Forty-Plus Years of Iowa Choice-of-Law Precedent: The Aftermath of the Restatement (Second) of Conflict of Laws

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I. INTRODUCTION

Beginning with *Fabricius v. Horgen*, Iowa courts shifted to align themselves with the principles of the Restatement (Second) of Conflict of Laws (“Second Restatement”) in the 1960s. Iowa’s departure from the maligned Restatement (First) of Conflict of Laws (“First Restatement”) was an ambitious and bold adjustment at a time when few other States had begun the transition or developed a body of case law on which Iowa courts could rely. Similar strategies in other States have resulted in a quagmire of inconsistent conflicts cases. Characterizing recent choice-of-law developments in the United States, Professor Perry Dane has observed, “... choice of law has sometimes resembled the law’s psychiatric ward. It is a place of odd fixations and schizophrenic visions.” Some contend the multiple theories and ad-hoc methods substituted for the First Restatement’s approach to choice-of-law issues are an over-correction that has fostered “... increased litigation costs, waste of judicial resources, and an increased danger of judicial subjectivism.”

Despite the jumble of modern choice-of-law theories, Iowa’s shift from the First Restatement to the Second Restatement has produced relatively uniform and straightforward results. These results may be in part because, since *Fabricius*, Iowa courts have rarely wavered from referring to the Second Restatement when confronted with the most common varieties of choice-of-law issues. Additionally, the majority of Iowa’s modern choice-of-law precedent developed in a unified manner in the Iowa Supreme Court and through legislation, rather than in lower appellate courts.

While Iowa courts consistently rely on the Second Restatement, an attorney wishing to determine the applicable law for a particular case...
set of circumstances can simply refer to the Second Restatement. Iowa statutory and case law purposefully departs from the Second Restatement in multiple instances. Further, as has been observed in other States, Iowa’s courts often do not refer to the more specific presumptive sections of the Second Restatement such as 185, 193, or 196, intended to apply in precise. Instead, Iowa courts tend to make cursory reference to general Second Restatement provisions, such as sections 6, 145, and 188, that provide much less guidance. Finally, following the Second Restatement often means courts incorporate other distinct theories, like interest analysis or comparative impairment, either expressly or implicitly. In any event, empirical study has suggested a State’s chosen “methodology plays a relatively minor role in explaining the results in actual cases.” Thus, while labeling Iowa’s approach the “Second Restatement approach,” this Article generally puts theory aside and instead focuses on the results of Iowa choice-of-law cases.

Rather than continuing to reject the rule-based approach or criticize new ad-hoc approaches to choice-of-law issues, this Article attempts to smooth the ills of both by demonstrating how Iowa’s Second Restatement conflicts precedent can be characterized by a series of descriptive rules; albeit rules more flexible and responsive than the First Restatement rules Iowa rejected. In all, nineteen rules and sub-rules that encompass Iowa’s approach to the most common choice-of-law dilemmas are listed and adapted from rules formulated for other States with similar conflicts law by other writers. While important

9. See infra notes 57-69, 165-68, 190-92 and accompanying text.
10. Patrick J. Borchers, Courts and the Second Conflicts Restatements: Some Observations and an Empirical Note, 56 Md. L. Rev. 1232, 1239 (1997); see infra notes 18-139 and accompanying text. The common refusal to consult or inadvertent neglect of more precise Second Restatement sections may stem from the “strong antirule syndrome that has set in since the failure of the First Restatement.” Symeonides, supra note 5, at 1798.
11. Patrick J. Borchers, Courts and the Second Conflicts Restatements: Some Observations and an Empirical Note, 56 Md. L. Rev. 1232, 1239 (1997); see infra notes 18-139 and accompanying text. The common refusal to consult or inadvertent neglect of more precise Second Restatement sections may stem from the “strong antirule syndrome that has set in since the failure of the First Restatement.” Symeonides, supra note 5, at 1798.
14. The rules set forth in this Article are in large part gleaned (though modified where necessary) from the work of Patrick J. Borchers, well-known conflicts expert and coauthor of a leading casebook and treatise on the subject. See Peter Hay, Russell J. Weitkamp, & Patrick J. Borchers, Conflicts of Laws: Cases and Materials (12th ed. 2004) and Eugene F. Scoles, Peter Hay, Patrick J. Borchers, & Symeon C. Syme-
nuances exist between choice-of-law patterns that have developed in Iowa and the patterns that have developed in other states paying lip service to the same methodology, at least the primary choice-of-law results in Iowa are consistent and comparable to those emerging in other states that represent they have adopted or follow the Second Restatement. This Article’s conclusion includes two diagrams, at Figures 1 and 2, intended to assist the reader to navigate the suggested tort and contract rules. The diagrams, similar to the rules, are not necessarily comprehensive but are a general descriptive guide for Iowa choice-of-law problems.

II. TORT RULES

A. DEFAULT TORT RULE:

“In tort cases in which the parties or events are connected with more than one State, the law of the State in which the plaintiff is injured governs.”

Despite the so-called conflicts revolution beginning with an assault on the First Restatement’s tort rule, the tort rule of general application under Iowa’s Second Restatement approach will yield the same result. The First Restatement set forth the lex loci delicti rule, or law of the place of the tort, defined as the place where the injury occurred. Under the Second Restatement, the lex loci delicti will remain the operative law for many—probably the majority—of Iowa tort

15. Compare, Patrick J. Borchers, Nebraska Choice of Law: A Synthesis, 39 Creighton L. Rev. 1, 23 (2005) (stating situs of real property governs inter-vivos trust validity in Nebraska) with IOWA CODE § 633.1108.1 (2005) (providing an inter-vivos trust “is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which at the time the trust was created the settlor was domiciled, had a place of abode, or was a national.”).

16. See Borchers, supra note 15, at 6-17 (establishing tort and contract rules equivalent to Iowa’s rules in Nebraska); Broglin v. Nangle, 510 S.W.2d 699, 700, 703-04 (Mo. 1974) (demonstrating the default tort rule stated below); Dunaway ex rel. Dunaway v. Fellows, 842 S.W.2d 166 (Mo. Ct. App. 1992) (demonstrating tort exception #2 stated below); Dillard v. Shaughnessy, Fickel & Scott Architects, Inc., 943 S.W.2d 711, 713 (Mo. Ct. App. 1997); Bonner v. Auto. Club Inter-Ins. Exch., 899 S.W.2d 925, 926 (Mo. Ct. App. 1995) (demonstrating contract rule #2); see infra notes 18-139 and accompanying text.

17. The diagrams, similar to the rules, are not necessarily comprehensive or prescriptive but are a general descriptive guide for Iowa choice-of-law problems.


21. Symeonides, supra note 5, at 1745.
choice-of-law cases although the theory and method by which the result is obtained is significantly altered. Rather than focusing solely on the place of the injury, Iowa courts’ new approach first accounts for other factors such as the parties’ domicile or principal place of business and the characterization of the law in dispute. After consideration of these factors, which could invoke one of the tort exceptions—or escape hatches—set forth below based on the interests involved, Iowa cases revert to the place of the injury in instances where a true conflict between the laws of the different States is present.

