

Exam Number _ _ _ _ _

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

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 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 Secureexam 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 Secureexam);

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 (15 minutes)

17 year old Bob Baxter lived in Nevada and seemed to show lots of promise as a singer. Bob wanted to get an agent to help him along with a singing career. Bob became acquainted with Steve Rogers, who lived in California and was an agent for several performers. Bob and Steve agreed that they wanted to enter an agency contract, but Bob's parents strongly disagreed with the idea.

Under Nevada law, persons under the age of 18 do not have capacity to enter into binding contracts without the consent of a parent or guardian, and Bob's parents will not give consent. Any contract made without such consent is voidable. Under California law, however, persons who are 17 years old do have the capacity to enter binding contracts.

Can Bob and Steve make a legally binding contract if they include a clause that the contract will be governed by the law of California? Explain.

QUESTION II (15 minutes)

Mike and Sue Jones, a married couple living in Minnesota, bought a lake cottage in Wisconsin. In 2005, they separated. Mike remained in their home in Minnesota, and Sue moved to the Wisconsin cottage. A divorce action followed in a Minnesota court, in which both Mike and Sue were represented by counsel. The final judgment in the divorce action included an award of "sole title" to the Wisconsin cottage to Mike. Mike then brought an action in Wisconsin seeking to evict Sue from the cabin. Mike argued that the Wisconsin courts had to give full faith and credit to the Minnesota award. Is he likely to prevail on this claim? Explain.

QUESTION III (30 minutes)

States A and B are adjacent to each other. The Smithton Public School District is in the town of Smithton in State A, and all of its students live in State A. One of its school bus routes, however, is on a road that includes a quarter mile segment that is in State B. This segment in State B includes a railroad crossing.

Tragically, one day, a Smithton school bus failed to stop for an approaching train at this crossing in State B, and the train collided with the back of the bus. The three students on board and the bus driver miraculously survived, but all were severely injured. State B emergency vehicles responded to the collision, and the injured were taken to a State B hospital where they were all treated.

Your law firm has been hired by the students' parents to seek compensation for their injuries. A video camera, which was on the bus for the purpose of monitoring the behavior of the students, captured the fact that the bus did not stop prior to crossing the tracks. The police investigation and your own investigation suggest that the accident was probably entirely the fault of the bus driver, and that the railroad was not at fault.

A potential obstacle to recovering substantial damages against the School District is the law of State A on public schools' immunity from suit. Under the law of State A, every public school

district is required to purchase liability insurance for bus accidents, with liability coverage in the amount of \$300,000 per accident. Beyond this amount, however, State A public schools are immune from suit. Under the law of State B, however, there is no immunity and no limitation on the amount that can be recovered for an action in tort brought against a public school district.

The Supreme Court of State A has recently re-affirmed the commitment of State A's courts to the traditional territorialist approach to choice of law. The courts of State B, however, apply the "choice influencing considerations" of Professor Leflar (the "better rule" approach). The courts of both states will consider arguments based on precedent by other courts using their approach.

As attorney for the plaintiffs, you obviously want to file suit in a court that is most likely to apply State B's law on the issue of the School District's immunity. In which state would you recommend filing suit? Explain your reasoning, taking into account the amount of time suggested for this question.

QUESTION IV (60 minutes)

States X and Y are adjacent to each other. Ames lives in State X. Baker lives in State Y. One day in the year 2006, Baker, after spending several hours drinking in a bar in state Y, drove his car into State X. While driving in State X, Baker was involved in an accident with a car driven by Ames. Ames was seriously injured. Baker incurred only minor injuries, but had to be hospitalized briefly. While in the hospital, Baker's blood was tested to determine his blood alcohol content. The test showed that the level was .15, well above that required by State X to be guilty of driving while intoxicated. Ames' blood was also tested, and his test showed no blood alcohol content.

The law firm that you work for has agreed to represent Ames in a suit against Baker to recover damages for Ames' injuries. You plan to file suit in State Y, for reasons that will become apparent. You are confident that you can prove that the accident was caused by Baker's negligence, and that you can prove that his blood alcohol content was .15. You also believe that in addition to having automobile liability insurance coverage, Baker is very wealthy.

Notwithstanding your confidence in the forgoing, there is a potential problem in recovering damages from Baker. At the time of the accident, Ames, who is not very well off financially, had let his automobile liability insurance lapse because he neglected to make a payment when it was due.

This lapse of Ames' insurance is of concern because in 2005, State X enacted into law a provision related to the fact that State X requires all of its owners of automobiles to have automobile liability insurance. This provision, enacted in part as a result of lobbying by the insurance industry, is called "no pay, no play" ("NPNP"). It provides that any auto owner in State X who does not have the required insurance coverage in effect at the time of an accident may not recover damages from an owner of an automobile involved in the accident who has liability insurance coverage.

