Conflict of Laws (May 19, 1972)

William & Mary Law School
CONFLICT OF LAWS

Anthony J. Santoro
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9 a.m. -- 12 p.m.

Please read the entire examination with care before starting to write. Please write legibly and on one side of the paper. All states mentioned are states of the United States. If you feel that an essential element of fact is not stated, please make and expressly state an appropriate assumption.

I. John was a wealthy and prominent young attorney who has resided in the state of Boston all his life. Some years ago, while in law school, he met and won the hand of Rose, a young debutante from the state of Portland. Shortly after their wedding day, the marriage began to disintegrate due to Rose's frequent bursts of jealousy. Rose decided, in 1965, to return to her childhood home in Portland, taking their two young children with her.

In the meantime John met and fell in love with Mary a young student whom John employed as a law clerk in the summer of 1965.

In 1968 John accepted a one year appointment as a Visiting Professor of Law at the University of Williamsburg in the state of Williamsburg. He left his practice in the capable hands of his longtime friend and partner William. After satisfying the ninety day residency requirement, John instituted divorce proceedings charging Rose with extreme cruelty. Rose, who had been duly informed of the Williamsburg proceedings by mail, did not appear. A decree was, in due course, granted and made final.

While the Williamsburg proceedings were pending, John and Rose, after considerable negotiation, had reached an agreement under which, in return for her promise not to contest the Williamsburg divorce, he agreed to pay her, for her and the children's support, the sum of $20,000 per year during his lifetime. The agreement took this form because John enjoyed a large annual income, but had little capital for a lump sum settlement.

Immediately upon the issuance of the final decree John and Mary married in Williamsburg. While waiting for John's one year appointment to expire, they decided to sell John's townhouse in Boston and to purchase an estate in the state of Providence. John deemed this move necessary in order for Mary to retain her status as a domiciliary of Providence and thereby retain her position as the State Senator from Warwick County.
Accordingly the townhouse was sold and the estate purchased; however, when the appointment was over, the couple was forced to reside in Boston because the new house was not yet redecorated. They lived for a time in John’s summer home on Cape Shrimp in Boston which was within commuting distance to Providence.

Since it appeared that the new home would not be ready for occupancy for two months, the couple decided to drive to the state of Miami and enjoy the sun and surf, and to give John’s new Mercedes a try-out. At the last minute, John decided to invite Sam and Maureen to make the journey with them. Sam was an old law school buddy who currently lived in the state of Philadelphia. Sam and Maureen accepted the invitation and John decided to pick them up in Philadelphia.

On their way to Philadelphia, while driving in the state of Hartford, their car was rammed by Paul, a resident of the state of Sacramento. John received extensive back and head injuries and the automobile was completely destroyed.

Not wanting to delay their trip, John instructed Mary to rent an auto in Hartford so that they could continue their journey. Mary drove because John was incapacitated.

John, Mary, Sam and Maureen arrived in Miami within the next few days. On the evening of their arrival, Mary fell asleep while driving Sam and Maureen to their hotel. As a consequence the auto struck a telephone pole and Sam received serious injuries which caused him to return to Philadelphia for treatment by a renowned bone specialist. John and Mary, however, decided to remain in Miami until their Providence home was ready.

While in Miami, John discovered that the Apollo Casualty and Life Insurance Company did business in Miami. Apollo was Paul’s insurance carrier and his policy provided, inter alia, that the company will defend him in any action brought to recover damages caused by his driving and will, within the policy limits of $5,000 for property damage and $100,000 for personal injury, pay any judgment rendered against him. Miami by statute permitted judicial jurisdiction to be established by attaching assets belonging to the defendant and situated within the state.
The statutory provision in question allows the attachment of "any debt due or yet to become due, whether it was incurred within or without the state, to or from a resident or a non-resident." John sought to establish jurisdiction over Paul by attaching Apollo's contractual obligation to defend and indemnify Paul. Paul appeared and challenged the jurisdiction, but the court held that jurisdiction exists and proceeded to litigate the claim on the merits. John obtained a judgment against Paul for $200,000, having established property damage in excess of $5,000 and personal injuries in excess of $100,000.

After the trial John and Mary decided to go to Providence despite the fact that their home was not yet habitable. They decided to stay at the Vacation Inn Hotel in Warwick County, Providence until such time as the house was habitable.

In the meantime, Sam brought an action against Mary for $100,000, joining John as a co-defendant. Under a statute in force in Miami, a host is not liable for injuries caused by ordinary negligence. Miami further provides by statute that the head of a household is liable as a co-defendant for damages resulting from the negligent driving by a member of his household even though the head of the household does not own the auto. Providence, Boston and Philadelphia have no special rules applicable to guest-host liability. Philadelphia has a statute comparable to Miami's respecting the liability of the head of a household, but Providence and Boston have no similar rule. A recent decision in Philadelphia refused to accept the approach to choice of law problems exemplified by the decision of the New York Court of Appeals in Babcock v. Jackson. The highest court there remarked that "the rule of the lex loci delicti provides satisfactory solutions to the choice of law problem in the tort area." The courts of Miami, on the other hand, have adopted the Babcock approach.

On May 1, 1972 John died, intestate, in an airplane crash in the state of Miami, on takeoff of the return portion of a roundtrip flight from Providence to Miami. The accident was caused by the pilot's failure to observe Federal air regulations. Mary desires to sue the airline company for wrongful death. Under the law of Miami, liability for wrongful death
is limited to $25,000. There is no such limitation on recovery in Providence, Boston or Portland. In Providence and Boston the proceeds of recovery for wrongful death accrue to the surviving spouse, if any. Under Portland and Miami Law, they belong one-half to the surviving spouse and one-half to the surviving children.

A. Paul appealed the decision of the court in the case of John v. Paul. The Miami Court of Appeals is split on the question whether judicial jurisdiction was properly exercised by the lower court.

Write a majority opinion and one or more dissenting opinions. The majority opinion should represent your view of the correct result with supporting arguments. The dissent or dissents should set forth contrary arguments.

B. You are a judge of the Supreme Court of Providence.

1. Write an opinion for the case of Tom v. Mary utilizing per Babcock methodology and;

2. Write an opinion using the methodology that derives from the Babcock decision.

C. Advise Mary of her chances of recovery. Discuss all issues.