199) 40 (EU) (concerning noncontractual obligations in civil and commercial matters), and other jurisdictions. See generally SYMEON SYMEONIDES, CODIFYING CHOICE OF LAW AROUND THE WORLD: AN INTERNATIONAL COMPARATIVE ANALYSIS (2014).

For an assessment of the Restatement of the Law, Conflict of Laws (AM. L. INST. 1934) and the process leading to the drafting of the Restatement of the Law Second, Conflict of Laws (AM. L. INST. 1971), see Willis L.M. Reese, *Conflict of Laws and the Restatement, Second*, 28 LAW & CONTEMP. PROBS. 679, 679–681 (1963). In the same article, Reese, the Reporter for the Restatement Second, described it as a transitional document, voicing his hope that "more definite and precise rules can be stated after more experience has accumulated. That will be the task of future Restatements." Id. at 699. For an assessment of the Restatement Second and the development of American choice of law, see Kermit Roosevelt III, *Certainty and Flexibility in the Conflict of Laws*, *in* THE CONTINUING RELEVANCE OF PRIVATE INTERNATIONAL LAW AND ITS CHALLENGES (Franco Ferrari & Diego P. Fernández Arroyo eds., 2019).

§ 5.02. Choice-of-Law Analysis

(a) A court will decide a choice-of-law issue by determining whether there exists a material difference among relevant laws and, if so, deciding which of the conflicting laws will be given priority.

(b) A court, subject to constitutional limitations, will follow a local statute that identifies the law to be given priority.

(c) In the absence of such a statute, a court will use the rules of this Restatement to identify the law to be given priority.

Comment:

a. Material difference among relevant laws, scope of laws. As set forth in this Restatement, choice-of-law analysis requires a court first to determine whether a conflict exists. That determination is performed by ascertaining whether there is a material difference among two or more relevant laws.

A difference is material if the laws direct different outcomes with respect to a particular issue. A law is relevant if the facts of the case bring the issue within the scope of that law. In the absence of specification by the courts or legislature of another state, a court may presume that the scope of that state's law is broad. The Restatement of the Law Second, Conflict of Laws provides nonexhaustive lists of contacts that will bring an issue within the scope of a state's law for tort issues (§ 145) and contract issues (§ 188). For the purposes of applying this Restatement, any of

those contacts may be presumed sufficient to bring the facts of a case within the scope of a state's law. Broad presumption of scope is appropriate because any error in extending the scope of a state's law beyond what the state lawmaker intends will likely be rendered harmless at the second step. The rules of this Restatement will not give priority to the law of a state with only a marginal interest in the issue.

Sometimes, state legislatures will indicate whether a law of their state is or is not relevant to a particular set of facts by explicitly limiting the scope of the law. A statutory specification of scope is a statement by the legislature that the law reaches certain facts and not others. A legislature might provide, for instance, that its law creates a cause of action for wrongful deaths "caused in this state," that its law imposes vicarious liability on the owners of vehicles "used or operated in this state," that its franchise act regulates franchise contracts for franchises "in this state," that its wage-and-hour laws provide rights relating to "work performed in this state," or that its consumer-protection law regulates "goods delivered in this state." In each of these cases, the statute implies that the law does not create rights for events outside its scope—it does not regulate with respect to wrongful death caused outside the state, or injuries caused by vehicles not operated in the state, or franchises located outside the state, or work performed outside the state, or goods delivered outside the state. (A court of the enacting state could interpret the statute differently, but courts have been consistent in their interpretation of such statutes.)

Courts of the enacting state might also interpret a statute to have a limited scope, even if the words of the statute do not contain such a limit. Some state courts follow a presumption against extraterritoriality in interpreting their own statutes. A decision by a state court of last resort that the scope of a state statute is territorially limited determines the scope of that statute to the same extent as legislative specification.

If a state law does not reach certain facts, it is not relevant and is not a candidate for selection through choice-of-law analysis. If only one law is relevant, there is no choice-of-law issue and no need to consult the law-selecting rules of this Restatement. See § 5.01, Comment *c* and Illustrations 3 and 6 thereto.

b. Legislative determination of priority. A legislature might also write a different sort of statute: one that is directed to the issue of priority rather than scope. In contrast to a specification of scope, which tells *all* courts the circumstances under which the state's own law is or is not available for selection through a choice-of-law analysis, a determination of priority directs *the*

state's courts to skip the analysis and select one state's law rather than another's. See Restatement of the Law Second, § 6, Comment *a* (describing "[s]tatutes that are expressly directed to choice of law" as "statutes which provide for the application of the local law of one state, rather than the local law of another state" and giving examples). Such a statute identifies the governing law, just as the law-selecting rules of this Restatement do. Such statutes must be followed by local courts unless invalidated by some higher authority such as the U.S. Constitution.

