

1973

## Conflict of Laws: Final Examination (May 15, 1973)

William & Mary Law School

---

### Repository Citation

William & Mary Law School, "Conflict of Laws: Final Examination (May 15, 1973)" (1973). *Faculty Exams: 1944-1973*. 364.  
<https://scholarship.law.wm.edu/exams/364>

Copyright c 1973 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.  
<https://scholarship.law.wm.edu/exams>

## CONFLICT OF LAWS

A. J. Santoro

Final Examination

May 15, 1973

Please read the entire examination with care before starting to write. Please write legibly and on one side of the paper. If you feel that an essential element of fact is not stated, make and expressly state an appropriate assumption and answer the question both with and without the assumption. Discuss all issues fairly raised whether or not dispositive of the case.

### I. 5 Points (9 Minutes)

On November 10, 1970, John, a lifelong resident of Massachusetts, married Mary, a life long resident of Rhode Island. Immediately after the marriage, the couple went to live in John's summer cottage on Cape Cod while waiting for the completion of a permanent residence in Boston. Before the house was completed, however, John was drafted into the Army and Mary went to live with her widowed mother in Cranston, Rhode Island.

Sometime during June, 1971, Mary was advised by her physician to move to a warmer climate for her health. She communicated this to John, who wrote insisting that Mary move to Miami where they could make their home after his discharge. Accordingly, Mary and her mother moved to Miami on August 10, 1971 and took up residence in a condominium owned by Mary's mother. Mary also arranged for the sale of the now completed Boston house.

On April 28, 1973, John was mustered out of the service at Fort Dix, New Jersey and promptly started for Florida. He arrived at his mother-in-law's residence on May 1, 1973, and there remained until he purchased a home in Fort Lauderdale some three weeks later.

The Florida legislature had recently passed a statute providing for a \$1,000 bonus to Viet Nam veterans (as John was) who were domiciled in Florida on or before January 1, 1973. The bonus was an attempt by the state legislature to provide compensation for the disruption to families caused by the war.

John seeks your advice as to whether or not he is entitled to the bonus.

### II. 5 Points (9 minutes)

Vitali, a national of Italy, came to the United States in 1969 on a temporary visitors visa which was valid for six months plus extensions. At various intervals after his arrival in the U. S. he applied for and received extensions. The condition for obtaining the extensions was that he sign a statement reciting his foreign residence as Rome, that he was admitted for a temporary period and that he was in possession of a return ticket to Italy.

During his stay in the United States, Vitali commenced operations as a treaty trader, married and purchased a home in Perth Amboy, New Jersey. He frequently applied for, but was denied, a permanent visa.

A treaty trader is defined as: "An alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national solely to develop and direct the operations of an enterprise in which he has invested."

There is, however, no such treaty between Italy and the United States. Vitali held himself out as a treaty trader because of a gratuitous notation on his temporary visa which reads as follows: "Mr. Vitali would be eligible for a permanent visa if the appropriate treaty between the United States and Italy were in effect. /s/ John A. Marino American Vice-Consul."



Vitali has continued his stay in the U. S. for some four years pursuing his trading operations.

In 1972 he sought a divorce from his wife and although he could prove sufficient grounds for divorce, the court dismissed the proceedings because of lack of jurisdiction. Vitali wants you to advise him as to whether or not an appeal would be desirable.

### III. 20 Points (36 Minutes)

Sam and Laura were married in 1950 and lived in the state of New York from 1950 until 1962. Sam has been employed by the Federal Immigration Service since 1949. In 1962, he was transferred to Boston, Massachusetts and lived there until 1966 when he was transferred to Baltimore, Maryland. At government expense, he, his wife and children moved to Baltimore, Maryland, where they lived from 1966 to 1970.

In 1970, Laura and the children went to New York, at the insistence of Sam, so that the children could visit with Sam's dying mother and so Laura could be of some comfort during the mother's last days. Sam paid the fare and continuously sent money to Laura for her's and the children's support. Some months later his mother died and he went to New York for the funeral. At that time, Sam informed Laura that they were evicted from their residence in Baltimore, that he had no suitable replacement and that he would send for them when he found housing.

Unable to find housing, Laura and the children remained in New York and Sam sold some of their Baltimore furniture. The balance of the furniture was sent to New York and placed in storage.

At about the same time, Sam was temporarily transferred to Atlanta, Georgia, and because of this, suggested that Laura and the children continue to remain in New York. Prior to his trip to Atlanta, Sam had purchased a trailer and stationed it at a trailer camp in Baltimore, but shortly before his Atlanta trip he took the trailer to Alexandria, Virginia, parked it in a parking lot and commuted to Baltimore from Alexandria.

