

Spring 2024

# Conflict of Laws: Final Exam

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**Available for download:** Wednesday, May 1, 2024  
Starting at **8:15 EDT**

**Must be electronically submitted:** Wednesday, May 1, 2024  
due **8 hours** after download  
or by **4:30 p.m. EDT**, whichever is earlier

The exam mode is TAKEHOME. This exam is 6 pages long. Please check to see that you have all 6 pages.

## **MATERIALS**

This exam is completely open-book and open-note. While taking it, you may consult any digital or paper materials that you find helpful. That said, you must not consult anyone else, employ AI software, or do new research on the Internet during the exam. *Your exam must be entirely your own work.*

By submitting your exam answer(s), you acknowledge the above instructions, and certify that the work you are submitting is your own, that you have not received unauthorized assistance on the exam, including unauthorized use of AI (such as ChatGPT and other large language models), and that you have followed applicable rules, including rules for accessing reference and other materials during the exam.

#### **ANONYMITY**

Exam4 automatically prints your Anonymous ID and word count on the exam. The exam may be administered to some students at different times, so please don't discuss its contents with others until the exam period ends.

To help with the anonymous grading of separate questions, *please use the "Answer Separator" function* to distinguish one question from another.

Harvard prohibits student contact with faculty in regard to the personal scheduling or administration of an exam for that student before, during, and after the exam, until the student's grade is posted. Such contact is prohibited even if the anonymity of the student's exam is preserved; this policy extends to communications to the full class. As a result, I'm not allowed to communicate with you, including through email or the course website, while the exam is in progress or until the posting of final grades. (I will, however, be thinking about you guys!) In case of emergencies, *contact the Registrar's Office instead.*

#### **CONTENTS**

This exam consists of **three essay questions**. Your answers are limited to **3000 words** in total. This is a strict limit; additional words won't be read. (This isn't intended as a penalty but as a uniform way of ensuring fairness across different answers.) You aren't required to write that much, of course, and brevity is appreciated. *Make sure to watch your word count* so that you don't find yourself needing to make substantial cuts in the last few minutes.

Each question is accompanied by a point value, a recommended time allocation, and a recommended word limit. These are only recommendations! Allocate your time and words in whichever way seems best to you.

#### **SUGGESTIONS**

In general, please follow the advice given in John H. Langbein's *Writing Law Examinations*, available at <https://bit.ly/3h5rVdG>.

A few specific recommendations:

- (1) *Make sure that you read each question carefully.* Pay attention to the point values: they signal how important each question will be. The time allocations assume that you'll reserve thirty minutes at the beginning to read the whole thing, thirty minutes for lunch, and thirty minutes at the end for proofreading, all of which I encourage you to do. I'd also encourage you to spend up to one-third of your time on each question just sketching out the answers with pencil and paper before starting to type. (If you just dive in, you'll get lost halfway.)
- (2) *Organize your answers clearly.* You don't need to follow any particular format with rigor (IRAC, etc.), but it greatly helps to identify an applicable legal standard before applying it. Stating conclusions clearly will also be helpful to me when grading. Mentioning individual rules, statutes, or cases can sometimes serve as useful shorthand, but chapter-and-verse citations are a waste of your time. In the words of the now-repealed Civil Rule 84, any model answers available on the course website "illustrate the simplicity and brevity that these [instructions] contemplate."
- (3) *State the substance accurately.* If a particular legal standard hasn't received any substantial attention either in the book or in my lectures, it's unlikely to be tested. That said, the exam is open-book and could require close parsing of a provision we haven't addressed at length—or, indeed, at all.
- (4) *Apply the doctrine as it stands today.* As noted on the syllabus, the exam doesn't ask things like "how would this case have been decided in 1872?" It only tests on the law as understood in the courts of the United States as of the date of the exam, including any recent developments or statutes.
- (5) *Unless you're given specific details to the contrary, you may assume:* that every party is properly served; that every pleading is properly pleaded; that all filings are timely; that every motion, brief, or response presents the best available arguments for its position; and so on. Don't try to invent new and helpful facts or law not mentioned in the exam.
- (6) *With respect to conflict of laws in particular, unless you're given specific details to the contrary, you may assume:* that each state uses the conflicts principles listed in the Coyle, Dodge & Simowitz chart on the syllabus; that states relying on the Second Restatement have adopted any rules the textbook describes as belonging to the 1988 revised version thereof; that each state uses an appropriately modified version of § 187 in regard to choice-

of-law agreements; and that each state's long-arm statute extends its personal jurisdiction as far as the U.S. Constitution would allow.