B. Tort Exception #1:

If the laws of the connected States conflict as to an issue of loss distribution and each party contesting that issue is domiciled (or, in the case of a business entity, has its principal place of business) in the same State [at the time of the underlying events] and that State is not the injury State, the

22. See infra notes 24-80 and accompanying text.
23. Application of this rule admittedly has the most logical justification in the following common situations: (1) where only the laws of the domiciliary States of two parties are in conflict and the injury occurred in one of those States, or (2) where the law of the State of injury is consistent with the law of one of the domiciliary States. One author persuasively argues the injury State law should not apply by default; however, in instances where three or more States’ laws potentially could apply and each States’ law conflicts with the others. See Reppy, supra note 12, at 2065-68. Consider, for example, a fact pattern where a plaintiff from State A and a defendant from State B are involved in an accident in State C where State C precludes recovery of noneconomic damages like pain and suffering, State B allows recovery for pain and suffering subject to a cap, and State A allows uncapped recovery for pain and suffering. See, e.g., id. at 2065-67 (citing Bodea v. Trans Nat. Express, 286 A.D.2d 5, 731 N.Y.S.2d 113 (App. Div. 2001)). Here, it makes little sense to apply the law of State C as an automatic tie break when both domiciliary States would allow for at least some recovery for noneconomic damages.

Perhaps one solution in these loss-distribution-three-State-conflict cases would be to apply the law that most accurately reflects a reasonable compromise between the three States. See id. at 2066. Thus, if State C disallows noneconomic damages and State A allows uncapped noneconomic damages, the law of State B, which allows capped noneconomic damages could apply. The same result could obtain if the accident occurred in State B and the plaintiff and defendant were from State C and State A respectively.

Additional exceptions to the default rule will no doubt arise and have already been proposed/discovered by conflicts scholars. See Symon C. Symeondes, The American Choice-of-Law Revolution in the Courts: Today and Tomorrow, 298 Recueil des Cours 9, 275 (2002) (setting forth a distinct rule for conflicts between punitive damages laws as follows: “Subject to some exceptions, American courts award punitive damages when such damages are imposed by the law of either the state of conduct or the state of injury.”). At minimum, the default tort rule and its exceptions are a useful tool for the vast majority of cases that will arise.

24. Issues relating to loss distribution usually include ‘conflicts between an ordinary or ‘gross’ negligence standard, the applicability of charitable immunity, and the exclusivity of the workers’ compensation remedy in a product liability case.” Borchers, supra note 15, at 347. On the other hand, “[c]onduct regulating rules are those rules—such as speed limits, detailed safety standards, and the like—designed to affect primary conduct.” Id.
law of the State of the contesting parties’ common domicile 
(or principal place of business) governs as to the contested 
issue.25

The Supreme Court of Iowa demonstrated the operation of both 
the default tort rule and tort exception #1 in Fabricius v. Horgen.26 In 
Fabricius, four Iowa residents collided head on in an automobile acci-
dent with another Iowa resident on a Minnesota highway.27 Both 
drivers and the three passengers were killed.28 An administrator ap-
pointed on behalf of four of the Iowa residents involved in the accident 
(“the plaintiff”) sued the administrator for the fifth Iowa resident (“the 
defendant”) for wrongful death.29 The claims on behalf of each dece-
dent sought the recovery of damages suffered by the decedents’ next of 
kin pursuant to Minnesota law.30 On these facts, the default tort rule 
and the First Restatement rule would have required application of 
Minnesota law.31

The defendant moved for dismissal of the plaintiff’s claims under 
Iowa law because Iowa’s survival statute, intended to benefit a dece-
dent’s estate, contained no grounds for the defendant’s liability to the 
plaintiff on behalf of the decedents’ heirs or minor children.32 Fur-
thermore, the plaintiff had no claim under Minnesota law because he 
had not been properly appointed trustee under Minnesota law.33 In-
stead, the plaintiff was attempting to recover on behalf of the dece-
dent’s next of kin, who were eligible to recover exclusively under 
Minnesota law, in the capacity of a representative eligible to bring suit 
under only Iowa law.34

The trial court refused to dismiss the plaintiff’s claims despite the 
pleading defect and the Iowa Supreme Court affirmed the ruling on 
appeal.35 Turning to choice-of-law, the Iowa Supreme Court deter-
mained all the significant contacts with respect to the loss-distribution

25. Id. at 6-7. “For purposes of [tort exception #1], ‘the same State’ includes States 
that are distinct but have identical laws on the issue being contested.” Id. Slight varia-
tions or modifications to this rule could develop, such as substituting the location of a 
business’s branch office for its principal place of business as a connecting factor in cases 
where the activities of the branch office gave rise to the injury and the branch office and 
principal place of business are in different States. See Reppy, supra note 12, at 2105-06.
26. 132 N.W.2d 410 (Iowa 1965).
27. Fabricius v. Horgen, 132 N.W.2d 410, 411 (Iowa 1965). Fabricius was a consol-
idation of four separate cases brought on behalf of the injured plaintiffs in the case. Id. 
at 411.
28. Id.
29. Id.
30. Id.
31. See supra notes 18-19 and accompanying text.
32. Fabricius, 132 N.W.2d at 411.
33. Id. at 413.
34. Id.
35. Id. at 417.
issue—identifying the proper claimant and how much they could recover—were with Iowa. As the court noted, all parties involved in the accident resided in Iowa at the time of the accident and the relevant Minnesota and Iowa laws conflicted as to the appropriate plaintiff and the amount of recovery, facts plainly within tort exception #1. Although the plaintiff had not pled on behalf of the proper claimants under Iowa law, the court noted a simple amendment could cure the defect and support an actionable claim. Other cases cement tort exception #1 in Iowa law.

Interestingly, once it had determined the proper claimants under Iowa law, the court noted “the question of actionable negligence depends on the law of Minnesota . . . . Minnesota would have an interest in the manner in which the cars were driven at the time of the accident . . . .” Thus, the court characterized actionable negligence as a matter of conduct regulation and, for that limited issue, minimized the plaintiff’s decedents’ connections with Iowa by emphasizing the accident’s occurrence in Minnesota and Minnesota’s concern over the drivers’ conduct in that State. This characterization aligned the case facts with the tort default rule requiring application of the law of the place of injury. Other cases confirm the default tort rule in Iowa choice of law.

