

# *Conflict of laws and automobile insurance: an American perspective*

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# Unique US Legal Background

- Federalism - significant state autonomy and separation of state and federal power
- State law predominates for insurance law
- Common law complicates insurance regulation
  - Insurance policy interpretation by courts
  - Bad faith law a form of consumer protection
  - Public policy rules created by courts

# Thesis

Choice of laws in the United States for automobile insurance is exceedingly complicated, but does not matter very much because it mostly applies at the margins

# Complication 1: Different Tests

- *Lex Loci Contractus* (First Restatement - minority rule)
- Most significant relationship (Second Restatement - majority rule)
- Governmental interest analysis (minority rule)
- Lefler's better law approach (minority rule)
- *Lex Fori* approach (one state)

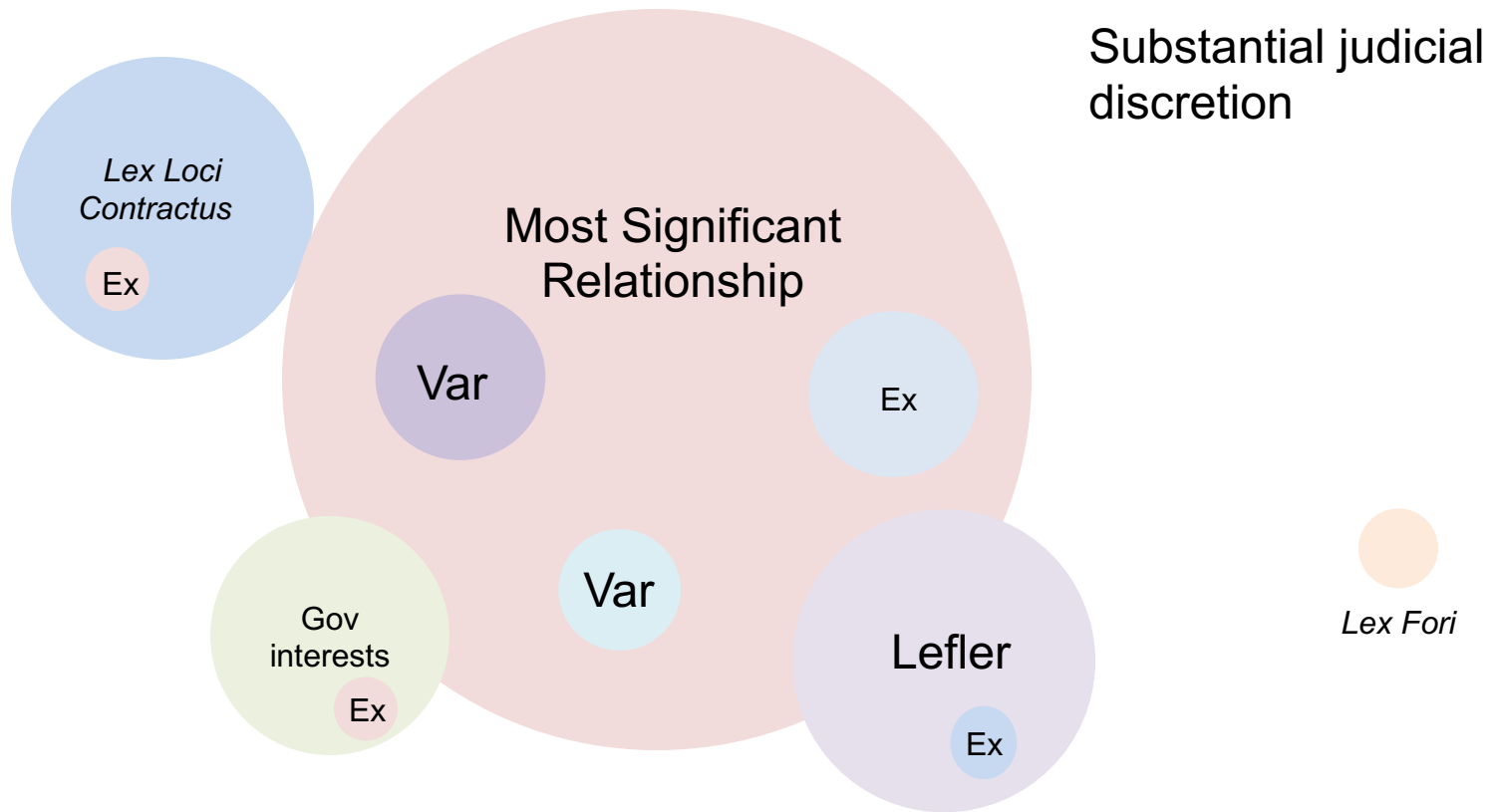
# Complication 2: Elements are vague

- *Lex Loci Contractus* - Where is the contract made?
- Relationship - Where is the risk located?
- Government interests - How are interests compared?
- Lefler - What is the better rule of law?
- *Lex Fori* - Are there sufficient reasons for application of another forum's law?