- (7) *If there are issues that seem inconclusive or that require more information, you should say so.* Some of them may be intentional! Likewise, not every issue suggested by the fact pattern is necessarily relevant to the question asked; discussing irrelevancies will only cost you time.
- (8) **This one is very important:** *When listing reasons why a particular result would be legally correct, don't give just one; give as many as are correct, even if just one of them would be enough to win or lose on that issue. Don't assume that I'll know you know the basics; show me that you do!*

#### GRADING

Answers will be graded on your understanding and analysis, as well as on clarity of exposition. Individual questions will be curved, to reward those who do well on harder questions, and the exam as a whole will be curved also. Final grades will be calculated in compliance with the syllabus and with Harvard's grading policies, both written and customary.

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Good luck!

— START OF EXAM —

**Q.1: “Fly, my pretties!”** (55 pts, ≈3.5 hr, ≈1650 words)

The Drone Factory, a Ruritanian robotics concern, advertises its flying facial-recognition drones to urban law-enforcement agencies as a means of locating and following suspects. The police departments of St. Louis, Mo., and Wichita, Kan., were persuaded by the ads to purchase a number of these drones from an independent Ruritanian distributor. The police in Tulsa, Okla., were intrigued by the ads but balked at the manufacturer’s license agreement; it requires that all related litigation take place under French law in the *Tribunal de commerce de Paris*.

Unfortunately, due to their negligent design, the drones’ security systems are surprisingly easy to break. *W*, residing in Kansas City, Kan., used an underground Ruritanian website to purchase instruction codes for the set of flying drones first sold to the distributor and then purchased by the St. Louis police. From her home computer, she instructed the drones to take off and follow *D*, of Pittsburg, Kan., with whom *W* had a longstanding feud.



Fig. 1. *W* releasing the drones (artist’s conception).  
© 1939 Metro-Goldwyn-Mayer, used per 17 U.S.C. § 107.

On seeing the drones, *D* ran to her car and fled from them at high speed, causing multiple automobile accidents in the course of a desperate multi-hour chase through Kansas, Missouri, Oklahoma, and Arkansas. The

drones ran out of power and crashed in Bentonville, Ark., damaging a Walmart corporate office building.

Neither *W* nor the distributor has any assets worth pursuing. So *D*, Walmart, the City of St. Louis, and a class of injured drivers wish to sue The Drone Factory. Each would prefer to sue at home, especially Walmart; Arkansas tort law prescribes treble damages for injuries caused by drones (which its residents rarely possess) and quadruple damages for foreign-made drones.

The Drone Factory's assets and operations are all located in various provinces of the Kingdom of Ruritania. The Ruritan provinces have each adopted laws equivalent either to the UFMJRA or to the UFCMJRA, and Ruritan law on jurisdiction and on interprovincial full-faith-and-credit obligations resembles our own. Like the French Republic, however, and unlike American jurisdictions, the Kingdom still requires privity of contract for product-liability claims against manufacturers; only some of its provinces follow France in regarding this as a matter of fundamental public policy.

**Advise the various plaintiffs on their appropriate litigation strategies.** (And if the answers are unclear, or if you need more information of a certain kind, just say so.)

**Q.2: “Action”** (30 pts, ≈2 hr, ≈900 words)

“Every human action ought to be regulated by the law of the state in which one acts.” In which ways do you agree or disagree with this statement? In which ways is it reflected or not reflected in the choice-of-law systems commonly used in the United States? **Discuss.**

**Q.3: “Mawwiage”** (15 pts, ≈1 hr, ≈450 words)

What is distinctive about the treatment of marriage (considered separately from divorce) in the field of American conflict of laws? What might explain this treatment? How *should* the topic be addressed? **Discuss.**

(Reminder: Your exam answers, in total, should not exceed 3000 words.)

— END OF EXAM —