

Exam Number \_\_\_\_\_

Instructor	:	<b>Prof. James Pielemeier</b>
Course Title	:	<b>Conflict of Laws</b>
Section	:	
Format	:	<b>Essay</b>
Date	:	<b>Self Scheduled</b>
Total Time for Exam	:	<b>3</b> hours
Total Number of Pages	:	<b>9</b>

**Reference Materials Allowed**

Allow the following reference materials only: Casebook 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 2007 Fall 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 SofTest** 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 amounts of time 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.

**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 SofTest);

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.



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**Question I (20 minutes)**

Davis and Evans, both Illinois citizens, entered into a contract in Illinois whereby Davis agreed to sell Evans one of his two adjacent lakeshore lots and cabins in Wisconsin. Shortly thereafter, Davis learned that Evans had a secret agreement with Farber to transfer the property to Farber immediately after the sale. Davis despised Farber and refused to convey the property.

Evans then sued Davis in an Illinois court for specific performance of the contract. Under Wisconsin law, the existence of the secret agreement would make the contract voidable by Davis. Under Illinois law, it would not. The Illinois court applied Illinois law and rendered judgment for Evans, ordering specific performance. Davis did not appeal.

Davis still refused to comply, and he moved to Wisconsin, becoming a full-time resident of that state. Evans then brought suit against Davis in Wisconsin, asking the Wisconsin court to recognize the Illinois judgment, and order specific performance in Wisconsin. Davis defended on the grounds that the Illinois court had no jurisdiction to adjudicate rights to real property in Wisconsin, and that the Illinois court should have applied Wisconsin law to a dispute involving a contract to sell real property in Wisconsin. Discuss how the Wisconsin suit should be resolved.

**Question II (10 minutes)**

Carla, a resident of state X, works as a computer support specialist for Abco., Inc. Abco's headquarters is in state X, and Carla does most of her work there. Occasionally, however, she is asked to work at Abco's branch office in the adjacent state Y. After finishing work at the branch office one day and while driving back to state X, Carla was injured in a traffic accident in state Y. She sought workers' compensation benefits from Abco in state Y, but state Y's workers' compensation board denied them, holding that her injuries were not incurred in the course of her employment. This finding was affirmed on her appeal to state Y's courts. Under the law of state X, her injuries would likely be deemed to have been incurred in the course of her employment and she would be entitled to workers' compensation benefits. If Carla now seeks workers' compensation benefits in state X, do you think its award of benefits to Carla would be constitutionally permissible? Briefly explain

**Question III (10 minutes)**

Briefly discuss your understanding of what sorts of laws constitute "penal laws" and the rationale for the traditional choice of law principle that States will not enforce the penal laws of other States.

**Question IV (50 minutes)**

States A and B border each other. State A's courts apply the traditional territorialist approach to choice of law. State B's courts apply Professor Leflar's Choice Influencing Considerations (the Better Rule Approach). Here's what happened.

Ann and Ben were teenagers who lived with their parents in State A. Ann and Ben drove to State B, with Ben driving and Ann as passenger. While in State B, Ben fell asleep at the wheel and crashed into a tree. Ben was instantly killed, and Ann was hospitalized in State B for three full weeks before she passed away.

Ben had no auto liability insurance on his car and his estate had no substantial assets. Ann's parents, however, owned an automobile that was registered and garaged in State A. Their auto insurance policy, issued to them in State A by the Cass Insurance Company (A State C corporation with its principal place of business in State D), provided for liability coverage in the amount of \$750,000 and also uninsured motorist coverage for \$750,000. This was 7.5 times the amount of coverage required by State A law. \$100,000 was the floor required by the State, but the insureds could purchase more coverage for a higher premium, which Ann's parents had done.

Ann was covered by her parents' uninsured motorist coverage, which provided that Cass Insurance would pay damages (up to the applicable limits) "that the law entitles you to recover from the owner or operator of an uninsured motor vehicle." Ann's parents made a claim against Cass Insurance for the full \$750,000, claiming they were entitled to the full amount (that Ann or her Estate would be entitled to that amount had there been a suit against Ben's estate.)

Cass Insurance conceded that Ben's car was an uninsured motor vehicle within the terms of the policy, and that Ben would be found to be liable, but the attorneys for the insurance company and those of Ann's parents could not agree on the amount the law would entitle Ann to recover. Their primary dispute focused on whether a statute of State A, limiting non-economic damages (generally damages for pain and suffering) to \$200,000 would be applicable in a suit for damages. This statute had been passed five years earlier by overwhelming majorities in State A's legislature as part of "Tort Reform." Several states have adopted similar legislation over the past fifteen years.

The law of State B has no limit on the amount of non-economic damages a plaintiff may recover. The parties generally agreed that if the law of State A applies on the issue of non-economic damages, the appropriate payment would be \$500,000, but if the law of State B applies, the appropriate amount would be the full \$750,000.

Unable to come to an agreement, Ann's parents plan to file suit against Cass Insurance for the full amount of uninsured motorist coverage provided by the policy (State A law and State B law both permit such a suit even where there has not been a suit directly against the tortfeasor).

