University of Kentucky College of Law  
Spring 1992  
Conflict of Laws (905-01) Professor M.J. Davis  
Examination No: _________ Room 142

Final Examination  
May 2, 1992

Instructions - Please Read Carefully

1. Do not turn to the next page until you are permitted to begin writing your answers.
2. This closed-book examination consists of four (4) essay questions of equal weight. The examination is worth a total of 100 points.
3. You will have three and one-half hours to finish this examination.
4. Write all your answers in blue books. You must write your examination number on the front of each blue book that you use and on this examination booklet as well. Do not identify yourself to me in any way in your answers.
5. Number sequentially the blue books that you use, and identify the question(s) being answered in each. Turn in all materials, including scrap paper and this examination booklet.
6. Write legibly and in ink. Write only on every other line and only on one side of the blue book page. There is no page limit on the response to any question nor on the exam as a whole. You must be the judge of how to distribute wisely the time available to you.
7. Please read each question completely before beginning to outline or write your answer. Answer the questions asked. Points will be deducted for patently irrelevant discussion. ORGANIZE YOUR ANSWER BEFORE WRITING.
8. If you have any questions, ask.

Good luck!

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Essay Question One

Adams had a comprehensive automobile insurance policy with Brookstown Insurance Company. Adams, a resident of the state of Conflicta, signed the contract and paid the premium at his insurance agent's office, also in Conflicta. Brookstown is registered to do business in only the few states contiguous to Conflicta. It writes primarily business insurance. Brookstown underwrote the automobile policy for Adams as an accommodation to a good business customer and has not done so for anyone else.

The policy contains a clause which says that in the event of an accident involving Adams or a covered vehicle, the Company would be required to pay Adams what he was "legally entitled to recover." Adams was involved in a hit and
run accident while on vacation in the state of Delictus, a state not contiguous to Conflicta. Witnesses to the scene testified that Adams was not at fault. Delictus has recently enacted a tort reform act (in effect at the time of this accident) which limits recovery for personal injuries sustained in automobile accidents to $50,000 per injured person. Conflicta has no such limit on recovery. The insurance policy has a coverage limit of $300,000 per injured person.

Adams has damages exceeding the limits of the policy and has filed suit against the Company, in a state court in Conflicta, seeking payment of the limits of the policy.

Conflicta follows the First Restatement and Delictus follows the Second Restatement approach to choice of law decisions.

You are counsel for Adams. The Court has asked you to prepare a brief addressing the following questions:

1. Which law will apply under both the First and Second Restatement approaches?

2. Should Conflicta abandon the First Restatement approach to choice of law decisions and, if so, why?

Essay Question Two

Mr. Rogers had just obtained his second class pilot's license and was flying two business associates to an electronics industry meeting in Washington, D.C. in late December 1991. Mr. Rogers had the second class license because he was not yet qualified to fly at night or in weather circumstances that prevented him from making visual contact with the ground at any time, as required for a first class license.

Mr. Rogers lived and worked in Cincinnati; he had recently moved there from Oregon where his employer, Triple A Industries, has its principal place of business. After leaving the Cincinnati/Covington, Kentucky airport, Rogers encountered a sudden and severe weather front with strong gusts of wind, thick black storm clouds and snow squalls. He was surrounded by clouds and unable to see the ground for a frame of reference. He became disoriented and unable to control the aircraft. The aircraft broke up in flight, its wings and tail breaking from the fuselage. It crashed in the mountains of western Pennsylvania. Mr. Rogers and the two passengers were killed.

Mr. Rogers' estate has brought suit against Pauper Aircraft, the manufacturer of the aircraft, for its allegedly defective design of the aircraft. Pauper is incorporated in Delaware but has its principal place of business, and its manufacturing facility, in Wichita, Kansas. Mr. Rogers' estate claims the aircraft, marketed as an all-purpose, all-weather business aircraft, was not designed to withstand the stresses foreseeably to be placed on it by inexperienced pilots in severe weather conditions. Mr. Rogers' estate has filed suit in state court in Pennsylvania. Pennsylvania uses the Governmental Interest Analysis to decide choice of law issues.

You are defending Pauper Aircraft. Pauper wants to know:

(1) what law will apply to determine Pauper's liability—Ohio and Kansas recognize strict products liability for defective design but Pennsylvania and Delaware do not, instead requiring the plaintiff to prove negligent conduct.
(2) what law will apply to determine the effect on the estate's recovery, if any, of Mr. Rogers' conduct and inexperience in flying the plane --Pennsylvania and Delaware use a pure comparative fault scheme that apportions damages based on the percentage of the parties' fault. Ohio and Kansas do not reduce a plaintiff's recovery based on his/her own fault when the defendant's liability is based on strict products liability.

Essay question Three

This problem is based on the facts found in Essay Question Two.

The aircraft Mr. Rogers was flying was owned by B & B Rent-a-plane and leased to Mr. Rogers' employer, Triple A Industries, on a full-time basis since 1985. Triple A Industries is headquartered in Portland, Oregon, as is B & B Rent-a-plane. Triple A is a Fortune 500 company with offices in Oregon and Texas and salespeople throughout the United States and Canada.

