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Choice of Law Issues-General

- Anti-ET Presumption
- Texas courts apply
 - Texas procedural law, but
 - The Wrongful Death Act commands that Texas courts “***shall apply*** the rules of substantive law that are appropriate under the facts of the case.”

TEX. CIV. PRAC. & REM. CODE §71.031(b) and (c).

Forum non conveniens—not if Texas resident beneficiary
In re Mahindra (Tex. 2018)



Policy considerations

It is a firmly established principle of American jurisprudence that the laws of one state have no extra-territorial effect in another state...

Indeed, this Court is reminded of the oft-paraphrased advice of St. Ambrose, Catholic bishop of Milan in the fourth century, to St. Augustine. 'When you are in Rome, live in the Roman style; when you are elsewhere, live as they do elsewhere.'

Brennan v. Univ. of Kansas (10th Cir. 1971)



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Policy considerations

The decedent's domicile solely determine choice of law Judge Posner has remarked that a plaintiff cannot expect to travel:

carrying his domiciliary law with him, like a turtle's house, to every country he visit[s]...[and cannot be] cocooned in Illinois law, like citizens of imperial states in the era of colonialism who were granted extraterritorial privileges.

Spinozzi v. ITT Sheraton (7th Cir. 1999).



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Gutierrez v. Collins (Tex. 1979)



- Choice of law—
 - No longer *lex loci delicti*
 - “Most Substantial Relationship”

➤ Dissimilarity Doctrine



➤ Restatement



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Restatement 6(2) (General Provisions)

- (a) The needs of the interstate and international systems,
- (b) The relevant policies of the forum,
- (c) The relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
- (d) The **protection of justified expectations**,
- (e) The basic policies underlying the particular fields of law,
- (f) Certainty, **predictability, uniformity of result**, and
- (g) **Ease in determination and application of the law** to be applied.

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