Conflict of Laws (June 1966)

William & Mary Law School
I.

DIRECTIONS: (a) Use the form provided, not your bluebook, for answering this portion of the examination. (b) Each correct answer will count 1/2 point for you; each incorrect one will count an equal amount against you, while an unanswered question will not count at all. Therefore, do not answer a question at all unless reasonably sure you are right. (c) Mark each true statement "T" and each false statement "F". Choose the answer that seems most generally right, where a completely correct answer is not possible; do not add explanation. (d) Assume, unless otherwise stated, that the jurisdictions involved are States of the United States.

1. Reasons of forum public policy justify F2 in refusing to enforce a valid F1 judgment of the type normally enforceable in sister-States. ( )

2. F may refuse, for reasons of forum public policy, to enforce rights arising under a sister-State statute. ( )

3. Renvoi is a favored doctrine in the United States, and is therefore applicable to most conflict of laws problems here. ( )

4. Renvoi is unknown outside the United States. ( )

5. Situs law governs title to real property. ( )

6. Pearson v Northeast Airlines. used the same rationale as Kilberg v Northeast Airlines. ( )

7. Domicile is a concept of increasing importance in conflict of laws. ( )

8. Theoretically, an executor or administrator has no existence as such outside the State of his appointment. ( )


10. An F1 judgment in personam need not be respected in F2 if F1 jurisdiction over the defendant, a nonresident of F1 not in F1 at the time, had been obtained by service by publication. ( )

11. Under older conflicts rules, an F1 judgment requiring future periodic payment of alimony had to be given full effect when sued on in F2. ( )

12. An F1 judgment of a type normally enforceable in sister-States will be rendered unenforceable in F2 by the fact that it was based upon a misinterpretation of F2 law. ( )

13. The forum will usually enforce the criminal judgments of a sister-State. ( )

14. An F1 judgment containing F1's explicit finding that it had jurisdiction can be collaterally-attacked in F2 for want of jurisdiction by a party to the F1 action. ( )

15. The outcome of a case may depend upon the characterization of its cause of action. ( )

16. Characterization may depend upon the purpose for which it is done. ( )

17. The full faith and credit requirement of the United States Constitution provides an added sanction to the rule of res judicata, where an F1 judgment is sought to be enforced in F2. ( )

18. A valid judgment need not be enforced in/sister-State whose courts do not have jurisdiction to decide domestic causes of action of the sort that formed the basis for that judgment. ( )

19. "Qualification Statutes" have to do with the doing of business by corporations in States other than those of incorporation. ( )
20. Statutes of the State of incorporation normally govern intracorporate relations.

II. (25 points)

Mather, a Maryland resident domiciled in Maryland, was hired in Maryland by Colonial Electric Co. (a District of Columbia corporation) to work as an electrician on a housing project in Virginia for which Colonial was a subcontractor and Woodner Co. (a Virginia corporation) the principal contractor. While at work in Virginia, Mather was ordered to go into the District of Columbia with a Woodner Co. truck and Woodner Co. driver, to select and bring back some special switches. While in the District of Columbia on this errand, Mather suffered serious injuries in an accident caused by the negligence of this driver.

Colonial carried workmen's compensation insurance for Mather's benefit under the Maryland, Virginia and District of Columbia Workmen's Compensation Acts. Woodner Li is & workmen's compensation insurance for Mather's benefit under the Virginia and Maryland acts only.

Under the Virginia and Maryland acts, a principal contractor, as well as the subcontractor who employs the worker, is "liable to pay any workman...any compensation under this article which he would have been liable to pay if that workman had been immediately employed by him." If the principal contractor does not take out workmen's compensation insurance he is subject to negligence suit by employees of his subcontractors; but when the principal contractor does carry workmen's compensation insurance on the subcontractor's employee, he is relieved by the Maryland and Virginia statutes of any common law liability to the employees of his subcontractor.

Under the D. C. Act the principal contractor is liable for the payment of workmen's compensation to employees of a subcontractor only if the subcontractor has not himself taken out workmen's compensation insurance. When an industrial injury occurs in the D. C., and only the subcontractor has taken out insurance, the principal contractor is liable to suit for negligence brought by an employee of the subcontractor. Under these circumstances the D. C. Act gives an injured employee the right to elect, on notice to the Workmen's Compensation Commissioner, to receive the compensation provided by the employer, or to recover damages against any third party (including the principal contractor) alleged to be liable.