On May 20, 1971, Sam obtained a divorce in Alexandria based on his Virginia domicile and on June 30, 1971 he married, at Potomac, Maryland, his present wife whom he had met and became enamored of while his family was residing in New York.

At this point, Laura becomes suspicious of his insistence that she stay in New York and she and the children unexpectedly returned to Maryland in August 1971. After a few days Sam told Laura of his divorce in Virginia. Laura returned to New York where she instituted divorce proceedings. Pursuant to statute, Sam was served in Maryland. The statute provided that where the complaint demands judgment in divorce, service may be made outside the state on a defendant domiciled in New York. This service has been held by New York to give the court personal jurisdiction over the party served.

The New York court granted Laura a divorce on the grounds of adultery, set aside the divorce decree in favor of Sam of the Virginia court, and awarded Laura alimony of \$1,200.00 per year. The N. Y. statute under which the alimony was awarded reads as follows:

"Where the husband in an action for divorce, separation, annulment, or declaration of nullity of a void marriage, or a person other than the husband when an action for an annulment is maintained after the death of the husband, makes default in paying any sum of money as required by the judgment or order directing the payment thereof, the court in its discretion may make an order directing the entry of judgment for the amount of such arrears, or for such part thereof as justice requires, having a regard to the circumstances of the respective parties, together with ten dollars costs and disbursements. The application for such order shall be upon such notice to the husband or other person as the court

may direct. Such judgment may be enforced by execution or in any other manner provided by law for the collection of money judgments. The relief herein provided for is in addition to any and every other remedy to which the wife may be entitled under the law; provided that when a judgment for such arrears or any part thereof shall have been entered pursuant to this section, such judgment shall thereafter not be subject to modification under the discretionary power granted by this section; and after the entry of such judgment the judgment creditor shall not thereafter be entitled to collect by any form of remedy any greater portion of such arrears than that represented by the judgment so entered."

During the early part of 1973, Laura and the child moved to Massachusetts as did Sam and his new wife. Laura brought an action in Massachusetts for \$2,000.00 in alimony arrearages.

Discuss all possible defenses and decide the case of Laura v. Sam.

#### IV. 5 Points (9 Minutes)

Plaintiff, a resident of Florida, sued defendant who is a resident of New York in a State court of Florida for damages for negligently causing him to be personally injured in a Florida accident. When defendant failed to appear or contest the suit, plaintiff was awarded damages by a jury and judgment was entered in Florida for damages and costs. The judgment was not paid and plaintiff brought the present suit thereon in New York. Plaintiff alleged that after the entry of judgment in Florida the defendant had filed a special appearance in the Florida Trial Court challenging the jurisdiction of that court over the defendant. Plaintiff asked the court to vacate the judgment but the court refused finding that service had in fact been made on defendant in Florida as certified by the local Sheriff. Defendant appealed this decision but the Appellate Court affirmed the refusal to vacate and the Supreme Court of Florida denied defendant's petition for a writ of certiorari.

Plaintiff asked for a summary judgment which was denied by the Special term but granted by the Appellate Division. The case is now before the Court of Appeals. Decide the case.

#### V. 10 Points (18 Minutes)

On June 10, 1971, Bob purchased a Cadillac from Automobile, Inc. and executed a note and chattel mortgage on the car to Automobile to secure the unpaid balance of the purchase price. On the same day, Automobile assigned the note and mortgage to Credit, Inc.

The mortgage provided inter alia that Bob would not remove the car from New York without the written consent of Credit. At all times the parties to these transactions resided or did business only in New York. Contrary to the provisions of the mortgage, Bob took the car to Florida and on September 17, 1971 the car was used to unlawfully transport heroin with the consent of Bob. The car was seized by Florida authorities pursuant to statute.

Proceedings were started by Florida for the forfeiture of the car pursuant to § 100 of the Health and Safety Code of Florida which reads as follows: "A vehicle used to unlawfully transport or facilitate the unlawful transportation of any narcotic, or in which any narcotic is unlawfully possessed by an occupant thereof shall be forfeited to the state."

An exception to forfeiture is made in favor of a lien claimant under §101 of the Health and Safety Code which reads as follows: "the claimant of any right, title or interest in the vehicle may prove his lien, mortgage, or conditional sales contract to be bona fide and that his right, title, or interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser, and without any knowledge that the

vehicle was being, or was to be, used for the purpose charged." Credit admits that it made no investigation of Bob because not required to under New York law.

The clear purpose of the forfeiture, as articulated by the Florida legislature, was to keep cars and of the possession of those who might use them for the transportation of narcotics.