Of note, the Fabricius court’s characterization of actionable negligence as an issue of conduct regulation is somewhat generous and blurs the otherwise useful distinction between loss-distributing and conduct-regulating rules. As Professor William A. Reppy noted, “if the basic standard of negligence in tort is a conduct-regulating law, then

36. Id. at 415-16.
37. Id. at 411; see supra notes 24-25 and accompanying text.
38. Fabricius, 132 N.W.2d at 416-17.
39. Berghammer v. Smith, 185 N.W.2d 226, 228-29 (Iowa 1971) (Plaintiff and Defendant: Minnesota and Illinois (but these States had the same law); Injury: Iowa; Law applied: Minnesota (law of the common domicile)); Fuerste v. Bemis, 156 N.W.2d 831 (Iowa 1968) (Plaintiff and Defendant: Iowa; Injury: Wisconsin; Law applied: Iowa); Flogel v. Flogel, 133 N.W.2d 907 (Iowa 1965) (Plaintiff and Defendant: Iowa; Injury: Wisconsin; Law applied: Iowa guest statute governing loss distribution). Of particular note is Berghammer v. Smith, which demonstrates tort exception #1 where the plaintiff and defendant are not domiciled in the same State but the two domicile States nevertheless have the same rule with respect to an issue of loss distribution and the injury occurs in a third State. Berghammer, 185 N.W.2d at 228-29.
40. Fabricius, 132 N.W.2d at 416. The court appeared to accept the doctrine of dépeçage here, the notion that different State law can apply to different issues within the same case. Id.
41. Id.
42. See supra notes 18-19 and accompanying text.
almost any aspect of tort law that imposes liability is as well." According to Professor Reppy, in order for the distinction between conduct-regulating laws and loss-distributing laws to retain its utility, the category of category-regulating laws should be limited to "specific descriptions of required or banned conduct," such as speed limits, rather than "broad categories of negligence, gross negligence, or strict liability." Thus, a strong argument exists that the Fabricius court should have applied Iowa's negligence standard as well under tort exception #1: the primary function of the negligence law was to set a standard at which an injured driver should be compensated and only its secondary effect, to some extent, may affect the manner of driving within the jurisdiction.

A more recent case, Judge v. Clark, implies that Iowa's courts have narrowed the category of laws they will characterize as conduct-regulating. In Clark, three employees of an Iowa corporation that performed industrial cleaning services in the Midwest traveled to Wisconsin to clean slag deposits from coal-burning boilers using explosives. During the cleaning process at a Wisconsin facility, communication between the three men in the explosive crew broke down and one of the employees died when his fellow employee mistimed a detonation.

The deceased employee's administrator ("the plaintiff") filed a wrongful death suit in Iowa against the employee who had detonated the explosion ("the defendant"), alleging co-employee gross negligence. Iowa law recognized a cause of action for co-employee gross negligence while Wisconsin law did not. The defendant contended Wisconsin law applied but that even under Iowa law the plaintiff could not prove facts sufficient to submit the case to a jury. The trial court disagreed with the defendant's position Wisconsin law applied but granted his request for a directed verdict under Iowa law.

44. Reppy, supra note 12, at 2086.
45. Id. at 2083. See Symeonides, supra note 23, at 154-72 for a helpful discussion of the distinction between conduct-regulating and loss-allocating rules.
46. 725 N.W.2d 658 (Table) (Iowa Ct. App. 2006).
49. Id. at *3.
50. Id.
51. Id. at *3 n.5, *5.
52. Id. at *3.
53. Id.
The Court of Appeals of Iowa affirmed the trial court’s decision that Iowa’s law applied but reversed the grant of a directed verdict. With respect to applicable law, the appeals court acknowledged the relevant contacts in a tort case “are to be evaluated according to their relative importance with respect to the particular issue.” Pursuant to that tenet, the court determined that Iowa’s law applied because the plaintiff and defendant were Iowa residents, the plaintiff’s estate was in Iowa, and the plaintiff’s only heir was an Iowa resident. Noticeably absent from the court’s analysis in light of its factual similarities to Fabricius is any implication that either Iowa or Wisconsin had an interest in applying its standard of actionable negligence for the sake of regulating conduct, indicating a narrower analysis than the Fabricius court’s view of which laws are conduct-regulating for choice-of-law purposes. Clark fits under tort exception #1 and the court prudently directed application of Iowa law, the State of the parties’ common domicile.

Reid v. Hansen is a final interesting case under the default tort rule. In Reid, a Nebraska resident employed with a corporation based in Omaha, Nebraska sustained an injury in Iowa while moving a piano in the course of his employment. The employee collected workers’ compensation benefits from the employer under Nebraska law and proceeded to bring suit for workers’ compensation under Iowa law. When the employee discovered the Nebraska employer was uninsured under Iowa’s workers’ compensation law, the employee withdrew his claim and instead sued under Iowa’s tort common law. The trial court dismissed the employee’s claim, finding the employer innocent of any omission under Iowa law because the employer had complied with Nebraska’s workers’ compensation law.

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54. Id. at *4, *8.
55. Id. at *4.
56. Id. Clark admittedly presented a false conflict, meaning Wisconsin probably had “no interest” in applying its law over Iowa’s more stringent standard even if the issue were expressly characterized as one relating to conduct regulation. Nevertheless, this author believes—or at least would like to believe—that the omission of any discussion of conduct regulation in the case indicates a narrowing of the classification of conduct-regulating tort rules for choice-of-law purposes. Id.
57. See supra notes 24-25 and accompanying text. See also Veasley v. CRST Int’l, Inc., 553 N.W.2d 896 (Iowa 1996) (Defendant: Iowa; Plaintiffs: Iowa; Injury: Arizona; Law applied: Iowa).
58. 440 N.W.2d 598 (Iowa 1989).
60. Reid, 440 N.W.2d at 599.
61. Id. The Iowa statute on which the employee based his claim provided for an alternative tort remedy for job-related injuries against employer’s who failed to provide workers’ compensation insurance as required under Iowa law. Iowa Code § 87.21 (2005).
62. Reid, 440 N.W.2d at 600.
After protracted discussion of Second Restatement section 184, the Supreme Court of Iowa reversed the trial court on appeal. Although section 184 of the Second Restatement pointed to application of Nebraska’s exclusive-remedy statute preventing further employer liability, the court found Iowa public policy opposed application of Nebraska law and thus rejected the Second Restatement rule. The court opined Iowa law was intended to address an employer’s neglect or refusal to obtain workers’ compensation insurance when the employer dispatched its employees to perform services in Iowa. In the court’s view, no provision of Nebraska law should defeat such a provision of Iowa law expressed in a positive legislative enactment. The court’s characterization of the choice-of-law issue thus forces Reid under the default tort rule: The facts and parties were connected to multiple States, the issue was one of conduct regulation (or at least not loss distribution), and the injury occurred in Iowa.

