1963

Conflict of Laws (January 24, 1963)

William & Mary Law School
Three hours - six groups of questions. Take time to analyze questions carefully, then answer as fully as time will permit. Watch your times, and do not spend too much on the early questions — you may leave spaces anywhere to return to later. Give as many reasons as possible for all answers — if you are going to cover more than one point, make a check list before commencing to write. "General rule" will be interpreted to mean a settled rule to which there are exceptions. Do not use "majority" or other term indicating that there is a conflict of authority unless there is. If there is a conflict, so state and make clear the various views, and the nature of the conflict, and, if not otherwise clear, the reasoning back of each view. If there is a conflict of authority, be sure to carry the problem through to a conclusion under each view, bearing in mind that a view taken under a conflict may lead into another conflict. If in doubt as to meaning of question or facts to be assumed, state your doubt and answer both ways, bearing in mind that facts may be stated so as to leave different possibilities as to other facts for you to consider. Unless stated otherwise, you may assume that only American states are involved. You need not discuss conflict of authority in regard to contracts in general. I shall return to the examination room at 10 and 11 to answer questions — do not hesitate to ask questions, as if there are "bugs" in the exam I would like to have them cleared up.

1. (a) H and W, husband and wife, are domiciled in state A. H desires to borrow money, secured by deed of trust on land in state B, from First Bank in state C, and W wishes to guarantee payment by indorsing in blank note made by him. H has note and application for loan prepared, and while H and W are temporarily in state D has W sign the note. H sends the note and application to the bank, and the loan is made, the money being delivered at the bank, it being provided that repayment of the loan is to be made at the bank. What domestic law will govern?

(b) In foreign countries all having the full renvoi suit is brought in A on contract made in B, to be performed in C, the parties stipulating that the law of D, their domicile, is to govern. It is the rule in A that the law of the place of execution governs, in B that the law of the place of performance governs, and in C the law intended by the parties governs; and in D the point has never been passed upon, and no relevant domestic substantive law of D can be found. What domestic law will govern?

(c) L lends money to M in state A secured by deed of trust on land in state A. At maturity of the debt L is unable to secure personal jurisdiction over M, but forecloses the deed of trust, the sale price leaving $10,000 due. L sues M in state B, securing personal jurisdiction over M. A statute in B provides: "No action shall be brought in any court to recover any deficiency due after foreclosure of security" (constitutionality need not be discussed). The court in B decides that L has no remedy. L then sues M in C, where deficiency judgments can be entered, securing personal jurisdiction over M. What decision?

2. (a) A question arises in state F as to validity of marriage of first cousins in state A. What investigation will you make, what domestic law will be applied, and what will be the result?

(b) X, while domiciled in state A, fills out and hands to agent of Star Insurance Company (you may refer to as Star) in state B application for life insurance. Star is incorporated in state C and has its home office in state D. The policy is delivered by an agent of Star to X in state E. X later borrows money on the policy, handing application to agent of Star in state F and the money being paid to him in state G. In a suit in state H raising questions as to the loan, what investigation will you make, what domestic law will be applied? Be sure to cover every possible combination of views among the jurisdictions (if more than one) whose domestic law might be applicable.

(c) A statute in state A provides that any person to whom property is turned over is deemed to be the owner of it in dealing with third persons. A racehorse is turned over by X to Y in state A for training. Y takes the horse to state B and sells it to Z. A suit in state C involves the title to the horse. What domestic law will be applied?

3. (a) I sells Y an automobile in state A, taking duly recorded chattel mortgage for a portion of the purchase price. Without the knowledge of X Y takes the car to state B and sells it to Z. Z takes the car to state C, and sells it to T. A suit in state D involves title to the car. What domestic law will be applied?

(b) A suit in state D involves questions relating to the disposition of X's personal property at death. X died domiciled in state A. The property was in state B. He is ill was executed in state C. What domestic law will be applied?

(c) Using a telephoto lens, in state A a photographer without the knowledge of X, the wife of a prominent writer, takes a photograph of her in her home while changing her clothes. He sells it to a news agency in state B, and it is published in newspapers throughout the country. What domestic law will be applied to determine X's legal position?
CONFLICT OF LAW S (continued)

4. (a) A dam in state A floods land in state B. What law will be applied?
(b) In countries having the full renvoi X, a citizen of country A, dies domiciled in country B, leaving real and personal property in both countries. What law will be applied in the courts of A and B?
(c) While H and W, husband and wife, are domiciled in state A, H takes out life insurance payable to W in a company of state A. Later they are divorced in state B, and there is no provision in property settlement or divorce decree in regard to the insurance. After H’s death, he having taken no action in regard to the policy, the question arises in state C as to the effect if any of the divorce on the insurance. What law will be applied?

5. (a) Suit is brought in this country to recover damages for breach of contract in a foreign country, where all the facts occurred. How will the court handle the rate of exchange?
(b) X, a citizen of state A, sues Y, a citizen of state B, on an alleged transitory cause of action arising out of facts in state C. The suit is brought in state D, and X has writ of garnishment served on Z, against whom Y has secured a judgment in state F, while Z is temporarily in state D, it being impossible to secure personal jurisdiction over Y in state D, and there being no other basis for jurisdiction in D. Z is a citizen of state E. What will the court do and what would you advise Z he should do?
(c) H and W, minors domiciled in state A, each 17 years of age, elope to state B and get married, without the consent of their parents, written consent being required in state A and no consent being required in state B. Before W has become pregnant, suit to annul the marriage is brought in state A. What will the court do?

6. (a) H and W, husband and wife, are divorced in state A while domiciled there. After a lengthy hearing the custody of the children is awarded to W for the nine school months of the year. H and W change their domicile to state B. Thereafter the decree is altered by the court in state A, their original domicile, to give W the children eleven months in the year. Later H and W change their domicile to state C. A proceeding is commenced by H in state C to obtain sole custody. What investigation will you make, and what will the court do?
(b) A statute is passed in state A that in distributing the estates or insolvencies, either after death or in receiverships, resident creditors, individual or corporate, shall be paid their full pro rata share of the estate, considering all the liabilities and all the assets in all jurisdictions, but that no payments shall be made to non-resident creditors, individual or corporate. Is the statute valid?
(c) X brings suit for an accounting against Y in state A, with personal jurisdiction over Y. Y is held to be constructive trustee for X of land in state B, and Y is ordered to convey the land to X. Y fails to execute deed and disappears, and deed of the land is made in his behalf to X by a commissioner appointed by the court, in accordance with the practice of the state. The deed is duly recorded in state B, and suit to quiet title is brought in state B. What will the court do?