

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

Reference Materials Allowed

Open Book (all reference materials allowed)

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 2009 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 Pipeline or the Office of the Registrar.

If you are using SofTest to write your exam answers, please read the instructions before you start your laptop. You must exit your exam immediately at the end time for the exam. 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 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, and give it to the proctor. If this is a self-scheduled examination, you must stop at the end of your time and return the sealed bag to the Office of the Registrar immediately. You will collect your receipt there.

Instructions Specific to This Examination

- A. This examination consists of five questions. There are suggested amounts of time for each question. These suggested times total two hours and fifty minutes, giving you ten minutes to allocate as you wish. Bear in mind that in grading, I generally give a question weight that is proportionate to the suggested time.
- 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 (10 minutes)

Elvis obtained a valid judgment against Farr in a court of State A for \$100,000. The law of State A provides that its judgments may be enforced during a period of six years from their rendition. It also has a statute of limitations for actions on foreign judgments of six years.

Six years pass, and Elvis has still not collected. Seven years after the judgment was rendered, Elvis brings an action on the State A judgment against Farr in State B, which has a ten year statute of limitations for actions on judgments. The court of State B recognizes the judgment, entering judgment in favor of Elvis against Farr for \$100,000 plus post-judgment interest (determined by applying State A's laws on post-judgment interest). Elvis then brings an action on the State B judgment in State A, requesting State A to recognize the judgment. May State A refuse to recognize the judgment, on the ground that enforcement is being sought outside of its six year limitations periods, and it therefore could not have been obtained in State A? Briefly explain.

Question II (60 minutes)

State X and State Y border each other. Mary Eagan lives in State X. A friend, John Ford, lived in State Y, where he worked as a sales representative for ABC, Inc. ABC is a relatively large corporation, with its headquarters and manufacturing plant in State Y. It sells its products in several states, including X and Y. ABC provided Ford with a company owned car, on the understanding that Ford would use it only while on company business.

One day, Eagan and Ford made plans that Ford would pick her up at her home and they would go out to a night club in state X. Because Ford's own car was in the repair shop, he drove the company car instead. Ford had quite a bit to drink at the night club, and while driving Eagan home had a one car accident in State X, in which Ford was killed. Eagan was very seriously injured. She was in the hospital in intensive care for two weeks, required three more weeks of full time hospitalization, after which she needed several shorter hospital stays for additional surgeries. Her injuries included several broken ribs, spinal damage which permanently limited her use of her right arm, and required that one of her legs be amputated.

After the accident, Ford's automobile liability insurer paid Eagan \$100,000, which was the full amount of Ford's policy limits. Because this amount does not even cover the full amount of her medical bills, Eagan has come to your office to see whether there might be other sources of recovery.

After learning that Ford had been driving a company car, you did some research into whether ABC might have potential liability. Your research has disclosed that under the law of State X, an employer is vicariously liable for its employee's negligent use of a company vehicle, so long as the use is in the course of employment. Liability will not attach, however, if the employer/employee understanding is that the vehicle will be used only on company business, and if the use of the vehicle resulting in the injury was not for company business. You have found a

decision from the Supreme Court of State X, holding that this rule will not permit employer liability on facts very similar to Eagan's case.

Under the law of State Y, however, employer liability exists once the employee is given initial permission to operate the vehicle, even if the employee's use exceeds the scope of the permission given. You believe that Eagan has a good chance of recovery against ABC under this rule. Your research has also disclosed that, as part of a "tort reform" effort, State Y recently enacted legislation that limits damages for pain and suffering to a maximum of \$300,000. State X law has no such limit, and you believe that a jury, not restricted by a statutory maximum, may award Eagan damages for pain and suffering that are much greater than \$300,000.

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 find no liability on the part of ABC. State Y's courts, however, have recently adopted Interest Analysis. 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 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 law on the issue of employer liability, and state X 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 III (40 minutes)

AA Construction is a building contractor. BB Plumbing and CC Electric are companies that often work as sub-contractors on jobs done by AA Construction. John is an electrician who is employed by CC Electric. AA Construction, BB Plumbing, and CC Electric are incorporated and have their principal places of business in State X. John lives in State X and usually, but not always, works on jobs in that state.

AA Construction was hired to build a new apartment building 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 John was testing the electrical system in the building in State Y. In doing so, he switched different circuits on and off as his safety required. However, a plumber employed by BB Plumbing working in the same general area of the building threw a switch that caused a circuit John was working on to go “live.” John suffered substantial injuries as a result. John obtained workers compensation benefits from CC Electric. 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 BB plumbing for ordinary tort damages. You are fairly confident that you can prove that the conduct by the plumber who threw the switch was negligent, and that this negligence caused John’s injuries. You also have determined that under the law of both States X and Y, BB Plumbing can be held liable for the negligence of its employee, unless it is immune from a suit for such negligence. Whether you can successfully assert such a tort claim against BB Plumbing, however, will depend how the court will rule on a choice of law issue.