Note, however, that the issue in Reid again appears remarkably similar to the issue in Clark where the court employed the law of the parties’ common-domicile with respect to whether an actionable claim was present (which would have directed application of Nebraska law in Reid). The competing laws arguably conflicted with regard to loss distribution rather than a required or banned action properly characterized as conduct-regulation. In any event, this Author believes two things distinguish Reid from Clark: first, Reid dealt with statutory workers’ compensation issues which tend to be somewhat anomalous in conflicts law; and second, Reid invoked a rare public policy

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63. Second Restatement § 184 provides as follows: Recovery for tort or wrongful death will not be permitted in any state if the defendant is declared immune from such liability by the workmen’s compensation statute of a state under which the defendant is required to provide insurance against the particular risk and under which
(a) the plaintiff has obtained an award for the injury, or
(b) the plaintiff could obtain an award for the injury, if this is the state (1) where the injury occurred, or (2) where employment is principally located, or (3) where the employer supervised the employee’s activities from a place of business in the state, or (4) whose local law governs the contract of employment under the rules of §§ 187-188 and 196.
64. Reid, 440 N.W.2d at 601-03.
65. Id. at 602-03.
66. Id. at 600.
67. Id. at 602.
68. See supra notes 18-19 and accompanying text.
69. See Reppy, supra note 12, at 2082-86 (discussing the scope of the conduct-regulating exception to applying the law of the place of injury).
70. In fact, courts in some other States that follow the Second Restatement would have applied Nebraska law to the case in compliance with Second Restatement section 184. See e.g. Langston v. Hayden, 886 S.W.2d 82 (Mo. Ct. App. 1994). In those States, an additional tort exception applies in tort cases involving workers’ compensation claims: “In suits for subrogation or reimbursement for workers’ compensation payments, the workers’ compensation law under which the employer compensated the in-
argument in an arguably dubious manner to justify application of Iowa law. *Reid* therefore does not warrant an interpretation that expands Iowa’s realm of conduct-regulating laws. Still, *Reid, Fabricius,* and *Clark* demonstrate the fine distinctions that exist in characterizing laws as conduct regulating or loss distributing for choice-of-law analysis.

C. TORT EXCEPTION #2:

“If the injury and the conduct causing the injury occur in different States, and the laws of those States differ as to an issue of conduct regulation, the law of the State in which the conduct occurred applies.”

In *Bankord v. DeRock,* the United States District Court for the Northern District of Iowa applied Iowa’s choice-of-law approach to a suit arising out of an accident that occurred in Minnesota, injuring Minnesota residents. The injured Minnesotans sued the owner of an Iowa tavern, who had sold liquor to the negligent driver, arguing the court should apply Iowa’s law that provided for dram-shop liability where patrons intoxicated at the shop injured third-parties.

Under the default tort rule, Minnesota law would have applied because the accident occurred in that State. Nevertheless, the court determined that where the tavern owner’s actions occurred in Iowa and were generally subject to Iowa statutory law expressly governing his conduct, Iowa law would apply to allow the suit to proceed. The court noted Iowa’s dram-shop law had been construed as both regulatory and remedial in nature. Further, the court found the law’s primary purposes were to provide an avenue for relief and “to place a hand of restraint upon those licensed or permitted by law to sell or supply intoxicants to others.” Finally, the court stated that the law was embedded in a chapter of the Iowa Code that “represent[ed] a comprehensive legislative effort to regulate traffic in alcoholic liquors in the public interest.” As such, the court departed from the default tort rule where conduct regulation was one of the primary purposes of the applicable law and where the injury and conduct occurred in dif-
ferent States. The court's decision in Bankord is a typical example of tort exception #2's impact in States that have adopted the Second Restatement.

III. CONTRACT RULES

A. CONTRACT RULE #1:

A choice-of-law clause not subject to an accepted contract defense (such as fraud or duress) is enforceable if it chooses [Iowa] law. A choice-of-law clause not subject to an accepted contract defense is enforceable if it chooses another State's law unless either there is no reasonable basis for the choice or the choice violates a fundamental public policy of [Iowa].

In Joseph L. Wilmotte & Co. v. Rosenman Brothers,82 the Iowa Supreme Court first acknowledged contract rule #1. In Rosenman, the court applied New York law to determine the validity of an arbitration-compelling contract clause despite the location of the parties' contracting and principal performance in Iowa.83 The court rejected the plaintiff's contention that New York's policy of upholding arbitration provisions violated Iowa public policy.84 Instead, the court determined the parties' express choice of the American Arbitration Association Rules to govern the contract allowed the appointed administrator to select New York as the place of arbitration and thus New York law as controlling.85

Although also affording proof of contract sub-rule #1 below, Cole v. State Automobile & Casualty Underwriters86 further endorses the Second Restatement rule that prioritizes the parties' choice in the relevant contract.87 The Cole court noted the most significant relationship analysis and the parties' intent coincided in that case, citing a provision of the contract that provided for payment of claims in accordance with Minnesota law.88 Finally, Curtis 1000, Inc. v. Young-
blade\textsuperscript{89} demonstrates a court’s refusal to honor the parties’ choice of law where the issue related to Iowa public policy surrounding the validity of covenants not to compete.\textsuperscript{90} A host of cases in support of contract rule #1 from Iowa’s federal courts followed \textit{Rosenman, Cole,} and \textit{Youngblade.}\textsuperscript{91}

B. \textbf{Contract Rule #2:}

Subject to the sub-rules below, the law applicable to a contract without an enforceable choice-of-law clause is that of the State in which the parties contemplated the principal performance of the contract would occur, unless each party contesting that issue is domiciled (or, in the case of a business entity, has its principal place of business) in the same State [at the time of the underlying events] and that State is not the performance State, in which case the law of the State of the contesting parties’ common domicile (or principal place of business) governs as to the contested issue.\textsuperscript{92}

In \textit{Grace Label, Inc. v. Kliff,\textsuperscript{93}} a sole proprietorship operating in California brokered a deal involving a multinational Mexican food corporation and an Iowa corporation based in Des Moines for production of 47,250,000 Britney Spears trading cards.\textsuperscript{94} The Mexican corporation ultimately rejected the cards before the Iowa corporation shipped the final allotment, claiming the cards produced an odor that breached the contract’s requirement that the cards be fit for direct contact with food.\textsuperscript{95}

The California broker sued the Iowa corporation for breach and argued the United Nations Convention on Contracts for the International Sale of Goods (“CISG”) applied due to the international nature

\textsuperscript{89} 878 F. Supp. 1224 (N.D. Iowa 1995).
\textsuperscript{90} Curtis 1000, Inc. v. Youngblade, 878 F. Supp. 1224, 1254 (N.D. Iowa 1995) (Iowa law governed as to the enforceability and validity of a covenant not to compete despite the parties choice of Delaware law). \textit{But see APAC Teleservices, Inc. v. McRae, 985 F. Supp. 852, 856-57 (N.D. Iowa 1997) (Parties’ choice that Illinois law govern validity of a covenant not to compete did not violate Iowa’s public policy).}
\textsuperscript{92} Borchers, supra note 15, at 13-14. “For purposes of Contract Rule # 2, ‘the same State’ includes States that are distinct but have identical laws on the issue being contested.” \textit{Id.} This is merely a logical extension of the rule.
\textsuperscript{93} 355 F. Supp. 2d 965 (S.D. Iowa 2005).
\textsuperscript{95} \textit{Grace Label}, 355 F. Supp. 2d at 970.
of the transaction. 96 The district court rejected the broker’s suggestion because the contract dispute in question involved solely parties based in the United States. 97 Consistent with contract rule #2, the court proceeded to conclude Iowa law applied as the place of contracting and performance. 98 Subject to the sub-rules below, the place of performance is generally determinative for contracts with no express choice-of-law provision under the first part of contract rule #2. 99