Mather elected to sue Woodner Co. as a third party in the U. S. District Court for the District of Columbia, giving the required notice to the Commissioner. In the trial court, Mather won a verdict and judgment for $60,000 damages, and Woodner Co. appeals.

What conflict of laws issues arise in this case? How should the appellate court decide, and why?

III. (25 points)

On February 6, 1963, petitioner, a citizen of Ohio, filed her complaint in the District Court for the District of Massachusetts, claiming damages in excess of $10,000 for personal injuries resulting from an automobile accident in South Carolina, allegedly caused by the negligence of one Osgood, a Massachusetts citizen, deceased at the time of filing the complaint. Respondent, Osgood's executor and also a Massachusetts citizen, was named as defendant. On February 8, service was made by leaving copies of the summons and the complaint with respondent's wife at his residence, concededly in compliance with the relevant Federal Rule of Civil Procedure, Rule 4(d)(1), which provides:

"The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

"(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally
or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein....."

Respondent filed his answer and motion for summary judgment on March 2, 1963, alleging, inter alia, that the action could not be maintained because it had been brought "contrary to and in violation of the provisions of Massachusetts General Laws (Ter. Ed.) Chapter 197, Section 9. (Noncompliance was later admitted by petitioner.) That section provides:

"Except as provided in this chapter, an executor or administrator shall not be held to answer to an action by a creditor of the deceased which is not commenced within one year from the time of his giving bond for the performance of his trust, or to such action which is commenced within said year unless before the expiration thereof the writ in such action has been served by delivery in hand upon such executor or administrator or service thereof accepted by him or a notice stating the name of the estate, the name and address of the creditor, the amount of the claim and the court in which the action has been brought has been filed in the proper registry of probate......" Mass. Gen. Laws Ann., c. 197, sec. 9. (1958).

(Respondent had filed bond as required by Section 9 on March 1, 1962.)

The District Court granted respondent’s motion for summary judgment on the ground of inadequacy of the service under Mass. Sec. 9, supra; the Court of Appeals for the First Circuit affirmed. The U. S. Supreme Court granted certiorari. What result, and why? Why do these facts present a case that is markedly different to the usual diversity-jurisdiction case?

IV. (20 points)

Dean, plaintiff's intestate, died as a result of eating part of a can of diseased corned beef that he had bought from a local grocer in Ohio, of which he was a resident. The grocer had bought the meat from a wholesaler in Ohio, who had in turn, bought it from the defendant; the defendant, a New York resident, had imported it from South America, where it was processed and canned by another concern, and shipped it from New York, the port of entry, to the Ohio wholesaler.

The consequent wrongful death action was brought in the United States District Court for the Southern District of New York, its jurisdiction being based on diversity of citizenship.

The plaintiff sought recovery on the ground that the defendant’s negligence had caused the meat to be poisonous. He offered no proof of actual fault, however, relying, instead, on section 12760 of the Ohio Code. That section provided:

"Whoever sells, offers for sale or has in possession with intent to sell, diseased, corrupted, adulterated or unwholesome provisions without making the condition thereof known to the buyer, shall be fined or imprisoned, or both."

Ohio decisions held that violation of this statute creates liability without negligence. New York has a similar statute.

Can the plaintiff recover, and, if so, why? Discuss.

V. (20 points)

In 1965, the plaintiff, Smith, a resident of State X, and the defendant, Brown, a resident of State Y, signed a guaranty agreement in which they jointly and severally guaranteed payment of a loan by the Bank of X (located at Junction City, X) to the U.S. Dingbat Corp. in the principal sum of $500,000. Upon default in repayment of the loan, Smith, the guarantor resident in X, was required to pay to the Bank of X the entire principal and interest due on the loan. Smith now seeks contribution from his co-guarantor, Brown, in a diversity action in the U.S. District Court for the Northern District of Y.
It is clear that the guaranty agreement is invalid under the usury laws of Y, but valid under those of X. That agreement was signed by Brown in Y, but contemplated by its express terms acceptance by the extension of credit when it stated: "...all extension of credit...made by Bank to borrower shall be conclusively presumed to have been made in acceptance hereof."

What conflicts issues are there in this case? Who should win? Why?