A statute that gives priority to a particular law in specified cases implies that the specified cases come within the scope of the law. See Illustration 1. It does not restrict the scope of the law to those cases. Courts may use the law to govern other cases if their choice-of-law analysis selects it.

Illustrations:

1. A statute of state X provides that insurance contracts payable to X citizens "shall be governed by X law." An X citizen enters into an insurance contract. The statute directs that state X insurance law be given priority over any conflicting laws of other states with respect to this contract. The determination of priority must be followed in the courts of state X, but it is not binding on the courts of other states.

The statute implies that the contract is within the scope of X law. That means that X law is available for selection by the courts of other states, which must perform a choice-of-law analysis if some other relevant state law conflicts with X law.

2. Same facts as Illustration 1, except that the insured party is not a citizen of state X. The statute does not reach the contract, so it does not determine which law should be given priority if there is a conflict. It does not limit the scope of state X insurance law. All courts should perform an ordinary choice-of-law analysis to identify the governing law. Such an analysis might lead to the selection of X law.

A state might adopt such a choice-of-law statute with respect to a particular issue or set of cases. Such statutes could be called overriding rules because they override the normal choice-of-law analysis. If they cannot be varied by agreement, they are what this Restatement calls overriding mandatory rules. (Some choice of law statutes can be varied by agreement. They are default rules.) A state might also adopt a statute addressing a broader range of issues as part of a general codification of choice of law. The States of Oregon and Louisiana have done so, as have many nations. The Uniform Commercial Code also contains some sections that determine priority.

A court must follow a statutory provision of its own state that determines priority, provided that it would be constitutional to do so. For States of the United States, a federal statute is considered a statute of every State for the purposes of this subsection. See § 1.03, Comment *e*. Thus, States of the United States are bound to follow federal choice-of-law statutes to the extent such statutes are relevant. In interpreting and applying federal law, a State must follow the decisions of the U.S. Supreme Court. For the question of whether a contract selecting the law of a particular State includes federal law, see § 8.03. A foreign statute determining priority need not be followed. For the relevance of foreign choice-of-law statutes, see § 5.06.

Sections 5.03 and 5.04 of this Restatement provide for exceptions to its other law-selecting rules in cases in which the law selected by those rules would be manifestly inappropriate or their use would be contrary to a strong forum policy. Those Sections operate slightly differently with respect to local statutes than they do with respect to the law-selecting rules of this Restatement. If a local choice-of-law statute selects foreign law, it indicates that the state's legislature has deemed that law most appropriate and thus the § 5.03 exception is not available. However, it is possible, though unlikely, that the foreign law selected by such a statute would be sufficiently offensive to warrant invocation of the § 5.04 public-policy exception. Whether the public-policy exception remains available despite the law-selecting statute is a question of interpreting that statute.

c. Distinguishing specifications of scope from determinations of priority; the word "apply." Drawing the conceptual distinction between a specification of scope and a determination of priority is an essential step in understanding state statutes relating to conflict of laws. For the sake of clarity, one may start with hypothetical statutes that are unambiguous and clearly separate the two issues. With respect to wrongful death, for instance, one might imagine two possible statutes:

> Statute A. There is a cause of action under our law for any wrongful death caused in this state. There is no cause of action under our law for any wrongful death caused outside this state. How the cause of action for deaths caused in this state interacts with conflicting provisions of foreign law is to be determined by our ordinary choice-of-law principles.
>
> Statute B. There is a cause of action under our law for any wrongful death caused in this state. There is a cause of action under our law for wrongful death caused outside this state only if the plaintiff is a domiciliary of this state. Issues relating to wrongful deaths caused in this state are to be decided under our law, regardless of

any provisions of foreign law. How the cause of action for deaths caused outside this state interacts with conflicting provisions of foreign law is to be determined by our ordinary choice-of-law principles.

These statutes clearly distinguish between scope and priority. Statute A says that the scope of the state's law is territorial, meaning that it is relevant for deaths caused within the state and not for deaths caused outside it. Deaths caused outside the state will not be governed by the state's law. The statute says that questions of priority for deaths caused within the state are to be decided by ordinary choice-of-law analysis, so they may be governed by foreign law or local law as the analysis dictates.