If this "no pay, no play" law of State X is applied to the case, Ames will not be able to recover any damages against Baker. State X's courts apply the traditional territorialist approach to choice of law, and you believe that they would apply this law to the facts. This is why you have

decided to file suit in State Y rather than State X. State Y does not have a “no pay, no play” law, and there appears to be no law in State Y that would prevent Ames from recovering from Baker if Ames proves the normal elements of a negligence claim.

The other issue on which the court’s choice of law may be important is the ability of Ames to seek punitive damages against Baker. State X permits recovery of punitive damages against drivers in accidents who have blood alcohol levels in excess of State X’s legal limits. State Y law does not permit punitive damages.

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 Baker’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 “no pay, no play” issue and State X law on the issue of punitive damages. After discussing each of these issues, give a brief evaluation of your likelihood of success.

QUESTION V (30 minutes)

Acme, Inc. manufactures and sells hammers and other tools. It is incorporated and has its principal place of business, including two factories, in Delaware. It also has a separate factory in Maryland.

Ben, who lived in Delaware, worked for Acme at one of its Delaware factories. One day in June, 2006 while on the job, Ben injured his hand. Ben then filed a claim with the Delaware Workers Compensation Board, seeking a monetary Workers Compensation award from Acme. The Board denied Ben’s claim in August, 2006, concluding that his injury was too minor to qualify for an award.

In October, 2006, Acme told Ben that he was discharged from his employment. When he asked for a reason, Acme declined to tell Ben why he was being fired, but Ben suspected that his filing of the Workers Compensation claim had something to do with it.

Ben then moved to Maryland, where he found other employment with a significant reduction from the pay he had received from Acme. Assume that Maryland law recognizes a cause of action for retaliatory discharge and that there is Maryland case law permitting recovery where an employee was fired in retaliation for filing a Workers Compensation claim against his employer.

Ben sued Acme in a Maryland court seeking damages for retaliatory discharge. Assume that personal jurisdiction over Acme would be permissible based on the presence of its factory in Maryland.

Acme moved to dismiss on the ground that Delaware law did not recognize a cause of action for retaliatory discharge. Assume that a Delaware Supreme Court decision said that “the inability of

an at-will employee [which Ben was] to sue for retaliatory discharge is a fundamental statutory rule governing employer-employee relations in Delaware.”

Assume that under its choice of law approach, a Maryland court would apply Maryland law on the issue of whether Ben could recover for retaliatory discharge. Discuss whether this application of Maryland law by the Maryland court would be permissible under the United States Constitution.

QUESTION VI (20 minutes)

Carr, who lived in Virginia, was driving his Ford automobile in New Jersey when it was hit by an automobile driven by Davis, who lived in New Jersey. Carr was severely injured, and sued Davis in a New Jersey court, alleging that the accident was caused by Davis' negligence. After a trial on the merits, judgment was entered in favor of the defendant Davis.

Subsequently, Carr brought suit against Ford, which had manufactured Carr's auto. This suit was brought in Virginia, and was based on a products liability theory, alleging that the Ford had a defective passenger restraint system. Carr alleged that these defects contributed to his injuries, and that Ford was accordingly liable for damages.

Shortly after the Virginia suit was filed, Ford made a motion for summary judgment. The motion was based on the fact that Ford had not been joined by Carr as a defendant in the New Jersey suit against Davis, and New Jersey's "entire controversy doctrine."

New Jersey's entire controversy doctrine is a doctrine of preclusion that sweeps more broadly than the preclusion rules of every other state in the United States. It requires parties to an action not only to raise in that action all related claims they may have against other parties (the traditional claim preclusion rule), but also to join all non-parties subject to the court's jurisdiction against whom additional claims might be made, if those claims are related to the occurrence giving rise to the lawsuit.

The New Jersey courts have stated that the objectives of the entire controversy doctrine are "(1) to encourage the comprehensive and conclusive determination of a legal controversy; (2) to achieve party fairness, including both parties before the court as well as prospective parties; and (3) to promote judicial economy and efficiency by avoiding fragmented, multiple, and duplicative litigation."

New Jersey caselaw was clearly to the effect that, if the suit against Ford was in a New Jersey court, Carr's claim against Ford would be dismissed pursuant to the entire controversy doctrine. (Assume that Ford would have been subject to the jurisdiction of the New Jersey courts.) Virginia claim preclusion law was equally clear that Carr's failure to join Ford in the suit against Davis would not bar a later suit against Ford.

In support of its motion to dismiss, Ford argued that full faith and credit principles required the Virginia court to dismiss the action, pursuant to New Jersey's entire controversy doctrine. Carr argued, on the other hand, that Virginia was not obligated to follow this aspect of New Jersey preclusion law, but rather that it was free, pursuant to its own law, to permit the suit to proceed. Discuss how the motion should be resolved. **Please paste your exam here.**

END OF EXAM