Choice of law in U.S. aviation cases 50 years after the “revolution”

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Aviation accidents invoke the interests of numerous jurisdictions and potential laws.
U.S. Choice of law “revolution”

• 1960 – strict *lex loci delicti* rule defined by the place of the accident was the universal standard in all U.S. courts

• In aviation and other transportation cases where it seen as “fortuitous” and “unjust” to mechanically apply a *lex loci* provision that barred or limited recovery, courts began to rebel against the inflexible application of a territorial rule
New York driver crashes and injures New York passenger in Ontario, which has guest statute barring suit by passenger against driver

• Different laws may apply in the same case
• Ontario law applied to conduct issues but it was “unjust and anomalous” to apply its guest statute
• Courts should apply “the law of the jurisdiction which has the strongest interest in the resolution of the particular issue presented”
Complex Patchwork of Rules

• No general federal law
• 50 independent state choice of law rules apply to all accidents on land
• 2 different US federal maritime laws apply to most accidents at sea
• In international air transportation cases: Warsaw/Montreal treaty law with a “pass through” to otherwise applicable state (or federal) law
Different U.S. choice of law methods

- Strict *lex loci delicti* – 10 states
- Significant contacts – 2 states
- Interest analysis – 2 states
- Second Restatement test – 23 states
- Better law – 5 states
- Combined modern – 6 states
- *Lex fori* – 2 states
7 different methods
50+ different interpretations
“Modern” choice of law rules grant courts almost unlimited discretion

Restatement(Second) of Conflict of Laws §6

The factors relevant to the choice of the applicable rule of law include:
(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 field of law,
(f) certainty, predictability and uniformity of result, and
(g) ease in the determination and application of the law to be applied.
Added complexities with state law rules in U.S. federal courts

- U.S. federal courts must apply the choice of law rules of the state where the case was filed.
- A U.S. federal court with cases transferred from various different courts must apply the choice of law rules of each different state where each case was filed.
- Air traffic control negligence cases are governed by the choice of law rules of the state where the alleged negligence occurred.
Canada – One choice of law method
Canada choice of law
Supreme Court of Canada - *Tolofson*
[1994] 3 S.C.R. 1022

- *Tolofson*: *lex loci delicti* rule should be applied because it would promote “certainty, ease of application and predictability” and “meet normal expectations” of the parties
- Court rejects *Babcock* and “modern” U.S rules because of their “extreme uncertainty”
- Only exception: discretion in rare international cases to avoid “injustice”
“Order and fairness” are the “underlying principles” of choice of law and “order comes first”

“Order is a precondition to justice.”
Sample of decisions applying “modern” state choice of law rules to issues of compensatory damages in aviation accidents on land
In re Paris Air Crash
Los Angeles federal court – 1975

- Turkish Airlines flight from Paris to London crashed after cargo door failed, killing all 346 passengers and crew
- Claims filed in various U.S. courts against California manufacturer McDonnell Douglas
- Decedents from 36 jurisdictions
- 12 different state choice of law rules implicated with at least 3 different methods including *lex loci* and modern rules
In re Paris Air Crash
Los Angeles federal court - 1975

• U.S. choice of law rules impose a “reign of chaos” and present a “veritable jungle”
• Any decision is an “informed guess”
• Court concludes: “overriding interests” of California and the United States in the “design and manufacture of aircraft” require application of California law
In re Air Crash near Cali
Miami federal court – 1997

• Florida court applied more generous Florida damages law to all plaintiffs - including Columbian domiciliaries – killed in American Airlines crash in Columbia on flight from Miami

• There is “a powerful systemic interest in ensuring that victims of a single airplane crash… be compensated by resort to a single set of rules.”
In re Lockerbie Air Disaster

1988 terrorist bombing of Pan Am flight 103 from London to New York

Bomb explodes over Scotland, killing all 259 passengers and crew from over 10 countries and 11 residents of Lockerbie, Scotland
Lockerbie Air Disaster
New York federal court - 1996
*Pescatore*, 97 F.3d 1 (2d Cir. 1996)

- New York choice of law rules
- Scotland was "random" crash site with little interest in applying its damages law
- Damage laws of the domiciles of each decedent should apply
- The available damages in each case varied widely depending on the domicile law
Lockerbie Air Disaster
Miami federal court - 1996
unreported decision

• Florida choice of law rules
• Law of Scotland, as the place of the accident, applied rather than law of decedents’ residences in England
• English families who brought suit in Florida recovered substantial non-economic damages while most survivors (including other English families) suing in New York were limited to economic damages.
In re Air Crash at Kennedy Airport
New York federal court
730 F.2d 842 (2d Cir. 1984)

• New York choice of law rules
• Greek citizen on trip from New Orleans to Athens killed in crash of Florida airline at Kennedy Airport in New York
• The restrictive damage law of New York, as the *lex loci*, is applied, rather than more favorable Greek law
In re Aircrash near New Orleans

New York state court


- Deaths of residents from Puerto Rico, Panama and North Carolina in crash of New York airline in Louisiana on flight from New Orleans to Las Vegas
- Court rejects *lex loci* and domicile law and applies restrictive damage law of New York (as home of airline and forum) to discourage forum shopping
Modern state choice of law rules give courts tremendous discretion.