Statute B says that scope of the state's law includes wrongful deaths caused within the state and that the state's law should be given priority for cases involving such deaths. It does not limit the scope of the law to such deaths; instead, it provides that state domiciliaries may also invoke it for deaths caused outside the state.

All courts should respect the specifications of scope in these statutes. The determination of priority in Statute B binds only the courts of the enacting state.

State statutes are not always so clear. However, it is generally possible to distinguish between specifications of scope and determinations of priority. A statute that provides that a claim exists, or that a party shall be liable, under certain circumstances (for instance, "a claim exists for wrongful deaths caused in this state" or "a person shall be liable for wrongful deaths caused in this state") is, on its face, simply describing circumstances under which the state's law creates legal consequences. That is a specification of scope. Likewise, a statute that defines rights-holders, as by referring to "franchises in this state," is specifying the scope of the law. Statutory language that does nothing more than create a claim or a liability under certain circumstances should generally be understood as a specification of scope. Specifications are usually interpreted to operate as restrictions the reference to things, persons, or events "in this state" is interpreted as an exclusion of their out-of-state counterparts. A territorial restriction imposed via a presumption against extraterritoriality is also a restriction of scope. Whether a specification of scope is a restriction is a question of interpreting the statute, and the interpretation of the state's court of last resort is authoritative.

A statute that determines priority will identify a certain set of issues or cases and go on to provide that those issues shall be governed by a particular law or that a particular law "shall be

applied" to decide the issue. (As discussed below, it is often better to avoid the word "apply" in the choice-of-law context.) It might say that insurance contracts payable to Texas residents shall be governed by Texas law (see Reddy Ice Corp. v. Travelers Lloyds Ins. Co., 145 S.W.3d 337 (Tex. App.-Hous. 14th Dist. 2004)), that "Oregon law shall be applied in all cases where the contaminated property to which the action relates is located within the State of Oregon" (Oregon Rev. Stat. 465.480(2)(a)), or that certain tort issues shall be governed by the law of shared domicile. If a statute provides that a state's law should be given priority in certain circumstances, courts generally do not interpret it as limiting the scope of the law to those circumstances.

Generally speaking, courts have agreed upon how to interpret particular statutes. The interpretations of a state's court of last resort are authoritative with respect to that state's law.

One reason for confusion between the concepts of scope and priority is the use of the word "apply." It is often unclear what is meant by saying that a law "applies" to a certain set of facts. It could mean that the facts fall within the scope of the law, i.e., the law is available to be selected. (Courts determining the scope of statutes frequently say that they apply or do not apply to certain facts as part of a threshold determination of whether a conflict exists.) Or it could mean that the law is to be given priority as to those facts: the law will be selected and used to govern the issue. (Rome II, for instance, frequently selects a law by stating that the chosen law "shall apply.") To say that a court will or should "apply" a law generally means that it will be given priority—that law is selected rather than another law. (Oregon's hazardous-waste law states that "Oregon law shall be applied.")

To avoid confusion, it is better not to say that a law does or does not "apply" in the choice-of-law context unless it is clear whether the statement is about scope or priority. Rather, it is preferable to indicate scope by saying that a law "reaches" an issue or set of facts or "includes them within its scope." It is preferable to indicate priority by saying that a law "governs" an issue or set of facts or that it "will be given priority." (The carefully drafted Oregon choice-of-law codification consistently uses the word "governs.")

d. Flowchart. As described in this Section, a court considering a multistate case should perform the following steps:

(1) Decide whether a choice-of-law issue exists, i.e., whether there are material differences among relevant laws. This requires the court to identify the relevant laws. Relevant laws are those that include the issue within their scope. Statutory specifications

of scope are controlling, as are interpretations by that state's court of last resort. In the absence of an authoritative determination of the scope of a state law, courts may presume that its scope is broad, extending to all persons or events within the state's borders and to events involving the state's domiciliaries outside the state's borders, especially if the issue is one in which use of the state's law would protect or benefit a domiciliary;

(2) If a choice-of-law issue exists, decide to which law it is most appropriate to give priority. If a local statute directs the selection of a particular law, the court must follow that statute unless it is unconstitutional. If no local statute identifies the most appropriate law, the court should identify the law selected by the governing Section of this Restatement. Finding that Section requires the court to decide whether the issue is substantive or procedural, see Topic 3, and, if it is substantive, to decide its appropriate subject-matter characterization.