As was noted at the beginning of this question, the courts of State A apply the traditional territorialist approach to choice of law, while those of State B apply Professor Leflar's considerations. Taking into account the time suggested for this question, discuss reasonable arguments attorneys for BOTH parties (Ann's parents and Cass Insurance) would make to the courts of each state on which state's law should govern the issue of non-economic damages. Conclude with a recommendation on whether Ann's parents should sue in State A or State B (assume personal jurisdiction would be permissible in both), briefly stating your reasons.

**Question V (60 minutes)**

States X and Y border each other. Tom is a domiciliary of State X. The ABC corporation is incorporated and has its principal place of business in State Y, but has retail stores in several states, including State X.

Tom purchased an ABC brand riding lawn tractor from an ABC store in State X. One day he was using it to mow his lawn. His front lawn had a planting plot that was bordered with some wood edging. As Tom was mowing, the tractor became stuck against some of the wood. Tom tried to get unstuck by shifting the tractor back and forth between forward and reverse. After one of these maneuvers, he heard very loud screams from his six year old son, Samuel and saw that he was behind and under the tractor's rear wheels. Tom rushed Samuel to a local hospital. Samuel's right foot had to be amputated and his lower right leg was severely injured.

Tom has asked your law firm to represent him in a suit against ABC on behalf of Samuel. After some preliminary factual and legal research, you have determined that there are two choice of law issues in any suit you might file.

The first issue involves the issue of what constitutes actionable tortious conduct in States X and Y. State Y has adopted a rule of strict liability in tort for product design defects. You believe you have the best chance of a successful outcome if you can rely on such a theory. You also believe that most of ABC's decisions relating to the tractor's design were made in State Y.

State X, on the other hand, has refused to adopt the doctrine of strict liability, but rather it requires a showing of negligence for actions based on design defects. This appears to be a significant conflict because in a strict liability action, the inability of the defendant to know the risk is not a defense. However, such a finding would preclude a finding of negligence because the standard of care is established by other manufacturers in the industry.

The other choice of law issue involves non-economic damages (damages for pain and suffering) that can be recovered. (Yes, one of those again.) As part of tort reform, State Y has adopted a cap on non-economic damages that may be awarded. This cap limits available damages for pain and suffering in any tort case to no more than \$100,000. The constitutionality of this limitation has recently been upheld by State Y's courts. State X, on the other hand, has no limit on the amount of non-economic damages that can be awarded. You believe that a jury, not limited by a statutory cap, would award damages for pain and suffering well above \$100,000.

State X uses the traditional territorialist approach in resolving conflict of laws issues, and you have decided not to sue there because you believe its courts would apply State X's law requiring proof of negligence rather than permitting a claim based on strict products liability. State Y's courts, however, have recently adopted Interest Analysis. State Y's Supreme Court has stated that it would consider arguments based on principles applied and precedent from other states that have adopted interest analysis, including New York. It also stated, however, that it was 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 ABC's attorneys might reasonably make to the contrary, discuss how you would try to persuade state Y's courts to apply state Y's law permitting a claim based on strict liability, and state X's law on the issue of damages for pain and suffering. After discussing each of these issues, give a brief evaluation of your likelihood of success.

**Question VI (30 minutes)**

John, a citizen of New York, traveled to Massachusetts and stayed overnight at a motel owned by Marriott, which is a Delaware corporation with its principal place of business in Maryland. He became extremely intoxicated drinking alcoholic beverages in his motel room. He then left his room and staggered to the area of the motel's swimming pool, which was well lit. He fell in to the pool and nearly drowned, but an employee of the motel saw John and came to his rescue. John needed to be hospitalized overnight. The hospital took a blood test, and determined that John's blood alcohol content was .32, which was four times the legal limit for driving while intoxicated in the state.

John later filed suit against Marriott in a New York State Court, alleging that Marriott had been negligent in not having the swimming pool secured with some sort of barrier with a locked gate, and that this negligence caused him damages. Assume that the New York state courts could permissibly assert general personal jurisdiction over Marriott based on its ownership of a few motels in New York.

One issue in the case will be comparative fault, and the attorneys for the parties, dispute whether New York law or Massachusetts law applies on that issue. New York law provides for "pure comparative fault," under which fault attributable to a plaintiff will not bar recovery if the defendant is in any way at fault. Rather, the amount of damages a plaintiff may recover is diminished in the proportion which the fault attributable to the plaintiff bears to the fault attributable to the defendant. Under New York law, a plaintiff who is 99% responsible for his own injuries may still recover 1% of his damages.

In contrast, Massachusetts law on comparative fault bars recovery if the percentage of the plaintiff's fault is greater than the fault attributable to the defendant. Thus, in the current case, if the finder of fact concluded that John's fault should be assessed at 51% or more, John would not be able to recover any damages.

Assume that the New York courts would apply New York law on this issue of comparative fault. Discuss whether doing so would violate the United States Constitution.

# END OF EXAM