

Conflict of Laws
Professor Sachs
Final Exam Instructions, Spring 2012

Mechanics. Your exam will be available in hardcopy from the Registrar's Office, Room 2027, at **8:30 a.m.** on **Thursday, April 26**. You will have until **5:00 p.m.**, eight and a half hours later, to submit your answers by email. (Per Duke policy, qualified LLMs will have until 7:50 p.m.)

Send the answers as an attachment in Microsoft Word format—or Rich Text Format (.rtf) if you don't have Word—to the Registrar at examdeposit@law.duke.edu, cc'd to my assistant Sharon Sebolt at sharon.sebolt@law.duke.edu. **Also**, you must return the exam envelope with the questions inside to the Registrar's Office by **9:00 a.m.** the following morning. (Feel free to slide it under the door the previous night.)

When you submit your exam, you should receive an email auto-response like the following:

Your e-mail has been received. Please save this reply e-mail and your original e-mail, including attachments, for a period of 45 days from the end of the semester. These e-mails serve as both proof of receipt of your e-mail and proof of when your e-mail was sent. If you do not save these e-mails, even if they were deleted by an automatic archiving/deleting function, and they have been requested in the course of honor code investigation, such failure will also be treated as a separate possible honor code violation.

Should you have any questions, please contact the Office of the Registrar at (919) 613-7027. If you receive this message, however, please do not call simply to confirm that we received your e-mail.

Thank you!

If you don't receive a response like that, contact the Registrar's Office immediately.

Word limit. Your entire exam is limited to 4000 words (and no footnotes!). Additional words won't be read, as a favor to me and to you. Remember to watch your word count.

Format. Write your exam in 14-point font, double-spaced, with one-inch margins. Begin the answer to each question on a separate page, and include your Student ID—*not* your name—in the header of every page. A sample template is posted on the course website, under "Resources."

Materials. Feel free to use any print materials you like—including the textbook, the coursepack, your notes, commercial outlines, etc.—as well as any electronic materials you've previously saved to your computer. Qualified LLMs should feel free to use an English translation dictionary, electronic or hardcopy.

However, you may not use the Internet for research during the exam, so make sure you download any relevant materials *in advance*.

Substance. Each question is worth a specified number of points. Read them carefully and take a few minutes to outline each answer before beginning to write. Organize your answers clearly, to facilitate grading. Mentioning relevant statutes or cases can be helpful, but you don't always need chapter-and-verse citations as long as you state the substance correctly.

Grading. Grades will be based on your understanding, analysis, and clarity of exposition. Each individual question will be curved, as will the exam as a whole. Final grades will be calculated in compliance with Duke's grading policies.

Good luck!

Question 1. (50 pts.)

Defendantberg Industries, Inc., manufactures hoses that connect the gas tank of a vehicle to the engine. Its factory in Reno, Nev., uses locally-produced inputs to build more than 5,000 hoses a day. Almost all of Defendantberg's hoses are shipped to auto manufacturing plants in Portland, Oregon. The remaining handful are shipped to the Zion Motorcycle Repair Shop (ZMRS) in Hurricane, Utah, and are installed into refurbished motorcycles. In April 2009, it was discovered that one of Defendantberg's machines had been turning out defective hoses for an unknown period of time. The employee charged with monitoring that machine had been drinking on the job.

Paola Plaintiffsdottir was born and raised in New Mexico. She left home to attend a four-year program at the University of Colorado in Boulder. In March 2009, during the spring break of her second year, she went on a trip to Zion National Park in Utah. There, she bought a refurbished motorcycle from ZMRS and drove it back to Colorado. She registered and insured the motorcycle in Colorado and drove it to class for the next two years.

In her senior year, Paola accepted a long-term job offer from an agricultural concern in North Dakota. After graduating in June 2011, she began a motorcycle trip to Fargo, N.D. However, in an intersection in North Platte, Neb., her motorcycle was clipped by the car of John Doe, an inattentive, uninsured, and judgment-proof Nebraskan. The force of the accident threw Paola from the motorcycle and knocked her unconscious. It also caused the fuel hose to burst, spraying Paola with gasoline. She suffered severe burns to her right leg that would require amputation.

Paola was airlifted to a burn clinic in Rochester, Minnesota. There she was operated on by the incompetent (and equally judgment-proof) Dr. Theodor Tortfeassenhausen, who mistakenly amputated her left leg. He then amputated her right leg in a second surgery. Paola has remained in intensive care and hasn't regained consciousness since the accident.

Paola's sister Peggy lives in Wyoming. (Paola will be moved to a long-term care facility there as soon as she is well enough.) Peggy wishes to bring suit as a "next friend" on behalf of her unconscious sister, naming Defendantberg as the sole defendant. Peggy believes that one of the defective hoses found its way into Paola's motorcycle, and she seeks compensation for all injuries resulting in whole or part from Defendantberg's negligence.

You are an associate at the firm representing Peggy Plaintiffsdottir. Your research has revealed the following:

- Defendantberg is incorporated and headquartered in Idaho. It is registered to do business and has appointed an agent for service of process in Nebraska, Nevada, Oregon, Utah, and Wyoming.
- The American Law Institute long ago promulgated the following model statute: “Because it is more just that wrongdoers, rather than the innocent, bear the burden of damages relatedly inflicted by third parties, a tortfeasor who causes physical injury shall bear the cost of any future damages to the victim resulting from malpractice in treating those injuries.” This model statute was adopted verbatim in New Mexico, North Dakota, Oregon, and Wyoming. While Minnesota, Nebraska, and Nevada also adopted the model statute, they added the modification that the tortfeasor “shall bear up to \$50,000 of the cost” of future damages. The laws of Colorado, Idaho, and Utah prohibit all such “excessive additions” to the tortfeasor’s liability.
- Each of the States named above would let Peggy act as Paola’s next friend, and the suit would be timely under all relevant limitation periods.
- Colorado and Nebraska adhere to the First Restatement of Conflict of Laws, while New Mexico, North Dakota, and Utah adhere to the Second Restatement. Idaho and Oregon have adopted by statute “the principles of interest analysis, as expressed in the work of Professor Brainerd Currie”; Nevada follows “the principles of comparative impairment, as expressed in the work of Professor William Baxter”; and Minnesota courts favor “the multi-factor test developed by Professor Robert Leflar.” Finally, Wyoming courts adhere to the First Restatement for some disputes, but they apply the State’s own internal law to any suit filed by Wyoming citizens (whether on their own behalf or on behalf of others).
- By a convenient happenstance, all of the witnesses to the motorcycle accident and flawed surgery have since relocated to Nevada.

Peggy wishes to sue in federal court. Fortunately, each of the States listed above has only one district. **In which district court would you advise her to file suit, and why?** (If the answer is unclear, or if there are multiple courts among which you’re indifferent, that’s fine too.)

Question 2. (30 pts.)

ACME Investments is a diversified company incorporated in Delaware, with its principal place of business in Fresno, