

Exam Number _____

HAMLIN UNIVERSITY SCHOOL OF LAW

Date of Examination:

Professor: Pielemeier

Semester: Spring 2004

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 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 five questions. There are suggested times for each question. These suggested times total two hours and fifty minutes, giving you an additional ten minutes to use as you see fit.
- 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 (15 minutes)

Davis and Evans, both Minnesota citizens, entered into a contract in Minnesota 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 a Minnesota court for specific performance of the contract. Under Wisconsin law, the existence of the secret agreement would make the contract voidable by Davis. Under Minnesota law, it would not. The Minnesota court applied Minnesota law and rendered judgment for Evans, ordering Davis to convey the property to Evans. Davis did not appeal.

Davis still refused to convey, 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 Minnesota judgment and to order Davis to convey the property. Davis argued that the Wisconsin court did not need to recognize the Minnesota judgment, because the Minnesota court should have applied Wisconsin law and it had no power to order the transfer of real property in Wisconsin. May the Wisconsin court refuse to recognize the Minnesota judgment? Explain.

II (15 minutes)

Assume Indiana has the following statute: "Absent waiver, no claim against the State of Indiana may be brought for more than \$250,000." Smith, a citizen of Illinois, was injured in Illinois by an agent of the state of Indiana and was granted a judgment against Indiana for \$1,000,000 in an Illinois court. Smith then brought an action on the Illinois judgment in Indiana. May Indiana refuse to recognize the judgment to the extent it exceeds \$250,000? Explain.

III (60 minutes)

States X and Y are adjacent to each other. Davis, who lives in state Y, owns, breeds, raises and shows Percheron draft horses on his farm in state Y. Percherons are generally known as strong, high-strung animals possessing great speed and agility. An adult Percheron weighs approximately 2,000 pounds.

Davis took two of his horses to a horse show in state X, whose economy is dominated by agriculture and farming. Upon arriving at the show Davis hired Carr, a 19-year-old citizen of state X, to help him with his horses during the two days of the show.

The stalls at the show were designed to hold two horses, and Davis' entry fee entitled him to one such stall. Davis told Carr that this concerned Davis to some extent, because his horses were not used to being stalled with another horse. But rather than pay an extra fee for a second stall, he decided to put both of the horses in the same stall.

Shortly after the horses were put into the stall, they became agitated and began to bite each other. When Carr saw this occurring, he went to the stall with the intention of removing one of the horses. In doing so he was kicked in the face by the horse, resulting in severe injuries to his head. Carr underwent eleven surgeries to reconstruct his face.

The law firm for which you work has agreed to represent Carr in a lawsuit against Davis. The planned theory of recovery would be negligence. You plan to file the 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 first issue is the applicability of state X's "domesticated animal immunity statute" (DAIS). The statute provides that "the owner of a domesticated animal is not liable for damages, injury, or death resulting from the inherent risks of a domesticated animal activity." The statutory definition of a "domesticated animal" includes a horse. The meaning of "domesticated animal activity" includes participation in an activity sponsored by a "domesticated animal activity sponsor," which in turn includes a "show." It appears to be clear that the DAIS is applicable to the facts of Carr's case and that under it, Davis could not be held liable for negligence.

Under the law of state Y, there is no similar immunity for owners of domesticated animals. Thus, under the law of state Y, Davis could be found liable if he was determined to have been negligent.

The other issue on which the court's choice of law may be important is the extent to which Davis could be held liable for "non-economic damages." In a process of "tort reform," state Y enacted a statute limiting "non-economic damages" (generally damages for pain and suffering) to \$200,000.

Under the law of state X, however, there is no limitation on the amount of non-economic damages that may be awarded to a plaintiff. You believe that you could persuade a jury to award Carr substantially more than \$200,000 for pain and suffering.

State X uses the traditional territorialist approach to resolving conflict of laws issues, and you have decided not to sue there because you believe its courts would apply state X's DAIS, which would result in dismissal of Carr's suit.

State Y's courts, however, have 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 has 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 Davis' 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 immunity for owners of domesticated animals and state X law on the issue of limitations on non-economic damages. After discussing each of these issues, give a brief evaluation of your likelihood of success.

IV (40 minutes)

Tom Stith, a citizen of state A, died in a highway accident in state A when the truck he was driving went over a guardrail and slid into a deep ravine. The autopsy report showed several fractures of his ribs and spine, but also said Mr. Stith had suffered a heart attack. The report concluded, "It is not known which happened first, his medical event or the leaving of the roadway."

