

Exam Number _ _ _ _ _

Instructor	:	Professor James Pielemeier
Course Title	:	Conflict of Laws
Format	:	Self-Scheduled
Total Time for Exam	:	3 hours
Total Number of Pages	:	10

Reference Materials Allowed

Allow the following reference materials only: Case book only (may be annotated)

General Instructions

Please count the number of pages. **All** pages are sequentially numbered at the bottom right corner. If you are missing a page, you need a new exam. Contact the Office of the Registrar (or your proctor) as soon as possible.

Do not write your name on **any** examination materials. Write your five-digit 2006 Spring final exam number on the top right corner of the first page of this exam. If you don't know your exam number, get it from the Office of the Registrar (or your proctor).

If you are using Securexam to write your exam answers please read the start-up instructions before you start your laptop. If your laptop becomes inoperative you should start writing in a bluebook immediately. If you choose to restart the laptop you will lose time as **you will not be allowed extra time** to complete the examination. There is no technical assistance available during the examination. If you still choose to restart, you will need a proctor key: ask the room proctor or come to the Office of the Registrar.

If you are using a bluebook to write your exam answers, please fully complete the cover information for all bluebooks. Before you turn them in, sequentially number and nestle them so that the first bluebook has any others inside.

At the conclusion of the examination place all examination materials (including scratch paper) in the plastic bag, seal it and give it to the proctor; if this is a self-scheduled examination, please return the sealed bag to the Office of the Registrar.

Instructions Specific to This Examination

(a.) This examination consists of six questions. There are suggested times for each question. These suggested times total two hours and fifty minutes, leaving ten minutes to use as you wish.

(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.

Exam Misconduct

The Code of Conduct prohibits dishonest acts in an examination setting. Unless specifically permitted by the exam or proctor, prohibited conduct includes:

Discussing the exam with another student;

Giving, receiving, or soliciting aid;

Using electronic devices (other than a laptop running Securexam);

Referencing unauthorized materials;

Reading the questions before the examination starts;

Exceeding the examination time limit;
Removing **any** examination materials from the room (including scratch paper); and
Ignoring proctor instructions.



DO NOT READ PAST THIS PAGE UNTIL INSTRUCTED TO DO SO

Question I (10 minutes)

Briefly describe the distinction between “procedural” and “substantive” statutes of limitation under traditional conflict of laws principles, what difference the distinction makes in application, and briefly discuss whether this different treatment is appropriate.

Question II (10 minutes)

As you may recall from Supplemental Packet One of your materials, California has a statute that provides: “The parties to any contract ... involving in the aggregate not less than two hundred fifty thousand dollars (\$250,000) ... may agree that the law of this state shall govern their rights and duties in whole or in part, whether or not the contract ... bears a reasonable relation to this state.”

A, from Wisconsin, and B, from Minnesota, enter a contract involving entertainment that involves more than \$250,000 and is to be performed wholly within those States. Because California has a more fully developed body of entertainment law than either Wisconsin or Minnesota, they included in their contract a clause providing that California law shall apply in resolving any and all disputes arising out of the contract. Discuss whether, as a general proposition, Wisconsin and Minnesota courts should honor that clause in a suit between A and B arising out of the contract.

Question III (20 minutes)

A (a citizen of Great Britain) sued B (a Kansas corporation with its principal place of business in Kansas) in a British court and recovered a judgment of \$4,000,000, including punitive damages of \$3,000,000.

Unable to collect on the judgment in Great Britain, A brought an action on the British judgment in Wisconsin. B resisted the Wisconsin action on the ground that the claim sued on in Great Britain violated Wisconsin’s public policy. The Wisconsin court rejected B’s argument, and entered a Wisconsin judgment for \$4,000,000.

Unable to collect the full judgment out of B’s assets in Wisconsin, A then brought an action against B on the Wisconsin judgment in Kansas. Kansas law did not permit recovery for the sort of claim sued on in Great Britain, and the Kansas Constitution prohibits any award of punitive damages.