Case law is sparse in Iowa with respect to supporting the common-domicile provision of contract rule #2. 100 However, section 188 of the Second Restatement itself lends substantial support for the result and there is no reason why Iowa courts would not continue to reference that section when expanding Iowa’s collection of modern choice-of-law rules. Comment e. to section 188 addresses the relevance of domicile or a party’s principal place of business in contract choice-of-law problems: “The fact that one of the parties is domiciled or does business in a particular state assumes greater importance when combined with other contacts, such as . . . the place where the other party to the contract is domiciled or does business.” 101 Comment e. thus suggests the common domicile of the parties weighs considerably in favor of applying the law of the common-domicile State over the law of the performance State.

Further, the domicile or principal-place-of-business contact listed in part (e) of section 188 is common to section 145 governing general tort choice-of-law problems, which Iowa courts follow. 102 The evaluation of the principal-place-of-business contact under those two sections

96. Id. at 971. Note the CISG established “substantive provisions of law to govern the formation of international sales contracts and the rights and obligations of the buyer and the seller.” Asante Tech., Inc. v. PMC-Sierra, Inc., 164 F. Supp. 2d 1142, 1146-47 (N.D. Cal. 2001). It applies “to contracts of sale of goods between parties whose places of business are in different States . . . when the States are Contracting States” that have ratified the CISG. Asante Tech., Inc., 164 F. Supp. 2d at 1146.


98. Id. (citing Gabe’s Constr. Co. v. United Capitol Ins. Co., 539 N.W.2d 144, 146 (Iowa 1995)).


100. See infra note 104 (discussing an Iowa case that to some extent supports the rule).

101. Restatement (Second) of Conflict of Laws § 188 cmt. e (1971).

102. Restatement (Second) of Conflict of Laws §§ 145 & 188.
is analogous. Finally, cases from other States that have also adopted the Second Restatement show rules tending toward this result. In sum, the common-domicile clause of contract rule #2 is a logical extension of other conflict rules and cases.

C. Contract Sub-Rule #1:

"Unless subject to an enforceable choice-of-law clause," the law of the State where the insured risk is principally located governs insurance contracts. However, the law that governs the master policy governs group life insurance contracts.

In *Gabe’s Construction Co. v. United Capitol Insurance Co.*, a subcontractor contracted with a general contractor to work on a gas line project in Mahaska County, Iowa. One of the contract’s terms required the subcontractor to obtain insurance on the general contractor’s behalf with regard to work done on the Iowa project. The subcontractor thus proceeded to add the general contractor as an insured on a policy the subcontractor had previously procured in Minnesota.

During the course of the Iowa project, a driver sustained an injury in a collision with one of the subcontractor’s winch trucks parked on a

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103. See *Restatement (Second) of Conflict of Laws* §§ 188(e) & cmt. c (1971) (“So the state where a party to the contract is domiciled has an obvious interest in the application of its contract rule designed to protect that party against the unfair use of superior bargaining power.”); § 145(c) & cmt. c (“When the tort rule is designed primarily to compensate the victim for his injuries, the state where the injury occurred, which is often the state where the plaintiff resides, may have the greater interest in the matter.”).

104. See *Borchers*, supra note 15, at 15 (citing Powell v. Am. Charter Fed. Sav. & Loan Ass’n, 514 N.W.2d 326, 332 (Neb. 1994) and *Bonner v. Auto. Club Inter-Ins. Exch.*, 899 S.W.2d 925, 926 (Mo. Ct. App. 1995). In dicta, *Holiday Inns Franchising, Inc. v. Branstad*, 537 N.W.2d 724 (Iowa 1995), could be read to imply the result suggested in contract rule #2. In interpreting the Iowa Franchise Act, the *Branstad* court determined one of the Act’s provisions made it impossible for the Act to apply to franchises operated “outside the state of Iowa, even if conflict of laws analysis [read “common domicile”] points to application of Iowa law.” *Id.* at 730. Admittedly a stretch, the court’s apparent admission that Iowa law could apply under a conflicts analysis despite the performance of the contract in another State could be interpreted to support the as yet unapplied common-domicile part of contract rule #2.


107. 539 N.W.2d 144 (Iowa 1995).


110. *Id.* at 145–46.
The injured driver made a claim against the general contractor, which the subcontractor’s insurer refused to defend despite the endorsement adding the general contractor to the subcontractor’s policy. Subsequently, the general contractor and its general liability insurer sued the subcontractor’s insurer for reimbursement in Iowa district court. The subcontractor’s insurer argued Minnesota law governed as Minnesota was the primary place of business of the subcontractor and the place where the subcontractor purchased the policy through a Minnesota insurance agent. Further, the insurer noted the insured subcontractor worked on projects in multiple States and the policy would otherwise be subject to various interpretations depending on the relevant project’s location. Minnesota law was more favorable to the insurer: it was more permissive than Iowa law with regard to interpreting auto exclusion clauses, therefore increasing the likelihood the injury was not covered under the policy.

Despite the strength of the Minnesota contacts, the Supreme Court of Iowa affirmed the district court’s application of Iowa law to the suit. The court noted Iowa was the principal place of the insured risk in light of the finite and specific application of the insurance endorsement, obtained on the general contractor’s behalf, to the Iowa project. In affirming the application of Iowa law, the court cited Second Restatement section 193 which the above-stated sub-rule #1 closely mirrors. United Capitol appears to be the Iowa Supreme Court’s first express endorsement of section 193 with regard to insurance contracts and Iowa has followed the lead of other Second

111. Id. at 145.
112. Id.
113. Id.
114. Id. at 146.
115. Id.
116. Id.
117. Id. at 147.
118. Id.
The validity of a contract of fire, surety or casualty insurance and the rights created thereby are determined by the local law of the state which the parties understood was to be the principal location of the insured risk during the term of the policy, unless with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the transaction and the parties, in which event the local law of the other state will be applied.
120. United Capitol, 539 N.W.2d at 146-47.
Restatement States in adopting its rule.121 Other Iowa cases confirm the rule’s authority in insurance cases.122

D. CONTRACT SUB-RULE #2:

“Unless subject to an enforceable choice-of-law clause,” the law of the State where the parties are to principally perform services governs contracts for employment or personal services.123

This rule mirrors contract rule #2 above but eliminates the common-domicile exception, consistent with section 196 of the Second Restatement.124 In Owen v. MBPXL Corp.,125 an employee brought suit against his employer under the Age Discrimination in Employment Act (“ADEA”).126 The employee had worked for the same employer for over twenty years, including at meat processing plants in Kansas, Missouri, and Indiana.127 Eventually, the employer transferred the employee to a meat packing facility in Orange City, Iowa in March 1999.128 In September 1999, the employer formed a dispute resolution agreement (“the employment agreement”) with employees at the Iowa plant that purportedly included a binding arbitration clause.129 The employee resigned in July 2000 and brought a claim for constructive termination against his employer under the ADEA, claiming denial of several raises and promotions due to his age.130

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121. See Borchers, supra note 15, at 14 n.82 (citing Nebraska cases that comply with the rule) and Crown Ctr. Redev. Corp., 716 S.W.2d at 357-59 (Mo. Ct. App. 1986) (citing § 195).