(3) Last, after identifying the law selected by the governing Restatement Section, the court should consider whether the case presents such exceptional circumstances that selection of another state's law is manifestly more appropriate or whether local public policy prohibits use of the selected law. See §§ 5.03, 5.04.

e. Most appropriate law. This Restatement uses the phrase "most appropriate law" to name the governing law for two reasons. First, although it has been used in the Oregon codification, the phrase is not associated with any major pre-existing approach to choice of law. "Most appropriate" is not intended to replicate precisely any pre-existing concept such as "more impaired," "greater interest," "center of gravity," or "most significant relationship." Second, in distinction to those concepts, "most appropriate" is intended to convey that the rules selecting the governing law have been drafted with attention to certainty, predictability, and ease of application (what this Restatement calls "systemic factors") as well as the desirability of results in individual cases (what this Restatement calls "right-answer factors").

f. Particular issue. As did the Restatement Second (see Restatement of the Law Second, Conflict of Laws §§ 145(1) (describing analysis for "an issue in tort") and § 187 (referring to "particular issue")), this Restatement prescribes a separate choice-of-law analysis for each issue for which such analysis is appropriate. The result may be that different states' laws govern different issues or different parties within a single case (a technique called *dépeçage*).

g. Limitation on dépeçage. Some uses of *dépeçage* are unproblematic. Appropriate *dépeçage* will generally advance the policies of all relevant states to some degree. See Illustration 3. The possibility exists, however, that deciding different issues under different states' laws will produce a result that is contrary to the policy of all relevant states. In such circumstances, *dépeçage* should not be used.

It is not possible to provide bright-line rules expressing the limits on appropriate *dépeçage*. The problem is best understood in terms of the effect that *dépeçage* has on the expectations of the parties and the policies of the relevant states; and its resolution requires reasoned judgment. Analogous doctrines exist in other areas of law and may provide some guidance. For instance, a court that finds constitutional defects in some parts of a statute must decide whether the unconstitutional parts may be severed, allowing the remainder to stand. A United States federal court deciding whether to apply a particular state rule in a diversity case will sometimes consider whether the rule is so bound up with the rights and obligations of the parties that excluding it would impermissibly distort the state's law. In both situations, the question is about the relationship between rules that are excluded and those that are included: does the exclusion lead to an unacceptable distortion of the remaining law?

In the choice-of-law context, there are two relatively clear situations in which *dépeçage* would be inappropriate. (Others may exist, and the issue requires case-by-case analysis.)

First, a state may have two rules that are closely connected in purpose, so that applying only one would produce an unacceptable distortion. (This sort of connection will often exist between two rules that both relate to conduct, or two rules that both relate to persons.) See Illustration 4.

Second, a state may have two rules, one of which is intended to balance or mitigate the other. Applying only one will produce an outcome that is not consistent with the state's policy. That will be inappropriate unless the outcome can plausibly be attributed to the policy of another relevant state. See Illustrations 5 and 6.

If a court concludes that *dépeçage* is inappropriate, it must decide the issues under a single state's law. Doing so will require the court to disregard the otherwise-applicable choice-of-law analysis for one or more issues. A court will identify one issue as primary and another (or the others) as secondary and use the law governing the primary issue to govern the secondary issue or

issues as well. As between issues relating to conduct and issues relating to persons, issues relating to conduct may be presumed to be primary. See Illustration 9.

Illustrations:

3. State X and state Y have similar negligence rules that govern car accidents. State X has a guest statute, which bars a passenger from suing the driver of the vehicle. The stated purpose of this statute is to maintain low car-insurance rates by preventing collusive suits. State Y has no guest statute. Andy and Bob are state Y domiciliaries. Andy's car is garaged, registered, and insured in state Y. Andy drives Bob into state X, where Andy's negligence injures Bob.

The question of a party's negligence is an issue for which the place of conduct and injury is the most important connecting factor, while the effect of a guest statute is an issue for which the parties' domicile is most important. See §§ 6.02, 6.03. The rules of Chapter 6 thus direct that the issue of negligence be governed by X law and that the effect of the guest statute be governed by Y law. This *dépeçage* is appropriate. Using state X law to govern the issue of negligence but state Y law to govern the issue of whether Bob, as a passenger, can sue Andy advances state X's interest in deterring negligent conduct by drivers within its borders and also state Y's interest in compensating its injured domiciliary, Bob. Declining to give effect to the state X guest statute does not thwart state X's policy of maintaining low insurance rates. State X is presumably concerned with the insurance rates offered to state X drivers, and suits between Y domiciliaries with cars garaged, insured, and registered in state Y will not affect those rates.

