

1964

## Conflict of Laws: Final Examination (January 1964)

William & Mary Law School

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Notes: (1) All discussion is to be done in accordance with material read and discussed in the course in Conflict of Laws. (2) Total potential credit: one hundred points.

I. (Fifteen points)

A. Define, according to usage in our course, the following terms:

1. Borrowing statute
2. Characterization
3. Renvoi
4. Qualification statute. (Note: As you will recall, "qualification" is also used as a synonym of "characterization.")
5. Domicile

B. Mark "yes" or "no", as indicated. Choose the answer closest to right, and do not add explanation.

1. Does the full faith and credit clause of the United States Constitution, and its enabling legislation, apply equally in terms to the acts and judicial proceedings of sister-states? Yes \_\_\_\_\_ No \_\_\_\_\_
2. By the older view, can enforcement of the judgment of a sister-state be had under the full faith and credit clause, if that judgment is for future periodic alimony payments? Yes \_\_\_\_\_ No \_\_\_\_\_
3. Will enforcement of the judgment of a sister-state be required under the full faith and credit clause, if that judgment is based on an incorrect interpretation of the substantive law of the state where enforcement is sought? Yes \_\_\_\_\_ No \_\_\_\_\_
4. Will the otherwise-applicable statute of a sister-state be enforced in a case involving a cause of action that arose in that state, if that state's courts have characterized that statute as penal and those of the forum have characterized it as non-penal? Yes \_\_\_\_\_ No \_\_\_\_\_
5. Is there any essential policy difference between the enforceability of the judgments of a sister-state under the full faith and credit clause, and the enforceability, in the courts of this country, of the judgments of the courts of foreign countries? Yes \_\_\_\_\_ No \_\_\_\_\_
6. Is a statute of limitations usually characterized as substantive, if that statute stands alone? Yes \_\_\_\_\_ No \_\_\_\_\_
7. Does the law of the decedent's domicile at the time of making of his will govern the probate and administration of his estate under that will, although he died domiciled in another jurisdiction? Yes \_\_\_\_\_ No \_\_\_\_\_
8. Does the law of the state of incorporation govern the amenability of a corporation to suit by a rival business in another jurisdiction? Yes \_\_\_\_\_ No \_\_\_\_\_
9. May a qualification statute be applied to a foreign corporation that is engaged to any important extent in doing business in interstate commerce in the enacting state? Yes \_\_\_\_\_ No \_\_\_\_\_
10. Is Renvoi a European doctrine of conflict of laws, with almost no current application in this country? Yes \_\_\_\_\_ No \_\_\_\_\_



## II (Twenty points)

A. Give a simple hypothetical fact situation, patterned on the one discussed by us the other day in connection with an actual case, demonstrating and explaining the sort of triple characterization problem that may now arise in the United States.

B. Discuss briefly the following questions:

1. The (a) factors involved in determining domicile, and (b) importance of determining domicile, in cases where domicile is a factor.

2. How has the doctrine of Erie R. R. Co. v. Tompkins affected characterization technique?

3. To what conflicts situation has the borrowing statute been made applicable, and why?

4. What is the simple, basic, reason of legal policy for the law of conflict of laws?

5. Compare the "local law" theory of choice of law with the "vested rights" theory. Which important United States judge of recent memory has supported each?

## III (Twenty points)

Discuss briefly (indicating facts, holding, and your opinion of, inter alia, the significance) one of the following cases:

Treinies v. Sunshine Mining Co.

Huntington v. Attrill

Hughes v. Fetter

Sampson v. Channell

Marvin Safe Co. v. Norton

Louis-Dreyfus v. Paterson Steamships, Ltd.

## IV (Ten points)

Defendant, "Mad Man Moe - Est. 1920," was a used-car dealer in Detroit, Michigan. He bought a '64 Thunderbird from Reginald Clarence ("Shady") Tree, giving in exchange an old Jeep and cash -- Tree representing that he needed this for a mining stake. Tree told Moe that he had bought the 'Bird for cash from a dealer in New Jersey, and that it was free from liens. In fact, the car was mortgaged in New Jersey to P, who sues here to replevy the car from D, under the New Jersey recorded mortgage lien.

D had had no actual notice of the existence of this mortgage, nor had he really had much chance to find out about it; for, although the car had New Jersey plates, the mortgage lien did not appear on the face of the title and D bought before he had had much chance to do any checking in New Jersey.

Who should win, and why? Discuss.



V. (Twenty points)

Jim and Bill, Minnesota residents, celebrated New Year's Eve by heavy drinking in various Minneapolis bars, ending up at "Chez Elite", owned and operated by D Hotel Chain (an Illinois corporation doing business in Illinois, Wisconsin, and Minnesota). Despite their obvious intoxication, they persuaded the bartender to sell and serve them "one for the road." After adding this fuel to all of the rest, they left for Chicago, Ill. in Jim's car, with Jim driving. While driving in Wisconsin, Jim drove off the road into a stone wall, killing both passengers instantly. There were no witnesses, but no circumstances existed to indicate that the accident was caused otherwise than by Jim's intoxication.

Minnesota has a "Dram Shop Act," which provides that:

"No intoxicating liquor shall be sold to any person obviously intoxicated. Every person who is injured in person or property by any intoxicated person, or by reason of the intoxication of any person, has a right of action, in his or her own name, for all damages sustained, against any person who by illegally selling or giving intoxicating liquor caused or contributed to the intoxication of such person."

Illinois has a similar statute. Wisconsin has no such statute.

Minnesota, Wisconsin and Illinois all have wrongful death statutes of the usual type, those of Wisconsin and Illinois being unlimited in amount while that of Minnesota limits the maximum recovery to \$10,000.

Minnesota common law places on plaintiff the burden of proving freedom from contributory negligence, but Wisconsin and Illinois place on defendant the burden of proving contributory negligence.

P, entitled under the wrongful death acts as widow and sole dependent of Bill, brought an action in the Illinois court against D Hotel Chain. The trial court gave judgment for P for \$100,000, based on a jury verdict, applying the Minnesota "Dram Shop Statute", because the court believed this was the proper law to govern the tort and was required by the full faith and credit clause of the United States Constitution. It held the Minnesota law inapplicable on the amount of damages. Despite D's contention that Bill had been contributorily negligent, the trial judge instructed the jury that Illinois law applied on burden of proof of contributory negligence; the jury found specially that there was no evidence concerning contributory negligence, one way or the other.

D appeals to the Illinois Court of Appeals. What arguments should be made for D on the conflict of laws issues involved in this appeal? How should they be decided? What arguments would you, as counsel for P, make?

VI. (Fifteen points)

Mary, who was in business in Massachusetts as a beautician, suffered personal injuries in that state through her use of one of the products of D, Tony, Inc., a Connecticut corporation. The injury occurred on May 31, 1962, and P sued in Connecticut to recover damages in an action commenced on Aug. 1, 1963. The theory of the action was <sup>that</sup> the injuries were due to negligence in the manufacture of the product that caused the injury.

While the period within which personal injury actions may be brought is one year in Connecticut, the Massachusetts law provides that "action of tort and actions of contract to recover for personal injuries shall be commenced only within two years next after the cause of action accrues." Discuss how the case should be decided.

Also, as Plaintiff, for what additional fact might you seek rather urgently?