122. Bituminous Cas. Corp. v. Sand Livestock Sys., Inc., No. C04-4028-PAZ, 2005 WL 1476441, at *5 to *6 (N.D. Iowa June 22, 2005) (insured risk located in Iowa, thus Iowa law governs) but see Woods Masonry, Inc. v. Monumental Gen. Cas. Ins. Co., 198 F. Supp. 2d 1016, 1025-26 (N.D. Iowa 2002) (insured risk located in Iowa; law of employer’s principal place of business, Arkansas, nevertheless governed with respect to coverage under workers’ compensation insurance policy). Interestingly, the most recent reported Iowa case on the subject fails to cite section 193 of the Second Restatement and instead simply refers to general contract section 188. See Furhmann v. Majors, 756 N.W.2d 48 (Table) (Iowa Ct. App. 2008). In any event, Furhmann’s result is consistent with Second Restatement section 193. The case nevertheless is illustrative of the type of confusion that surrounds choice-of-law issues, from the trial court’s initial mischaracterization of the issue as one arising in tort to the appellate court’s failure to refer to section 193 despite the authority of United Capital.


124. See supra note 92 and accompanying text; RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 196 (1971).


128. Id. at 908.

129. Id.

130. Id.
The employer, which had its principal place of business in Kansas, moved to compel arbitration pursuant to the employment agreement. The district court held Iowa law applied, reasoning the employee was employed in Iowa at the time of his termination and had entered into the employment agreement while in Iowa. The court discussed the multiple contacts, including those with Indiana, Kansas, Delaware, Missouri, and Iowa, and found the principal place of performance at the relevant time was most significant with respect to interpretation of the employment agreement.

In another case involving an employment agreement, dePape v. Trinity Health Systems, Inc., the same federal court, noting the presence of a contractual choice-of-law clause, determined Iowa law would apply even without the clause because it was the place where the underlying employment duties were to occur. The rule seems settled and courts in other Second Restatement States in the United States Court of Appeals for the Eighth Circuit have also applied it consistently.

E. CONTRACT SUB-RULE #3:

Unless subject to an enforceable choice-of-law clause, [Iowa courts will uphold] a contract [] against a defense of usury if the interest rate complies with [Iowa] law or complies with the law of a State with which the contract has a substantial connection and the interest rate is not greatly in excess of the maximum rate allowed under [Iowa] law.

Older cases have established this rule and it has escaped attack from modern conflicts cases. Under this precedent, when multiple States are connected to a contract, Iowa courts will presume “the parties contracted with reference to the laws of the state wherein the stipulated rate of interest was lawful, and such presumption [will] prevail

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131. Id. at 909, 912.
132. Id. at 913.
133. Id. at 912-13.
until overcome by proof that the transaction was a device to defeat the law against usury.”

IV. OTHER RECURRING RULES

A. PROCEDURAL RULE: Iowa law governs matters of procedure.

This choice-of-law rule on the subject of procedure is deceptively simple. Further complicating the sometimes tricky chore of determining whether a rule is procedural or substantive, both for horizontal (State to State) choice-of-law purposes and vertical (federal to State) purposes, Iowa has enacted a statutory exception to the rule. The case of Cameron v. Hardisty suitably demonstrates the various masks of Iowa’s procedural rule.

In Cameron, the Iowa Supreme Court began with the general rule that Iowa’s statute of limitation will usually apply to limit an action in an Iowa court regardless of what State’s substantive law applies. In the court’s words, “Iowa’s choice of law rule, with two exceptions, requires the application of local law to matters of procedure.” Under the first exception, the court observed that Iowa’s borrowing statute, Iowa Code section 614.7, applies to prevent a plaintiff from taking advantage of a longer Iowa statute of limitation by filing suit in Iowa when the laws of a jurisdiction where the defendant has previously resided would bar the claim, unless the cause of action arose in Iowa. Under the second exception, the court explained it would de-
part from the customary procedural rule if the “statute giving rise to [a] plaintiff's cause of action also specifically limited the time within which the action could be brought.”

To summarize, Iowa’s procedural rules govern in Iowa courts except with regard to statutes of limitation when either (a) the applicable substantive law has a built-in, rather than general, limitation period, or (b) the applicable substantive law has no built-in limitation period and Iowa’s limitation period is longer than the period otherwise applicable based on the defendant’s former residences and the place where the action arose. Though application of forum procedural law is often assumed, an attorney should not overlook the importance of characterization of the relevant law under this rule as a useful litigation tool.

B. REAL PROPERTY RULE:

The law of the State where real property is located governs rights and interests in the real property.

This rule is so entrenched and accepted it is sometimes difficult to locate cases that directly state the proposition. The Iowa case of Olson v. Weber states the rule as follows: “The disposition of real property, whether by purchase or descent, is subject to the government within whose jurisdiction the property is situated.” The rule as to inter vivos trusts, set forth below, indicates one limited exception to the real property rule with regard to trust validity.


149. Cameron, 407 N.W.2d at 596. Note a federal court in Iowa has questioned whether Iowa’s Supreme Court would maintain the “right-remedy” distinction that the determination of whether a statute is “built in” reflects. Great Rivers, 934 F. Supp. at 305-06. The Iowa Supreme Court, however, has still not expressly rejected it.

150. See e.g. Joseph P. Bauer, The Erie Doctrine Revisited: How a Conflicts Perspective Can Aid the Analysis, 74 NOTRE DAME L. REV. 1235, 1252 n.76 (1999) (“It is very important to note, however . . . that the characterization of an issue as ‘substantive’ or ‘procedural’ may be quite different depending on whether the inquiry is made for Erie or for horizontal choice of law purposes.”).


152. 187 N.W. 465 (Iowa 1922)


154. See infra notes 166-73 and accompanying text.
C. **Perfection of Security Interests Rule:**

“Sections 9-301 through 9-307 of the Uniform Commercial Code govern ‘[q]uestions of perfection, non-perfection, and the priority of security interests in personal property and intangibles.’”

D. **Succession Rule:**

The law of the State where the relevant real property is located governs “[t]estate or intestate succession of interests in real property . . . [T]he law of the decedent’s last domicile . . . governs [t]estate or intestate succession of interests in personal property.”