B & B is owned and operated by Burt and Bob Smith. B & B performed all the routine maintenance and repairs on the aircraft. All the maintenance on the aircraft is performed in Oregon. B & B has a yearly net income of $450,000 and employs 15. B & B owns 25 business-use airplanes and leases them all on a full-time basis. Triple A is one of B & B's main customers. B & B's other primary customers include several local Oregon businesses that do business only in the northwestern region of the United States.

B & B also leases airplanes for personal use. Bob Smith (coowner of B & B) lived in Pittsburgh for 10 years, from 1975 to 1985, before moving to California. He managed a local airfield and leased planes for personal use only. He also did the maintenance and repair on several business-use planes housed at the airfield.

Mr. Rogers' estate is considering whether to pursue an action against B & B Rent-a-Plane for negligent maintenance and repair on the aircraft in which Mr. Rogers was killed. You are employed by the firm that represents the estate and have been asked to decide whether the estate should sue B & B in Pennsylvania, and if not, where the estate should sue B & B. (Oregon uses the comparative impairment approach to determine choice of law issues.)

Essay Question Four

This problem is based on the facts found in essay questions two and three.

The jury awarded Mr. Rogers' estate $900,000 against B & B Rent-a-Plane including $500,000 for punitive damages. The Ohio wrongful death statute was applied. Under that statute, damages are awarded based on the value of the decedent's life to the beneficiaries, which included Mrs. Rogers and her two children. No damages were awarded for the pain and suffering of either the decedent or the beneficiaries. Punitive damages are not allowed in Oregon in wrongful death cases. Pain and suffering damages are allowed in such cases but in a separate proceeding which takes place after the main action has been concluded and before a different jury.

B & B did not appear in the Pennsylvania action and default judgment was entered against it in the above amount. The Pennsylvania long arm statute confers jurisdiction to the extent allowed by the due process clause.
The estate has brought an action seeking to domesticate the judgment in Oregon and seeking an evidentiary hearing for the awarding of pain and suffering damages under Oregon procedure. B & B has moved to prevent the judgment from being domesticated in Oregon and opposing the damages hearing. Identify all bases of support for B & B’s motion.

Appendix

CONFLICT OF LAWS

This exam is three hours long and is "open book." You may use any written materials whatsoever, including commercially prepared outlines and notes written by other students. You may not, however, discuss this exam with anyone else.

On November 1, 1988, Sam Baker picked up his friend, Dave Winter, in Mashpee, Massachusetts to drive to Vermont for a weekend of deer hunting. On leaving Mashpee, the two stopped at a Seven Eleven and bought four six packs of beer. Most of this was gone by the time that they entered Vermont, at which point they stopped at the Trolley Square Warehouse Liquor store to buy more beer. Sam and Dave polished this beer off by the time they arrived at Hartland, Vermont and set up their camp. Hoping to get a little hunting done before it became completely dark, the two set off into the woods. They became separated, and when Baker took aim at what he thought was a large deer, it turned out to be Winter instead. The result is that Winter is now paralyzed from the waist down for life, and has gone to live with his parents in Maine.

Winter wishes to sue. Baker unfortunately has few assets and no insurance. The most likely other defendants are Trolley Square Warehouse Liquor (for selling beer to Baker when he was already apparently intoxicated) and Masseys, the Rhode Island gun shop where the gun was purchased in 1981. Masseys is a local branch of a chain of sporting goods stores. Rhode Island law imposes a seven day waiting period during which sellers of hunting rifles are obliged to check a prospective buyer for any criminal record. Baker identified himself as a Massachusetts resident when he applied to purchase the gun. Masseys did not discover that Baker had a previous manslaughter conviction in Massachusetts, for a highway fatality caused while Baker was driving while intoxicated. Under Rhode Island law, failure to uncover this evidence makes the gun seller liable to any third parties injured as a result of the buyer's misuse of the gun. (Massachusetts and Vermont have no such gun laws). The Rhode Island gun control law is accompanied by a special three year statute of limitations.

Massachusetts has a Dram Shop Act providing that those who sell alcoholic beverages to persons who appear to be intoxicated are liable to individuals subsequently injured by the intoxicated person's behavior. Rhode Island has a similar provision, except that it provides a contributory negligence defense if the injured party was partially responsible for the injury. Vermont has no Dram Shop Act at all.

The Vermont statute of limitations is one year, while the Massachusetts statute of limitations is two years. However, Massachusetts has a borrowing statute providing for application of the statute of limitations of the state where the cause of action accrued, while Vermont tolls the statute of limitations so long as the defendant is not subject to jurisdiction in the state. Masseys has been sued in Vermont once before, with jurisdiction being upheld on the grounds that one shop in the Masseys chain was located in Vermont. This was in 1983; the Vermont Masseys outlet has since been closed.

If Rhode Island uses an interest analysis approach to choice of law, Massachusetts uses the First Restatement, and Vermont applies the Second Restatement, where would you recommend that Winter file suit?