Mr. Stith was covered by an accidental death life insurance policy through the Stone Insurance Company, a State B corporation with its principal place of business in state B, where it has its only administrative office. The policy provided for \$100,000 of coverage in the event of accidental, but not natural, death.

Carla Stith, Tom's wife, was the named beneficiary of the policy. Within a week of her husband's death, she notified Stone and made a request for the amount covered by the policy. Four weeks later, Stone denied her claim, stating in a letter, "It appears from the autopsy report that your husband died from a cardiac event. Thus, as it does not appear that your husband's death resulted from an injury caused by an accident, the policy does not provide coverage for your claim."

Ms. Stith has come to your office and wishes to sue. You plan to sue for the \$100,000 coverage by making a breach of contract claim. You also believe that the facts of the case warrant including a count asserting that Stone denied benefits in bad faith, which is available under the law of state B, but not under the law of state A. If Ms. Stith succeeded on such a count, she could recover damages for emotional distress as well as punitive damages, in addition to the policy amount.

The Supreme Court of state A has explicitly rejected the existence of a claim for bad faith denial of benefits, stating,

Assuming for the sake of argument that an implied covenant of good faith was maliciously broken in this contract, that malicious motive is immaterial in so far as damages for contract breach are concerned. The motives prompting the breach of a contract are immaterial, so far as the rule of damages is concerned, and, however malicious or wrongful, the measure of compensation remains the same. That is settled law. People should get the benefit of the contract they enter into, nothing less and nothing more. A malicious or bad-faith motive in breaching a contract does not convert a contract action into a tort action. Accordingly, we think that bad-faith breach of contract is not an independent tort of the kind that will permit a tort recovery.

On the other hand, the courts of state B, as well as the majority of other states in the United States, recognize an independent claim for bad faith denial of insurance benefits. In explaining why it recognizes such a claim, State B's Supreme Court has stated,

In the insurance context a special relationship arises out of the parties' unequal bargaining power and the nature of insurance contracts which would allow unscrupulous insurers to take advantage of their insureds' misfortunes in bargaining for settlement or resolution of claims. In addition, without such a cause of action insurers can arbitrarily deny coverage and delay payment of a claim with no more penalty than interest on the amount owed. An insurance company has exclusive control over the evaluation, processing and denial of claims.

The courts of state A follow Professor Leflar's Choice Influencing Considerations in resolving choice of law issues, and will consider precedent from other states that also follow that approach. State B's courts still follow the traditional territorialist approach to choice of law.

Where would you recommend Ms. Stith file suit. Explain the reasoning leading to your conclusion.

V (40 Minutes)

Bill and his sister Cathy lived in Florida until the late summer of 2002, when Cathy accepted a job in South Carolina and Bill was preparing to begin his first year of law school in New York. Bill hoped to live and practice law in New York after he graduated.

They decided that Bill would drive Cathy to her new apartment in South Carolina and that Bill would then continue on to New York. However, shortly after they crossed the South Carolina border, they were involved in a serious accident with a U-Haul rental truck driven by Dave, a citizen of South Carolina. Cathy was killed and Bill was seriously injured.

Bill's entry into law school was delayed by his need for extensive medical and rehabilitative treatment. But by late summer of 2003, he finally moved into his New York apartment to begin school.

After he moved to New York, Bill filed suit for his injuries against U-Haul in a New York state court. He alleged that U-Haul was liable because of a New York statute, which provides:

Every owner of a motor vehicle shall be liable and responsible for death or injuries to person or property resulting from the negligence in the use and operation of such vehicle by any person using or operating the same with the permission, express or implied, of such owner.

The laws of South Carolina and Florida had no similar provision for owner liability, and U-Haul could not be held liable on these facts under the laws of either state. Bill's attorney is confident that she could persuade a jury that Dave's negligent operation of the truck caused Bill's injuries.

Discovery disclosed that Dave had rented the truck at a U-Haul outlet in South Carolina for use entirely within South Carolina. The truck was registered in and had license plates from South Carolina. Bill was unable to uncover any evidence suggesting that the truck had ever been driven in New York. He did, however, uncover evidence that U-Haul permitted its rental trucks rented in South Carolina to be returned to it at its outlets in other states, including New York.

U-Haul is a Delaware corporation and does business through various outlets throughout the United States, including several in New York. Its principal offices are in Chicago, Illinois. It did not contest the existence of personal jurisdiction over it.

Discuss whether it would be constitutionally permissible for New York to apply its statute in Bill's case. You do not need to discuss whether New York actually would apply the statute under its choice of law principles.