B argued that the Kansas courts need not give full faith and credit to the Wisconsin judgment because the underlying claim in Great Britain and the award of punitive damages were contrary to the public policy of Kansas, and that the Kansas courts lacked power to award punitive damages. B did not challenge the jurisdiction of either the British or Wisconsin courts to render their judgments.

The Kansas courts declined to recognize the Wisconsin judgment, agreeing with B’s arguments and further stating, “If we were required to recognize the Wisconsin judgment, that would open up ‘back door’ ways to enforce foreign country judgments that violate our public policy.”

Discuss the propriety of the decision of the Kansas courts.

Question IV (40 minutes)

States A and B are adjacent to each other. Pam and Dan lived together in a house in State A. They were married in March of 2006. One week later, they had an auto accident in State B. Dan had apparently fallen asleep while driving. No other autos were involved. Pam was seriously injured.

Both States abolished spousal immunity long ago, in part because of the availability of liability insurance, which reduces the risk of family discord resulting from suits between spouses. Dan had liability insurance which was issued to him in State A by Anystate Insurance. The limit of his liability coverage was \$100,000. Pam's damages might easily warrant that amount.

When they talked with their Anystate agent, however, he pointed out a clause in the policy, commonly known as the "Household Exclusion," which limited coverage to "the named insured [Dan] and any person related to you by blood or marriage residing in your household." Anystate's liability coverage to persons within the language of the clause, which would include Pam, was limited to the minimum liability coverage required by State A law, which was \$25,000.

Pam and Dan have contacted your office, seeking advice about the possibility of obtaining relief above the \$25,000. By statute, under the law of State A, the Household Exclusion is valid, so long as the insurer offers to provide additional coverage for an additional premium amount. Anystate had included such offers in the materials it sent to Dan, but Dan didn't think he had read them. By statute, such exclusions are not permitted under the law of State B. A slight majority of States hold such exclusions invalid, but none has changed its position in the past ten years.

You have decided to bring suit against Anystate for a declaratory judgment that the Household Exclusion was invalid and that Anystate's liability coverage for Pam's injuries was the full \$100,000. The two States differ in their choice of law approaches. Courts in State A apply the Choice Influencing Considerations of Professor Leflar (the "Better Rule" approach), and will consider precedent from courts of other States that use that approach. Courts in State B, on the other hand, apply the traditional territorialist approach, and will consider precedent from courts of other States that use that approach.

Assume that Anystate would be subject to personal jurisdiction in both States A and B, and that it would be constitutionally permissible for those courts to apply either State's law. You are licensed to practice law in both States. Taking into account arguments you think attorneys for Anystate would make, discuss arguments you would make in the courts of each State for the court to apply the law of State B on the validity of the Household Exclusion. Conclude with a recommendation of where you think the suit should be brought, and your reason (or reasons) for your recommendation.

Question V (60 minutes)

States X and Y are adjacent to each other. John and Mary were married and lived in State X with their two children, Bess, age 5, and Tommy, age 3. Mary had high blood pressure, which she tried to control with medication prescribed by her physician, Dr. Coe. In early 2006, Mary began experiencing a sensation of numbness in one of her hands. She visited Dr. Coe about the problem, and he wrote her a prescription for Gandol. Mary began taking the Gandol, as prescribed, on a daily basis. Exactly one week later, while at home, Mary had a heart attack and tragically died. An autopsy was done, which ultimately determined that her heart attack was probably an adverse reaction to the Gandol.

Gandol is manufactured by Druggs, Inc., a State Y corporation with all of its facilities in State Y. It distributes Gandol throughout the United States and in Canada. Gandol was approved in 2001 by the United States Food and Drug Administration (FDA) for the treatment of numbness such as Mary experienced. At the same time, the FDA approved the warning insert that was provided to doctors and pharmacists in the United States. The warning insert said nothing cautioning against the use of Gandol by persons with high blood pressure.