Under the workers compensation statutes of State X, sub-contractors on the same construction job are not immune from ordinary tort liability when a worker for another sub-contractor receives workers compensation benefits. Under State X law, the only entity entitled to immunity from a tort suit is the employee’s direct employer (here CC Electric), who compensates the employee with 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 tort claim against BB Plumbing 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, liability 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 BB Plumbing would make, discuss arguments you would make in the courts of State X and the courts of State Y 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.

QUESTION IV (30 minutes)

State A engaged in an aggressive advertising campaign to encourage people from other states to visit its “beautiful” State Parks. Its advertisements included broadcast advertisements on radio and television stations near its border with State B. They also appeared in newspapers in State B.

John and Mary Popp lived in State B with their three children. After hearing and reading some of these advertisements, they decided to visit Skeeter State Park in State A for a weekend picnic. After entering the Park, they drove to an area designated as a “picnic ground,” parked their car, and started preparing for their picnic lunch.

John had his digital camera with him and asked the rest of his family to pose for a photo. In preparing for the photo, John stood with his back only a few feet away from some dense forest. Tragically, while he was in this position, a wild deer leaped out of the forest and hit John, causing him to fall. As the deer scrambled over John, one of its hoofs hit John directly on his head. John was seriously injured as a result.

After several weeks of recovery, John and Mary have come to your law office in their home town in State B, seeking your advice and assistance in recovering damages from State A as a result of the accident. After discussing the incident with them, you believe that you have a plausible theory of liability that State A was negligent in not having some sort of barrier between the designated picnic area and the dense forest.

After doing some legal research, however, you discovered that while State A had waived sovereign immunity for many sorts of claims, it has expressly retained sovereign immunity for some categories. Specifically, and unfortunately from your point of view, it has expressly retained sovereign immunity for claims for personal injury “caused by a wild animal on land owned by the State.” Your further research has led you to believe that if you brought suit on John’s behalf in State A, its courts would dismiss John’s claim against State A based on this sovereign immunity.

You have also determined, however, that State B has generally waived its sovereign immunity from suit. While State B has some exceptions to this waiver, they do not include immunity from suit for claims for personal injury caused by wild animals. You have a reasonable hope that you could persuade State B’s courts to apply State B’s non-immunity rule on this issue under its choice of law approach.

Assume the courts of State B could assert personal jurisdiction over State A in a suit by John against State A. Discuss whether a decision by State B to apply its non-immunity rule rather than State A’s immunity rule would be permissible under the United States Constitution.

Question V (30 minutes)

Ames, a citizen of North Dakota, was badly injured when the auto he was driving collided with another driven by Baker, a citizen of Idaho. The accident occurred in Montana. Baker's liability insurance company paid Ames \$50,000, representing the coverage limits of Baker's insurance policy. This amount was likely to fall very short of the costs that would be incurred by Ames as a result of the accident.

However, Ames had an insurance policy he had purchased in North Dakota from Cars, Inc. (Cars). The policy covered three motor vehicles that were owned by Ames and provided Ames with "underinsured motorist coverage," with a policy limit of \$100,000. Ames consulted an attorney who advised him that under Montana law, this coverage could be "stacked" by multiplying the policy limit by the number of vehicles insured, with the result that Ames would be entitled to \$300,000. Such stacking was not permitted by North Dakota law, under which Ames would be entitled to only \$100,000 from Cars.

Ames' attorney requested that Cars pay Ames the full \$300,000. Cars paid \$100,000, but disputed any obligation to pay the additional \$200,000. The day after Cars rejected the demand for the additional \$200,000, Cars filed suit against Ames in a North Dakota state court, seeking a declaratory judgment that North Dakota law applied and that Ames was entitled to only \$100,000 underinsured motorist coverage under the policy.

A few days later, Ames' attorney filed suit on his behalf against Cars in a Montana state court. Assume that Cars was subject to personal jurisdiction there. The suit sought the additional \$200,000 from Cars, alleging that Montana law permitting stacking was applicable. A few weeks later, Ames made a motion for summary judgment in the Montana court on his stacking claims. The Montana court accepted briefs and heard oral argument on the motion, and said that it would take the motion under advisement, with a decision to be forthcoming.

While Ames' motion in Montana was under consideration, the North Dakota court ruled that North Dakota law was applicable, that stacking was not permitted, and that Ames was entitled only to the \$100,000 Cars had already paid. The North Dakota court entered final judgment. Cars then made a motion for summary judgment in the Montana court, arguing that Montana was required to give the North Dakota judgment full faith and credit and that under North Dakota law, issue preclusion barred Ames from seeking greater compensation in the Montana court.

The Montana court denied Cars' motion and entered summary judgment for Ames, concluding that Montana law was applicable and entering judgment against Cars for \$200,000. The Montana court's opinion accompanying its ruling included the following language:

A law denying stacking of insurance coverage is against the strong public policy of Montana. In addition, this case and the North Dakota case were proceeding simultaneously in both courts. It is evident that the action in North Dakota was brought for the purpose of preempting Montana from exercising control over the judicial processes necessary to resolve the dispute. The North Dakota rulings are not entitled to full faith and credit because they impermissibly interfere with the Montana litigation over which North Dakota had no authority. See Baker v. General Motors [page 677 of your casebook].

Discuss the propriety of the Montana court's ruling.

END OF EXAM