# Complication 3: Exceptions and variations

- Public policy exception for *Lex Loci Contractus*
- Exception for a more significant interest to override location of the risk
- Variation for mobile risks - multiple states or other factors besides location
- Variation on Leflar test - some states add those factors to other factors in an interest analysis

# Choice of Law Illustrated



# Areas without conflicts

- Insurer has a duty to defend against potentially covered claims
- Insurer has a duty to indemnify for bodily injury and property damage up to the limits
- Little variation on auto insurance exclusions
- Insurer's liability subject to policy limits
- Insurer has a duty to act in good faith in the handling (and settling) of the claim



# Issues Raising Choice of Law

- Allocation/stacking for multiple policies
- Nuances in bad faith law
- Uninsured and underinsured motorist issues
  - Passengers are covered by owners' policies
  - Was the “offer” of coverage sufficient?
  - Is claimant “legally entitled to recover”?
  - Is stacking of coverages allowed or precluded?

# Illustration: *Allstate v. Hague*

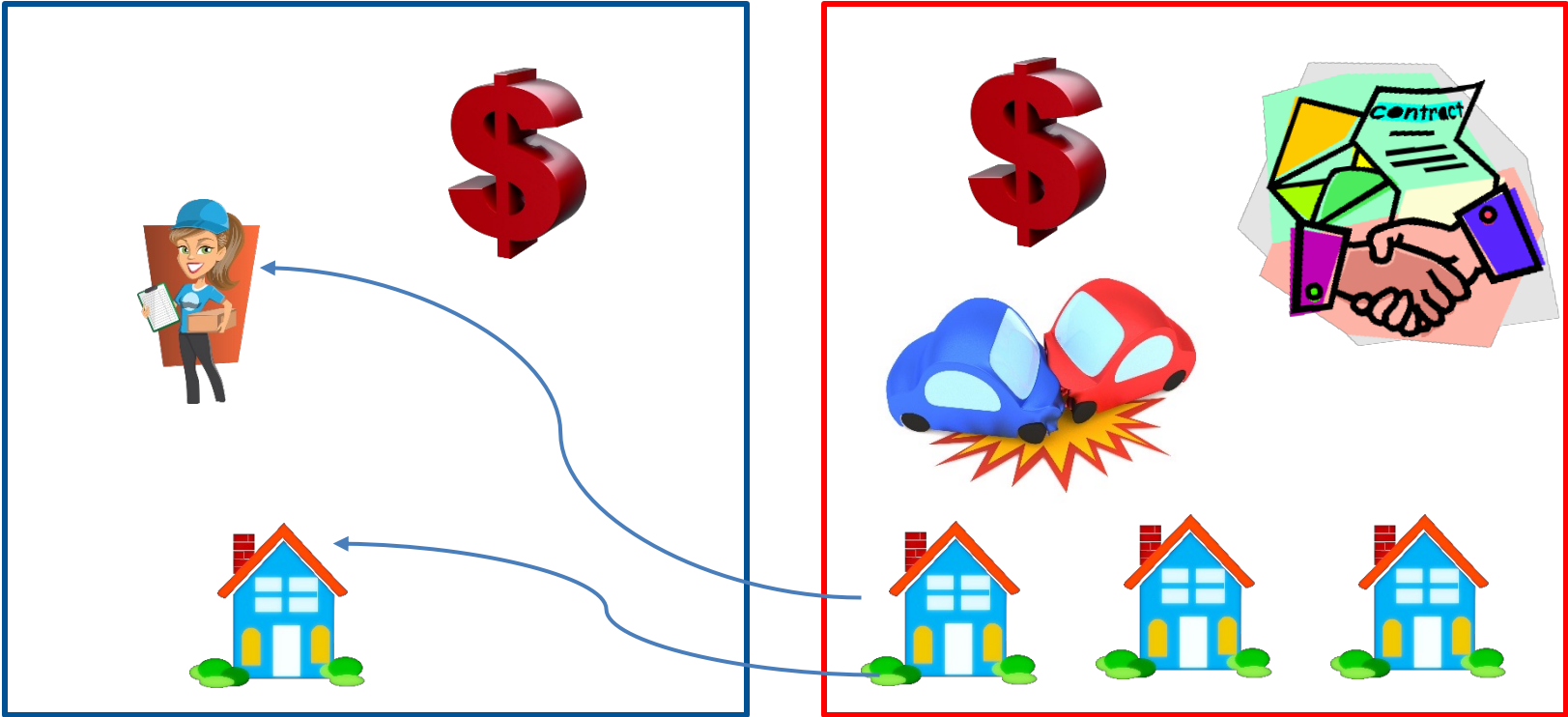
449 U.S. 302 (1981)

- Passenger on motorcycle killed when hit by car
- Car and motorcycle uninsured
- Passenger had uninsured motorist coverage on 3 cars, \$15,000 coverage on each
- Issue: stacking for \$45,000?
  - Wisconsin - no stacking so \$15,000 in coverage
  - Minnesota - stacking permitted, \$45,000

# Relationship to the states

Minnesota

Wisconsin



# Choice of Law Result

- Minnesota court applied Minnesota law
- Applied Lefler standard - "better law" to allow stacking
- Same result with other tests because of finding that Minnesota has strong public policy in favor of stacking, which can override other considerations

# Conclusions

- Choice of law is complicated - 5 different tests in the US with uncertainties and variations
- Courts have broad discretion
- Choice of law rarely made because of general consensus on most auto insurance issues
- Choice of law decisions made at the margins (allocation, bad faith, UM-UIM), and choice of applicable laws is quite unpredictable

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