

Exam Number _____

HAMLIN UNIVERSITY SCHOOL OF LAW

FINAL EXAMINATION-Conflict of Laws

CODE OF CONDUCT

Violations of the Code of Conduct include (1) unauthorized conversation among students concerning the examination; (2) giving, receiving, or soliciting unauthorized aid; (3) using materials that are not specifically permitted by the written examination instruction; (4) exceeding the examination time limit; or (5) any other dishonest conduct in connection with the examination.

INSTRUCTIONS

1. This examination consists of six (6) page(s) in addition to this cover page. Please ensure that you are not missing any pages.
2. The time allowed for this examination is three (3) hours.
3. Outside material permitted: Casebook Only (may be annotated)

SPECIAL INSTRUCTIONS

- a. This examination consists of six questions. There are suggested times for each question. These suggested times total three hours, which is the total amount of time permitted for the exam.
- b. An answer containing only your conclusions will receive little credit. Taking into account the suggested times, discuss all issues reasonably raised by each question, even though your resolution of one issue may seem to render the others moot.
- c. Unless otherwise indicated, assume that a “state” or “F-1,” etc. is one of the United States.

I (10 minutes)

Briefly explain the concept of “renvoi” and why it generally has not been applied in choice of law decisions in the United States.

II (10 minutes)

Briefly explain whether the following statement is true or false: As a general rule, Minnesota state courts have no jurisdiction to adjudicate civil claims between American Indian tribal members where the claim arose on non-fee land on an American Indian Reservation.

III (40 minutes)

AA Construction is a building contractor. BB Plumbing and CC Electric are companies who often work as sub-contractors on jobs done by AA Construction. John is a plumber who is employed by BB Plumbing. AA Construction, BB Plumbing, and CC Electric are incorporated and have their principal places of business in State X. John lives in State X.

AA Construction was hired to build a new house in State Y, which is adjacent to State X. AA sub-contracted the plumbing and electrical work to BB Plumbing and CC Electric. One day when John was working on the plumbing in the house in State Y, he came in contact with some “live” exposed electrical wiring and suffered substantial injuries as a result. John obtained workers compensation benefits from BB Plumbing. He has come to your office to explore whether he might have claims against anyone else.

Your research and investigation suggests to you that John may be able to sue CC Electric for ordinary tort damages. You are fairly confident that you can prove that the exposed electrical wiring was “live” because of conduct by the electricians of CC Electric, and that you can successfully argue that this conduct constituted negligence, causing John’s injuries.

Whether you can successfully assert such a tort claim against CC Electric will depend how the court will rule on choice of law.

Under the workers compensation statutes of State X, other sub-contractors on the same construction job are not immune from ordinary tort liability when a worker for a sub-contractor receives workers compensation benefits. Under the workers compensation statutes of State Y, however, other sub-contractors on the same construction job are immune from such liability. Thus, John may have a viable claim against CC Electric if the law of State X applies. If, however, the law of State Y is applicable, John’s suit will almost certainly be dismissed.

You have also determined that the law of State Y reflects the rule adopted by a large majority of the States in the United States. In addition, although you have been unable to determine the exact reason, insurance rates for plumbing and electrical companies are generally higher in State X than they are in State Y.

Courts in State X still apply the traditional territorialist approach in resolving choice of law issues. Courts in State Y apply the Choice Influencing Considerations of Professor Leflar (the "Better Rule" approach). You are licensed to practice law in both States X and Y. Taking into account arguments you think attorneys for CC Electric would make, discuss arguments you would make in the courts of each state for the court to apply the law of State X on this issue of sub-contractor immunity. Conclude with your recommendation of where you think John should file suit and your reason (or reasons) for that recommendation.

IV (60 minutes)

States X and Y are adjacent to each other. Dan and his spouse Debra lived in State Y, and owned a pet dog they named Rocky. Until the incident described below occurred, Rocky was a very gentle dog and was very good with children, who loved to pet and play with him.

Phil and Paula, who lived in State X, invited Dan and Debra to Phil and Paula's home for an outdoor barbecue party. When Dan asked Phil if it would be OK to bring Rocky along, Phil said that would be fine.

When Dan and Debra arrived at the party, they took off Rocky's leash and let him roam freely in Phil and Paula's large fenced yard. At some point in time, Phil and Paula's six year old son, Patrick, was standing near the top of a flight of concrete outdoor stairs, which led to an entrance to the basement. Patrick was waving slowly at Rocky when, without any provocation, Rocky growled and lunged at Patrick, attacking him viciously. As Rocky's attack continued, and before others could intervene, Patrick fell backwards down the concrete stairs, hitting his head on several of the stairs. Tragically Patrick died from the incident.

The law firm for which you work has agreed to represent Phil and Paula in a suit against Dan and Debra for the wrongful death of Patrick. You plan to file suit in State Y, for reasons that will become apparent. There are two issues in the case on which the court's choice of law will be important.