The judgment rendered by the court provided for the sale of the Cadillac and the proceeds forfeited to the State of Florida subject to a lien of \$2000 payable to Credit. The State appeals the decision saying the lower court erred in recognizing the lien. The state maintains that the public policy of Florida is to enforce its penal statutes and that the civil law of New York could have no extra-territorial effect to defeat the penal law of Florida.

Write the appellate opinion.

VI. 15 Points (27 Minutes)

Bill and Sue were married in Massachusetts in 1969. Soon after the marriage, it became apparent that they were simply incompatible so they separated. John remained in Massachusetts and Sue took up residence in New York.

Some months later they met in California while both were on vacation. Realizing that they never finally dissolved the marriage they decided to get divorced in California under a statute which authorized the granting of divorces if both the husband and the wife are subject to the jurisdiction of the court.

The California court proceeded to grant the divorce based on New York law which permits incompatibility as a ground for divorce even though both Massachusetts and California permit divorces only on the grounds of adultery.

Shortly after the divorce, Bill and Sue married Jane and Michael respectively. Now the state of New York is instituting a bigamy prosecution against Sue.

In the meantime, Bill's new wife, Jane, died and her brother now claims that since Bill was not properly divorced, he was not validly married to Jane and therefore not entitled to share in Jane's estate and that he, the brother, is Jane's sole heir.

- (1) Decide the case of New York v. Sue
- (2) Decide the case of In Re Jane's Estate

VII. 10 Points (18 Minutes)

Several years ago James and Carol were divorced in Maine which was their domicile at the time. The divorce decree purported to finally establish and fix James' support obligation to James, Jr., the only issue of the marriage. Following the divorce Carol and the child moved to Alabama and James moved to Texas.

James Jr. has managed to dissipate the support money due to some extraordinary medicine and educational expenses. In view of this, James Jr. through a guardian brought suit for additional support in Texas. James answered by setting up the Maine decree as a bar.

May James Jr. recover for additional support? Explain your answer.

VIII. 30 Points (54 Minutes)

On June 22, 1972, Plaintiff, a resident of Maryland was driving on a Maryland road about five miles from the District of Columbia line, when a speeding automobile, returning to the District, rapidly approached him from the rear, collided with the left portion of his car, veered across the road and came to rest in a ditch. Plaintiff was severely injured.

Upon the arrival of the police, it was discovered that the driver of the car causing the accident had abandoned said car. The owner of the abandoned car was traced through its District tags to defendant, a resident of the District of Columbia.

Plaintiff brought an action against defendant in Maryland based upon a statute which provides for personal jurisdiction over nondomiciliaries of Maryland "who commit a tortious act within the state, except as to a cause of action for defamation of character arising from the act, or commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act." Service on the defendant was made as prescribed by statute and was proper.

Defendant maintains that he was not the driver of the auto at the time of the accident and that, in fact, the auto had been stolen near the White House prior to the accident. He admits however that a set of keys was inadvertently left in the back seat of the auto, in full view of passers-by.

Both Maryland and the District have the following statute:

No person driving, or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key, and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

Both jurisdictions have articulated the purposes behind their statutes. The District maintains that the purpose of the statute is to prevent strangers from tampering with or stealing cars and injuring others. The statute is designed to promote the safety of the public in the streets. Unlocked cars create a risk that meddling by children, thieves or others will result in injuries to the public and the statute discourages this by placing the burden of the risk, as far as it may be, upon those who create it. The District also cited statistics indicating that 40% of autos stolen in the District are involved in accidents. Moreover, 85% of the thieves do not possess an operator's permit and that in 42% of the thefts, keys were left in the cars.

Maryland maintains that its statute is designed to prevent theft, tampering with a car, or the starting of a car under its own momentum if the brakes should slip.

Under District law, violation of the statute is negligence per se whereas under Maryland law it is not. In fact under District law its courts have stated:

"Since it is a safety measure, the violation of the statute is negligence. This negligence created the hazard and thereby brought about the harm which the statute was intended to prevent. It was therefore a legal or "proximate" cause of the harm. Both negligence and causation are too clear in these circumstances, we think, for submission to a jury."

Maryland courts, on the other hand, have stated that "the statute creates a duty of safety to the public, but this duty is limited to the immediate vicinity of the parking place and a thief, an independent intervening cause, is the proximate cause of the accident and not the owner whose negligence is remote."

(1) Decide the case of Plaintiff v. Defendant by utilizing a preBabcock methodology.

(2) Write a majority and one or more dissenting opinions by utilizing a methodology that derives from the Babcock decision.