Courts are often biased in favor of the application of the damage law of the forum.
“Modern” choice of law rules are ditched at sea

The Death on the High Seas Act, a 1920 *lex loci* statute drafted for ship accidents applies to any aviation accident on non-U.S. waters, no matter how fortuitous
In re Korean Air Lines Disaster of Sept. 1, 1983

- Flight 007 from New York to Seoul via Anchorage
- Flown 300+ miles off course and shot down over Sea of Japan by Soviet fighter
- Airline’s wilful misconduct under Warsaw treaty established at trial
In re Korean Air Lines Disaster
U.S. Supreme Court

• Because of the location of the disaster, the applicable damage law is the 1920 Death on the High Seas Act statute, which establishes the “exclusive recovery for deaths that occur on the high seas”

• Damages limited to elements in DOHSA

• No recovery for pre-death pain and suffering
In re Air Crash Disaster Near Peggy’s Cove
Pennsylvania federal court

• Exclusivity of Death on High Seas Act extends to accidents on territorial waters of foreign states

• Damages limited to DOHSA

• No recovery for pre-death pain and suffering

• No punitive damages recoverable against component manufacturers
U.S. federal maritime law and its “modern” choice of law rules apply to accidents with a maritime nexus that occur inside U.S. territorial waters within 12 miles from shore.
In re Aircrash off Long Island
July 1996 in-flight fuel tank explosion and crash of Boeing 747 operated as TWA flight 800 from New York to Paris - 8 miles from U.S. coast
Death on High Seas Act does not apply to deaths in U.S. territorial waters

General federal maritime law governs because ocean crossing was a “traditional maritime activity”

Federal maritime law can be supplemented by favorable state law

Non-pecuniary damages available

Punitive damages recoverable against Boeing
In re Air Crash off Point Mugu
January 2000 Alaska Airlines crash of MD-83 aircraft in U.S. territorial waters on flight from Puerto Vallarta to San Francisco
**In re Air Crash off Point Mugu**

San Francisco federal court - 2001
145 F.Supp.2d 1156 (N.D.Ca. 2001)

- Federal maritime law applied because transportation between two port cities on the Pacific coast was “traditional maritime activity”

- Maritime law punitive damages were recoverable against the U.S. manufacturer

- Pre-death pain and suffering claims were available
In re Air Crash at Belle Harbor

New York federal court - 2006

• American Airlines flight 587 from New York to Santo Domingo
• Airbus A300
• 2,400 kilometer trip across the Atlantic
In re Air Crash at Belle Harbor
New York federal court - 2006

• The A300’s vertical tail fell off the plane and landed in Jamaica Bay
• The aircraft crashed in Belle Harbor, killing 260 passengers from 6 countries and 8 states
• 5 persons killed in their homes and over 10 injured on the ground in Belle Harbor
In re Air Crash at Belle Harbor

Compensatory damages

Passengers
- Federal admiralty law applied because the disaster occurred over water and had maritime nexus
- Non-pecuniary damages were recoverable

Ground victims
- New York law applied to the deaths and injuries on land
- Compensatory damages limited to pecuniary loss
In re Air Crash at Belle Harbor
Punitive damages vs. Airbus

Passenger cases
Maritime choice of law
• French law applied to bar punitive damages
• Place of alleged misconduct controlled
• The “accident location was fortuitous as to the passengers”

Ground victims
New York choice of law
• New York law applied to allow punitive damages
• Place of injury was paramount
• “The site of the crash cannot be said to be fortuitous with respect to the ground victims”
Punitive damages

- *Lex loci* rule normally governs conduct regulating issues such as punitive damages.
- But where does the “wrong” occur?
- Is it at the place of injury or the place of conduct? At the crash site or at corporate headquarters?
- Traditional rule provides that the tort occurs at the place of the “last event necessary” to establish liability – the place of injury.
- But the site of a plane crash may be “fortuitous”
In re Air Crash Near Chicago
Chicago federal court - 1981
644 F.2d 594 (7th Cir. 1981)

- Suits against airline and manufacturer involving crash on takeoff of Chicago to Los Angeles flight
- Place of crash was “fortuitous”
- Places of defendants’ conduct in Missouri and Oklahoma allowed punitive damages
- Places of defendants’ headquarters in California and New York barred punitive damages
- The law of the place of crash in Illinois was the “tie-breaker”: no punitive damages
In re Air Crash Near Roselawn, Indiana
Chicago federal court - 1997
1997 LEXIS 13794 (N.D.Ill. 1997)

• Crash of American Eagle ATR-72 in Indiana on flight from Indianapolis to Chicago

• French law applies to bar punitive damages because manufacturers have their “principal place of business in France” and “the alleged misconduct relating to the design, testing, and manufacture of the airplane occurred in France”
The punitive damages law of New York was applied as the place of injury, rather than the law of Massachusetts, the place of the alleged misconduct of the airline defendants.
In re Air Crash at Clarence Center
Buffalo federal court – pending
Continental Connection flight 3407

• Flight from Newark, New Jersey to Buffalo, New York
• 49 passengers from six states and three countries and one ground victim
• Crash caused by multiple pilot errors on final approach
In re Air Crash at Clarence Center

• Cases filed in five states with “modern” rules
• Airline’s motion seeks application of law of Virginia - with its $350,000 cap on punitive damages - as place of its headquarters and alleged corporate misconduct
• Plaintiffs argue for law of New York, as location of deaths and pilots’ fatal misconduct
• Had case been filed in Virginia, New York law would apply under Virginia’s *lex loci* rule
50 years after the “revolution”

• Highly complex system, with over 50 independent choice of law rules
• In many cases, the applicable law is uncertain
• “Modern” rules give judges enormous discretion, with widely varying outcomes
• Increased litigation
• Forum shopping is required to obtain favorable law