The law firm for which you work has agreed to represent John in a suit against Druggs for the wrongful death of Mary. You also hope to assert claims against Druggs on behalf of Bess and Tommy for the loss of their mother's consortium, care, and affection. You plan to file suit in State Y, for reasons that will become apparent.

Your firm's investigation of the case has led you to believe that between 2001 and Mary's death, several people with high blood pressure suffered heart attacks shortly after taking Gandol. You also believe you can prove that Druggs was aware of these incidents, yet never changed its warning insert in the United States to caution against the use of Gandol by persons with high blood pressure. You have also learned that beginning in 2004, the government of Canada required Druggs to include such a warning with Gandol sold in Canada. No law prohibited Druggs from modifying its warning inserts in the United States to include warnings in addition to those in the warning insert approved by the FDA in 2001.

Your theory of liability against Druggs will be negligent failure to warn of adverse reactions to Gandol by persons with high blood pressure. Dr. Coe has told you that he is willing to testify that he never would have prescribed Gandol for Mary if there had been such a warning. There are two issues in the case on which the court's choice of law will be important.

The main concern is whether you can establish liability at all. In 2004, in State X enacted into law a number of "tort reform" measures. One of these provides, "In an action against a manufacturer or seller, a product that is a drug is not defective, and the manufacturer or seller is not liable, if the drug was approved by the United States Food and Drug Administration, and the drug and its labeling complied with the United States Food and Drug Administration's approval at the time the drug left the control of the manufacturer or seller."

Application of this statute would bar any recovery. State X's courts apply the traditional territorialist approach to choice of law, and you believe they would apply this statute. This is why you have decided to file suit in State Y rather than State X. Under the law of State Y, on the other hand, FDA approval is only one factor for the fact finder to consider in determining whether a defendant's failure to warn was negligent.

The other issue on which the court's choice of law may be important is on the ability to assert claims against Druggs on behalf of the children for the loss of their mother's consortium, care, and affection. The law of State X permits such claims. The law of State Y, however, does not permit such claims.

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 Druggs, Inc.'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 ability to assert claims on behalf of the children. After discussing each of these issues, give a brief evaluation of your likelihood of success.

Question VI (30 minutes)

Adam Adams, a Michigan citizen, worked for forty years for the Ford Motor Company at one of its plants in Michigan. In his earliest years on the job, he worked in areas where he was exposed to asbestos. When he retired at age 60, he and his wife, Betty moved to Florida to be near their two adult children, Cass and David, and their families. A few months after the move to Florida, Adams began to experience chest pains and shortness of breath. He soon was diagnosed with cancer of the lungs. He underwent chemotherapy, resulting in vomiting and dehydration, and progressively lost lung function. In the last six months of his life, Adam experienced incredible intractable pain, despite taking a number of prescribed narcotics to control the pain.

Adam's physicians told Adam and Betty that they suspected that Adam's cancer may have been caused by his exposure to asbestos at the Ford plant in Michigan. After his death, Betty and her children consulted an attorney, who after reviewing the case suggested bringing an action against Ford in Florida for wrongful death. The attorney then filed suit in a Florida state court, basing general personal jurisdiction on the existence of a Ford manufacturing plant in Florida. Assume for purposes of this question that personal jurisdiction was constitutionally permissible.

The attorneys agreed that Michigan tort law was applicable generally on the issue of liability, but they disagreed on one issue. Under Florida law, damages for wrongful death could include damages for the decedent's pain and suffering prior to his death. Under Michigan law, damages for the decedent's pain and suffering were not permissible.

The court ruled that Florida law governed on the issue of such damages, reasoning that "the decedent's suffering and death took place in Florida, all of the surviving plaintiffs are residents of Florida, and the public policy of Florida is to permit such damages for pain and suffering, so Florida has the predominant interest in the issue of damages."

Discuss whether application of Florida law on this issue is permissible under the United States Constitution.

END OF EXAM