4. Alex, a state Y domiciliary, injures Belle, another state Y domiciliary, in state Y. Belle sues in state X. The facts support a negligence claim under state Y law. State Y also has a statute that provides a complete defense to Alex based on the facts of the case, but the statute is deeply offensive to state X public policy.

It would be inappropriate *dépeçage* to use state Y law to give Belle a claim but to use state X law for the issue of the defense, thereby negating Alex's defense under State Y law. Allowing Belle to recover does not advance the relevant policies of state Y because state Y has barred recovery by statute. It does not advance the relevant policies of state X because state X has no contacts with the case other than its status as the forum and therefore no relevant substantive policies. See § 5.04.

5. In order to reduce litigation expenses and in response to the difficulty of proving negligence with respect to a certain tort claim, state X has adopted a regime of strict liability for that claim but imposes a limit on the damages that can be recovered. State Y retains an ordinary negligence regime with no damages cap. Without acting negligently, Amelia, a state Y domiciliary, injures Bernard, another state Y domiciliary, in state X.

Strict liability is an issue for which the location of conduct and injury is the most important connecting factor, while the parties' domicile is more important for the issue of whether damages should be capped. See §§ 6.02, 6.03. The rules of § 6.04 and § 6.06 thus suggest that X law should govern the issue of strict liability and Y law the issue of the damages cap. However, it would be inappropriate *dépeçage* to use state X law to impose strict liability but to allow an unlimited recovery by using state Y law to govern the issue of a damages limitation. State X created the limitation to balance the expansion of liability, and it would not align with the policies of either state to impose unlimited damages on the basis of strict liability.

6. Alaric, a state Y domiciliary, injures Brutus, another state Y domiciliary, in state X. The facts support a claim under a state X statute. The statute also has a damages cap. State Y law does not recognize any similar cause of action.

The question of whether a cause of action exists is an issue for which the place of conduct and injury is the most important connecting factor, while the parties' domicile is most important for a damages cap. See §§ 6.02, 6.03. The rules of § 6.04 and § 6.06 thus direct that X law should govern whether a cause of action exists and Y law whether damages should be capped. However, it would be inappropriate *dépeçage* to use state X law to give Brutus a claim but to allow an unlimited recovery by using state Y law to govern the issue of a damages limitation. State X has a policy of limiting the amount of damages that can be recovered for this tort, and state Y has a policy of not allowing damages to be recovered. It would not align with the policies of either state to allow unlimited damages to be recovered.

If, on the other hand, state Y law did recognize a similar cause of action and had no damages cap, it would be appropriate *dépeçage* for a court to use state X law to determine the existence of a cause of action and Y law to allow unlimited damages. In that case, state

Y would have a policy in favor of unlimited recovery for such claims and that policy would be furthered by the use of Y law.

7. Same facts as Illustration 6. Having decided that *dépeçage* is inappropriate, the court must decide which issue is primary and which is secondary. The issue related to conduct issue is primary; therefore, both issues are governed by state X law and Brutus can recover the limited amount available under that law.

REPORTERS' NOTES

1. *Comment a. Scope of law.* A State court applying another State's statute to a set of facts outside its specified scope would violate the Full Faith and Credit Clause of the U.S. Constitution if the scope restriction is clear and has been brought to the court's attention. See Sun Oil v. Wortman, 486 U.S. 717, 731 (1988) (misconstruction of sister-state law violates the Full Faith and Credit Clause if the "law of the other State is clearly established and has been brought to the court's attention"); Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 834–835 (1985) (Stevens, J., concurring) (Full Faith and Credit requires state court to "attempt in good faith to apply [sister-state laws] as they would be applied by home state courts"). To this extent, all States of the United States have as one of their choice-of-law rules the rule that the scope of sister State law is determined by following the court decisions and statutes of the sister State.