*In re Drumheller’s Estate* states the part of this rule that applies to immovables. The rule is a resurfacing of the insistent real property rule stated above. On the other hand, *In re Estate of Colburn* directs that “the laws of the state in which the owner had his domicile at the time of his death rather than [ ] the laws of the locality in which such personality happened to be located” govern as to personal property.

E. **Will Validity Rule:**

As in many other States, Iowa has a statutory rule that governs the validity of a written will. That rule provides as follows:

- A will executed outside this state, in the mode prescribed by the law, either of the place where executed or of the testator’s domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state, provided said will is in writing and subscribed by the testator.

A parallel rule applies to the sufficiency of powers of appointment involving land or personalty. For purposes of construction and meaning, as stated in the succession rule, the law of the testator's

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156. Borchers, supra note 15, at 22;
157. 110 N.W.2d 833 (Iowa 1961).
158. *In re Drumheller’s Estate*, 110 N.W.2d 833, 834 (Iowa 1961).
159. See supra note 151 and accompanying text.
160. 173 N.W. 35 (Iowa 1919).
164. Bussing v. Hough, 21 N.W.2d 587, 590 (Iowa 1946). The Bussing court did not decide whether the law of the situs of real property governs construction (as opposed to sufficiency) of powers of appointment, as is the case with wills. *Id*. at 590-91.
domicile at death governs as to movables and the law of the situs of the property governs as to immovables.\textsuperscript{165}

F. \textsc{INTER-VIVOS TRUST RULE}:

In Iowa, choice of law with regard to inter-vivos trust validity is also statutory.\textsuperscript{166} Under the statute, an inter-vivos trust “is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which at the time the trust was created the settlor was domiciled, had a place of abode, or was a national.”\textsuperscript{167} As noted under the real property rule above, this validity rule applies to trusts of both real and personal property and is an exception to the real property rule.\textsuperscript{168} This Iowa-specific exception is contrary to the rule proffered in section 278 of the Second Restatement: “The validity of a trust of an interest in land is determined by the law that would be applied by the courts of the situs.”\textsuperscript{169}

On the other hand, the law designated in the trust governs the interpretation of inter-vivos trust terms in Iowa courts if that State’s law has “a substantial relationship to the trust.”\textsuperscript{170} If the trustor designated no law, “the law of the jurisdiction that has the most significant relationship to the matter at issue” governs.\textsuperscript{171} With regard to real property, the law of the situs of the property governs interpretation even in the presence of other law designated in the instrument.\textsuperscript{172}

G. \textsc{MARRIAGE VALIDITY RULE}:

“Marriages that are valid in the place of celebration are valid in [Iowa]” even if the parties could not have contracted the marriage under Iowa law.\textsuperscript{173} “In rare . . . circumstances, [Iowa courts may deny

\textsuperscript{165} Boehm v. Rohlfs, 276 N.W. 105, 109 (Iowa 1937). No Iowa case discusses whether a testator can designate governing law in his will with respect to construction and meaning of its terms. It may be an Iowa court would honor such a designation as to personality but would persist in applying the law of the situs of realty when interpreting provisions that relate to the realty. \textit{See In re Burshiem}, 483 N.W.2d 175, 181 (N.D. 1992). Such a result would be consistent with the rule governing the construction and meaning of inter-vivos trust terms in Iowa. \textit{See infra notes 170-72 and accompanying text.}

\textsuperscript{166} \textsc{Iowa Code} § 633.1108.1 (2005).

\textsuperscript{167} § 633.1108.1.

\textsuperscript{168} \textit{See supra} notes 151-54 and accompanying text.

\textsuperscript{169} \textsc{Restatement (Second) of Conflict of Laws} § 278 (1971).

\textsuperscript{170} \textsc{Iowa Code} § 633A.1108.2.a. “A jurisdiction has a substantial relationship to the trust if it is the residence or domicile of the settlor or of any qualified beneficiary, the location of a substantial portion of the assets of the trust, or a place where the trustee was domiciled or had a place of business.” \textit{Id.}

\textsuperscript{171} § 633A.1108.2.b.

\textsuperscript{172} § 633A.1108.2.c.

\textsuperscript{173} Borchers, \textit{supra} note 15, at 23; \textsc{Iowa Code} § 595.20 (2005):
effect to] an out-of-state marriage that was valid where celebrated . . . if it violates the public policy of [Iowa].”174 These public policy exceptions are primarily codified in Iowa law, and provide restrictions on age and prohibit marriage between people of the same sex.175

However, the Iowa Supreme Court recently held the provision prohibiting same-sex marriage unconstitutional under Iowa’s Constitution.176 Further, in 2005, the Iowa Supreme Court denied standing to various groups seeking to overturn a trial court’s recognition of a same-sex civil union contracted in Vermont.177 Barring a prompt constitutional amendment, the scope of Iowa’s public policy exceptions to the general marriage validity rule are narrowing.

H. DIVORCE RULE:

“[Iowa] law applies to govern an action in [an Iowa] court for the dissolution of a marriage. Jurisdiction in a divorce action requires that [Iowa] be the genuine domicile of at least one of the parties.”178 Domicile requires “(1) A definite abandonment of the former domicile; (2) Actual removal to, and physical presence in the new domicile; [and] (3) A bona fide intention to change and to remain in the new domicile permanently or indefinitely.”179

However, jurisdiction over one spouse gives the court power to determine the status of the marriage only.180 Adjudication that affects property rights requires personal jurisdiction over both parties under Iowa’s long-arm statute181 and in compliance with the United States Constitution’s due-process jurisdictional requirements.182 If an Iowa court has jurisdiction to adjudicate property rights, it will initially

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175. § 595.20.
177. Alons v. Iowa Dist. Court for Woodbury County, 698 N.W.2d 858, 862-74 (Iowa 2005).
180. Bartsch v. Bartsch, 636 N.W.2d 3, 8 (Iowa 2001) (citing In re Marriage of Kimura, 471 N.W.2d 869, 875 (Iowa 1991)) (“divisible divorce doctrine recognizes when court does not have personal jurisdiction over absent spouse it still has jurisdiction to grant a divorce to one domiciled in the state but no jurisdiction to adjudicate the incidents of the marriage, for example, alimony and property division.”).
181. IOWA CODE § 617.3 (Supp. 2007).
182. Bartsch, 636 N.W.2d 3, 8 (Iowa 2001).
characterize spousal rights in marital property pursuant to the marital property rule stated below. After characterization, an Iowa court will most likely apply Iowa law to divide marital property incident to divorce.

De facto application of forum law to divorce has been criticized because it, in effect, allows the parties to choose the law applicable to their divorce. A party can forum shop by establishing a domicile in a State with more favorable law. The Full Faith and Credit Clause will then require recognition of the divorce in other States even when the divorce domicile is immediately abandoned.

I. MARITAL PROPERTY RULE:

The law of the State where the relevant real property is located governs spousal rights in real property. “The law of the State of the marital domicile at the time of acquisition” determines “[s]pousal rights in personal property and intangibles.” As noted in the divorce rule above, under Iowa law, this property-characterization rule appears separate and apart from the rule that applies to division of marital property incident to divorce.