The main issue of concern is whether you can establish liability at all. Under the law of State Y, owners of dogs are strictly liable for injury caused by their dogs, subject to an affirmative defense, not available in this case, that the victim had been taunting the dog.

The law of State X, on the other hand, is sometimes characterized as providing for "one free bite" before liability can be imposed on the owners of a pet dog. That is, liability is permitted only if the owners "knew or had reason to know that their animal had a dangerous propensity."

You fear it will be difficult to prove knowledge on the part of Dan or Debra that would permit liability under the law of State X. You also have decided to sue in State Y rather than State X because State X applies the traditional territorialist approach to choice of law and you believe it would apply X law on the issue.

The other issue on which the court's choice of law may be important is the nature of permissible damages for the wrongful death of a child. The laws of X and Y are substantially the same on this issue, with one notable exception. Under the law of State X, parents may recover damages for their own mental pain and suffering. Under the law of State Y, such damages are not permissible. In its decision that came to this conclusion, the Supreme Court of State Y stated that an action for the wrongful death of a child "is inherently extremely emotional," and that

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permitting a jury to award damages for the parents' mental pain and suffering "could result in devastatingly high jury awards."

State Y's courts have adopted Interest Analysis as their choice of law methodology. State Y's Supreme Court has stated that it will consider arguments based on principles applied and precedent from other states that have adopted Interest Analysis, including New York. It has also stated, however, that it is not inclined to include Comparative Impairment in its methodology, so you need not go into that in your analysis of this question.

Taking into account and noting arguments you think Dan and Debra's attorneys might reasonably make to the contrary, discuss how you would try to persuade State Y's courts to apply state Y law on the issue of liability and State X law on the availability of damages for the mental pain and suffering of Phil and Paula. After discussing each of these issues, give a brief evaluation of your likelihood of success.

V (30 minutes)

Ames was an outstanding football player for his high school team in Iowa. He was recruited by several colleges to play on their teams. He eventually accepted a football scholarship at the University of Kansas, and enrolled there in the fall after his graduation from high school.

During one of the fall practice sessions of the football team in Kansas, Ames suffered a heat stroke and was hospitalized there. The heat stroke resulted in severe neurological damage and severe permanent mental and physical disability. He left college and moved back to his parents' home in Iowa.

Ames then brought suit against the University of Kansas for his injuries in an Iowa court. He asserted that University personnel had been negligent in supervising the practice session and in providing medical attention when he had the heat stroke. He sought damages in excess of two million dollars. Assume the Iowa court could assert personal jurisdiction over the University, based on its recruiting visits.

Under Kansas law, Kansas has waived sovereign immunity for the University of Kansas but has limited that waiver to a maximum of \$200,000 per tort action. Iowa has waived the sovereign immunity of its State Universities in full, permitting claims of any amount.

Discuss whether it would be constitutionally permissible for the Iowa court to apply Iowa law on sovereign immunity and, should the evidence support it, enter judgment against the University of Kansas for the amount sought by Ames.

VI (30 minutes)

Bette Stern lived in New Jersey. She had two adult daughters, Carol, who lived near Bette in New Jersey, and Diane, who lived in Maryland. In 1999, when Bette was 83 years old, Carol and Diane instituted guardianship proceedings in a New Jersey court on the ground of mental incompetence. The New Jersey court entered a judgment finding Bette to be “a mental incompetent as a result of unsoundness of mind, incapable of governing herself and managing her affairs, and unable to consent to medical treatment.” The judgment appointed Carol and Diane as co-guardians of Bette’s person and property.

In 2001, with Carol’s consent, Bette moved to Diane’s home in Maryland. Later that year, Bette executed a will that complied with the requirements of Maryland law, including a representation that she was of “sound mind.”

In 2003, Bette died. Proceedings were held in the New Jersey court that had made the guardianship order regarding the probate of Bette’s will. The New Jersey court found that Bette “was domiciled in Maryland at the time of her death and that jurisdiction regarding the probate of her will is properly in Maryland.”

Diane then instituted proceedings in a Maryland court, requesting that Bette’s estate be distributed in accordance with her 2001 will. Carol, also a party to the Maryland proceedings, objected, claiming that Bette lacked testamentary capacity to execute the will. Under Maryland law, the normal process resulting from such an objection would be to have a hearing considering evidence on the issue of testamentary capacity and a finding on that issue by the court.

Carol, however, argued that the court must find that Bette lacked testamentary capacity as a matter of law because of the 1999 New Jersey judgment adjudicating that Bette was mentally incompetent. Carol’s argument cited two New Jersey statutes. One provided that no one who had been adjudicated mentally incompetent could execute a valid will until there was a subsequent judicial determination that the person had returned to competency. The other New Jersey statute provided that there is to be no litigation regarding a person’s testamentary capacity after that person’s death.

Carol’s argument continued that in light of these statutes, the provision in 28 U.S.C. §1738 that “. . . judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken,” required the Maryland court to find that Bette lacked testamentary capacity to execute the will.

Discuss how the court should rule on Carol’s argument.