For cases suggesting that statutory specifications of scope in other states' laws are binding, see, e.g., Budget Rent-A-Car System v. Chappell, 304 F. Supp. 2d 639, 647–648 (E.D. Pa. 2004) (Pennsylvania choice of law), rev'd on other grounds, 407 F.3d 166 (3d Cir. 2005); Budget Rent-A-Car System v. Chappell, 407 F.3d 166, 172 (3d Cir. 2005) (Pennsylvania choice of law); Garcia v. Plaza Oldsmobile Ltd., 421 F.3d 216, 220–221 (3d Cir. 2005) (Pennsylvania choice of law); Paulson v. Shapiro, 490 F.2d 1, 2–6 (7th Cir. 1973) (Wisconsin choice of law). Similar cases exist with respect to contractual choice of law, in which courts have consistently held that the parties' selection of a state's law does not allow them to extend that law beyond its specified scope. See, e.g., Gravquick A/S v. Trimble Navigation Int'l Ltd., 323 F.3d 1219, 1223 (9th Cir. 2003); Highway Equip. Co. v. Caterpillar, Inc., 908 F.2d 60 (6th Cir. 1990); Cotter v. Lyft, Inc., 60 F.Supp.3d 1059 (N.D. Cal. 2014); Sawyer v. Mkt. Am., Inc., 661 S.E.2d 750 (N.C. App. 2008). For the treatment of contracts selecting a law with a limited scope, see § 8.04.

For a discussion of the scope of a wrongful-death statute, see Waranka v. Wadena Ins. Co., 847 N.W.2d 324 (Wisc. 2014). For a discussion of the scope of a vehicle-owner-liability statute, see King v. Car Rentals, 813 N.Y.S.2d 448, 456 (N.Y. App. Div. 2d Dep't. 2006). For a discussion of the scope of a franchise act, see Cromeens, Holloman, Sibert, Inc. v. AB Volvo, 349 F.3d 376, 385 (7th Cir. 2003). For a discussion of the scope of a wage-and-hour statute, see *Cotter*. For a discussion of the scope of a consumer-protection statute, see Avery v. State Farm Mut. Auto. Ins. Co., 835 N.E.2d 801, 849, 855 (Ill. 2005); Goshen v. Mutual Life Ins. Co., 774 N.E.2d 1190 (N.Y. 2002).

2. *Comment b. Legislative determination of priority.* Illustrations 1 and 2 are based on Reddy Ice Corp. v. Travelers Lloyds Ins. Co., 145 S.W.3d 337 (Tex. App.-Hous. 14th Dist. 2004). Texas insurance law specifies that it takes priority over other laws with respect to contracts payable to Texas citizens or inhabitants by insurance companies doing business within the State. The *Reddy Ice* court first concluded that a Louisiana corporation with its principal place of business in Texas did not count as a Texas inhabitant for the purposes of the statute. It went on to do a choice-of-law analysis, concluding that the contract was governed by Texas law under the Restatement of the Law Second, Conflict of Laws (AM. L. INST. 1971). It did not, that is, view the statutory directive to grant priority to Texas law in certain circumstances as a limit on the scope of Texas law.

For examples of state insurance choice-of-law statutes that provide overriding mandatory rules, see, e.g., Md. Code Ann., Ins § 12-209 (2002) (" A life insurance or health insurance policy or annuity contract may not be delivered or issued for delivery in the State if the policy or contract: (1) states that the policy or contract is to be construed according to the laws of another state or country; (2) states that the rights and obligations of the insured or of a person with a claim under the policy or contract are to be governed by laws other than the laws of this State"); Tex. Ins. Code Ann. art. 21.42 (Vernon 1981) ("Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company . . . doing business within this State shall be . . . governed by [the laws of this State]"). For franchise acts, see, e.g., Minn. Stat. Ann. § 80C.21 ("Any condition, stipulation or provision, including any choice of law provision purporting to [waive compliance with the act] is void.").

Some states have enacted statutes that affect the determination of priority not by identifying a law that *will* be given priority but by identifying a law or laws that will *not* be given priority. See, e.g., Ariz. Rev. Stat. § 12-3103 ("A court, arbitrator, administrative agency or other adjudicative, mediation or enforcement authority shall not enforce a foreign law if doing so would violate a right guaranteed by the constitution of this state or of the United States or conflict with the laws of the United States or of this state."); see also Fla. Stat. Ann. § 61.0401(4); Kan. Stat. Ann. § 60-5104, La. Rev. Stat. Ann. § 9:6001(c); Miss. Code Ann. § 11-63-1(2); N.C. Gen. Stat. § 1-87.13; Okla. Stat. tit. 12, § 20(c); Tenn. Code Ann. § 20-15-103.