J. FAMILY SUPPORT RULE:

In a proceeding to establish, modify, or enforce a child support order the forum state’s law shall apply except as follows:

1. In interpreting a child support order, a court shall apply the law of the state of the court or administrative agency that issued the order.

183. See infra notes 188-90 and accompanying text.
184. See In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa Ct. App. 1991) (“However, once the property was characterized, the trial court should have applied Iowa law in dividing the property.”). “The traditional and accepted rule is that a court seized of dissolution of marriage litigation invariably applies the law of the forum to resolve the issues and incidents of the case.” William A. Répy, Jr., CONFLICTS OF LAW PROBLEMS IN THE DIVISION OF MARITAL PROPERTY § 10.02, in 1-10 VALUATION AND DISTRIBUTION OF MARITAL PROPERTY (Matthew-Bender 1984, reprinted 1986). See also Sandra C. Ruffin, POSTMODERNISM, SPIRIT HEALING, AND THE PROPOSED AMENDMENTS TO THE INDIAN CHILD WELFARE ACT, 30 MCGEORGE L. REV. 1221, 1264 (1999) ("[T]ypically, jurisdiction equals choice of law in the context of domestic relations law.").
186. Id.
187. Id.
190. See supra notes 180-84 and accompanying text.
2. In an action to enforce a child support order, a court shall apply the statute of limitations of the forum state or the state of the court or administrative agency that issued the order, whichever statute provides the longer period of limitations.191

This statutory rule is contrary to the rule applied in some other States that have adopted the Second Restatement.192 Missouri and Nebraska, for example, now appear to apply the law of the State where the party on whose behalf the support is sought is domiciled.193

K. CHILD CUSTODY RULE:

An Iowa court applies Iowa law to custody disputes if the Iowa court has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”).194

V. CONCLUSION

As the above rules show, apart from the general contract and tort rules that usually account for the most confusion in choice-of-law dilemmas, Iowa’s lawmakers are increasingly setting forth choice-of-law rules in statutes. Even so, careful analysis and characterization of an issue is necessary to determine whether a codified rule applies to a choice-of-law issue. For example, though an Iowa statutory rule governs determining what law is applicable when deciding a will’s validity, the same rule does not govern the law applicable to interpretation and meaning of the will’s provisions.195

Further, whatever rule appears to presumptively apply, whether statutory or common law, re-characterizing a set of facts can sometimes bring those facts outside of an unfavorable rule or within a more favorable rule.

194. Borchers, _supra_ note 15, at 26; _Iowa Code_ §§ 598B.101 to 598B.402 (2005). There is no express choice-of-law provision in the UCCJEA but the Act allows jurisdiction only where no other State court has jurisdiction or has claimed jurisdiction. §§ 598B.101 to 598B.402. Because of these strict jurisdictional limitations, application of forum law follows a finding of proper jurisdiction. _Id._; see Borchers, _supra_ note 15, at 27 and _In re P.D.M._, No. 01-0872, 2001 WI 1503276, *1 to *3 (Iowa Ct. App. Nov. 28, 2001) (Overturning Iowa trial court’s application of Iowa law to terminate parental rights of father in Wisconsin in contravention of Wisconsin court’s order and noting the Wisconsin court had made the proper “choice-of-state” determination under the UCCJEA.).
195. See _supra_ notes 162-65 and accompanying text.
favorable rule. For example, whether a tort rule is loss-distributing or conduct-regulating can be perplexing and open to interpretation.  

Beyond characterization flexibility, new choice-of-law approaches are also still developing. Comment c. to section 5 of the Second Restatement notes the degree to which conflict-of-laws rules have been and will continue to be in a state of change under the Second Restatement:

To the extent that they are embodied in common law rules, Conflict of Laws rules are as subject to change by the courts as are other common law rules. Indeed, more drastic changes have recently been made in the common law rules of Conflict of Laws than in most other areas of the law, and it seems probable that this trend will continue. As experience accumulates, some existing Conflict of Laws rules may be modified and additional rules may be devised in order to cover narrower situations with greater precision and definiteness.

As such, the above rules leave room for departure for resourceful lawyers in situations where the relevant policies or contacts are of an exceptional nature and warrant a different approach. The rules nevertheless are more precise than the general sections of the Second Restatement and are useful in predicting an Iowa court’s approach to a choice-of-law problem. Further, the cited line of cases can help illustrate to a court its approach to a particular issue to this point under the Second Restatement and convince it to continue in that vein. On the other hand, familiarity with the rules and precedent patterns can also assist an attorney in determining how best to argue in favor of altering the otherwise expected result.

196. See supra notes 44-70 and accompanying text.
197. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 5 cmt. c (1971).
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Fig. 1

Tort Claims Involving Contacts with Multiple States

- Loss distribution issue?
  - Yes
  - Common domicile or principal place of business in State other than injury State?
    - Yes
    - Law of common domicile or principal place of business governs
    - No
    - Conduct regulation issue?
      - Yes
      - Law of place of conduct causing the injury governs
      - No
      - Law of place of injury governs

- No
  - Injury and conduct causing the injury occurred in different States?
    - Yes
    - Conduct regulation issue?
      - Yes
      - Law of place of conduct causing the injury governs
      - No
      - Law of place of injury governs
    - No
    - Law of place of injury governs

Fig. 2

Contract Claims Involving Contacts with Multiple States

- Subject to accepted contract defense?
  - Yes
  - Insurance contract?
    - Yes
    - Employment contract or contract for personal services?
      - Yes
      - Uphold contract
      - No
      - Violate public policy?
        - Yes*
        - Uphold contract
        - No
      - USurious rate
        - No
        - Uphold contract
        - Yes
        - Violate IA law
          - Yes
          - Uphold contract
          - No
    - No
    - Interest rate complies with IA law?
      - Yes
      - Uphold contract
      - No
      - Interest rate complies with law of a State with a substantial connection to the contract and is not greatly in excess of maximum IA law allows?
        - Yes
        - Uphold contract
        - No
      - Uphold contract
    - No
    - Interest rate complies with law of a State with a substantial connection to the contract and is not greatly in excess of maximum IA law allows?
      - Yes
      - Uphold contract
      - No
    - Uphold contract
  - No
  - Choose-of-law clause?
    - Yes
    - Ignore choice-of-law clause
    - No
  - Parties' choice violates fundamental IA public policy?
    - Yes*
    - Uphold contract
    - No
  - Subject to accepted contract defense?
    - Yes
    - Choose IA law?
      - Yes
      - Uphold contract
      - No
      - No insurance contract?
        - No
        - Uphold contract
        - Yes
        - Uphold contract
    - No
    - Choose-of-law clause
      - Yes
      - Uphold contract
      - No
    - No insurance contract?
      - Yes
      - Uphold contract
      - No
    - No
    - Laws of parties' choosing applies
      - Yes
      - Uphold contract
      - No
    - No insurance contract?