For examples of choice-of-law statutes that are only default rules, see Ministers & Missionaries Ben. Bd. v. Snow, 45 N.E.3d 917 (N.Y. 2015) (interpreting New York Estates, Powers & Trusts Law § 3-5.1(b)(2) to permit alteration by agreement); Certain Interested Underwriters v. Am. Realty Advisors, No. 5:16-CV-940, No. 5:17-CV-74 , 2017 WL 5195864, at *4–*5 (E.D.N.C. Nov. 9, 2017) (concluding that a North Carolina insurance statute only controls in the absence of a choice-of-law clause and that the parties may select the laws of another state to govern the agreement notwithstanding the statute); Rockhill Ins. Co. v. Se. Cheese Corp., No. 2:18-cv-268, 2020 WL 1696728, at *4 (S.D. Ala. Apr. 7, 2020) ("Accordingly, the Court finds that Section 27-14-22 is a choice of law provision, but that it does not override a parties' contractual choice of law."); Diocese of Superior v. Swan & Assocs., 2010 WI App. 100, 327 Wis. 2d 798, 788 N.W.2d 383 ("Section 60A.08(4) simply provides, as relevant, 'All contracts of

insurance on property, lives, or interests in this state, shall be deemed to be made in this state,' and does not, by its plain terms, prohibit choice-of-law agreements.")

For an example of a codification of the internal-affairs rule, see, e.g., Ky. Rev. Stat. Ann. § 275380(1)(a) ("The laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs, including the inspection of the books, records, and documents, and the liability of its members, except as provided in subsection (2) of this section;").

For UCC provisions relating to choice of law, see, e.g., U.C.C. §§ 8-110 (AM. L. INST. & UNIF. L. COMM'N) (applicability; choice of law), 9-301 (id.) (law governing perfection and priority of security interests), 9-302 (id.) (law governing perfection and priority of agricultural liens), 9-303 (id.) (law governing perfection and priority of security interests in goods covered by a certificate of title), 9-304 (id.) (law governing perfection and priority of security interests in deposit accounts), 9-305 (id.) (law governing perfection and priority of security interests in investment property), 9-306 (id.) (law governing perfection and priority of security interests in letter-of-credit rights).

For a comprehensive list of choice-of-law codifications, see SYMEON SYMEONIDES, CODIFYING CHOICE OF LAW AROUND THE WORLD: AN INTERNATIONAL COMPARATIVE ANALYSIS (2014).

3. *Comment c. Distinguishing scope from priority.* For decisions discussing state statutes that specify scope, see, e.g., Budget Rent-A-Car Sys. v. Chappell, 407 F.3d 166, 172 (3d Cir. 2005) (Pennsylvania choice of law) (determining "the scope of the statute" before selecting a law; Cromeens, Holloman, Sibert, Inc. v. AB Volvo, 349 F.3d 376, 338–390 (7th Cir. 2003) (Arkansas choice of law); Gravquick A/S v. Trimble Navigation Int'l, 323 F.3d 1219 (9th Cir. 2003) (California choice of law); Generac Corp. v. Caterpillar, Inc., 172 F.3d 971 (7th Cir. 1999) (Wisconsin choice of law); Highway Equip. Co. v. Caterpillar, 908 F.2d 60 (6th Cir. 1990) (Ohio choice of law); Peugeot Motors of America, Inc. v. E. Auto Distributors, Inc., 892 F.2d 355 (4th Cir. 1989) (Virginia choice of law); Bimel-Walroth Co. v. Raytheon Co., 796 F.2d 840 (6th Cir. 1986) (Ohio choice of law); Cotter v. Lyft, Inc., 60 F. Supp. 3d. 1059, 1065 (N.D. Cal. 2014) (California choice of law); Avery v. State Farm Mut. Auto Ins. Co., 835 N.E.2d 801 (Ill. 2005); Goshen v. Mutual Life Ins. Co., 774 N.E.2d 1190, 1196 (N.Y. 2002); King v. Car Rentals, 813 N.Y.S.2d 448, 456 (N.Y. App. Div. 2d Dep't. 2006); Sawyer v. Market America, Inc., 661 S.E.2d 750, 753 (N.C. Ct. App. 2008); Armstrong v. Miller, 189 N.W.2d 688, 692–693 (N.D. 1971); Waranka v. Wadena Ins. Co., 847 N.W.2d 324, 329 (Wis. 2014); Baldewein Co. v. Tri-Clover, Inc., 606 N.W.2d 145 (Wis. 2000)

For decisions discussing state statutes that determine priority, see, e.g., Boardman Petroleum v. Federated Mut. Ins. Co., 135 F.3d 750 (11th Cir. 1998); Alberto v. Diversified Grp., Inc., 55 F.3d 201 (5th Cir. 1995) (Texas choice of law); Reed v. Lockheed Aircraft Intern., A.G., 923 F.2d 849 (4th Cir. 1991) (West Virginia choice of law); In re J.A. Thompson & Son, Inc., 665 F.2d 941, 947 (9th Cir. 1982) (California choice of law); Madera Grp., LLC v. Mitsui Sumitomo Ins. USA, 545 F.Supp.3d 820 (C.D. Cal. 2021); Tarr v. USF Reddaway, Inc., 2018 WL 659859 (D. Or. Feb. 1, 2018) (Oregon choice of law); Breese v. Hadson Petroleum (USA), 955 F.Supp.

648 (M.D. La. 1996) (Louisiana choice of law); In re Last Will & Testament of Palecki, 920 A.2d 413, 415 (Del. Ch. 2007); Martin v. Phillips, 347 P.3d 1033 (Kan. App. 2015); Arabie v. Citgo Petroleum Corp., 89 So. 3d 307 (La. 2012); State ex rel. Smith v. Early, 934 S.W.2d 655, 657 (Tenn. App. 1996); Stevenson v. Ford Motor Co., 608 S.W.3d 109 (Tex. Ct. App. 2020); Reddy Ice Corp. v. Travelers Lloyds Ins., 145 S.W.3d 337, 344 (Tex. Ct. App. 2004); Matter of Paternity of M.H., 383 P.3d 1031 (Wash. 2016).

3. *Comment e. Most appropriate law.* See Or. Rev. Stat. § 15.445 (identifying governing law as "the most appropriate").

4. *Comment f. Particular issue.* It is clear that the analysis of the Restatement of the Law Second, Conflict of Laws (AM. L. INST. 1971) proceeds issue by issue. See, e.g., P.V. ex rel. T.V. v. Camp Jaycee, 962 A.2d 453, 460 (N.J. 2008) ("The Second Restatement assessment takes place on an issue-by-issue basis."). The weight of authority to consider the question also holds that a separate analysis may be conducted for different defendants. See, e.g., Ginsberg ex rel. Ginsberg v. Quest Diagnostics, Inc., 117 A.3d 200, 229–230 & n.14 (N.J. Super. Ct. App. Div. 2015) (endorsing "the option of allowing a defendant-by-defendant approach to choice of law" and citing similar cases), aff'd, 227 N.J. 7 (2016). The same is true under New York law. See, e.g., Edwards v. Erie Coach Lines Co., 952 N.E.2d 1033, 1042 (N.Y. 2011). The Louisiana codification explicitly endorses a similar approach. See La. Civ. Code art. 3543, cmt. (i) (prescribing independent choice-of-law analysis for each of multiple victims); id. art. 3544, cmt. (b) (prescribing separate choice-of-law determination for multiple victims and/or tortfeasors).

For academic discussions of *dépeçage*, see, e.g., Willis L.M. Reese, *Dépeçage: A Common Phenomenon in Choice of Law*, 73 COLUM. L. REV. 58 (1973); Symeon C. Symeonides, *Issue-by-Issue Analysis and Dépeçage in Choice of Law: Cause and Effect*, 45 U. Tol. L. Rev. 751 (2014).

5. *Comment g. Limitation on dépeçage.* For discussions of severability analysis, see, e.g., Alaska Airlines, Inc. v. Brock, 480 U.S. 678 (1987); Mark L. Movsesian, *Severability in Statutes and Contracts*, 30 GA. L. REV. 41 (1995); John Copeland Nagle, *Severability*, 72 N.C. L. REV. 203 (1993); Robert L. Stern, *Separability and Separability Clauses in the Supreme Court*, 51 HARV. L. REV. 76 (1937).

For the idea of state rules inextricably bound up with party rights, see, e.g., Byrd v. Blue Ridge Rural Elec. Coop., Inc., 356 U.S. 525, 537–538 (1958).

Illustration 3 is based on Babcock v. Jackson, 191 N.E.2d 279 (N.Y. 1963).

§ 5.03. Manifestly More Appropriate Law

The law selected by the rules of this Restatement will not be used if a case presents exceptional and unaccounted-for circumstances that make the use of a different state's law manifestly more appropriate. In such cases, the court will select the manifestly more appropriate law.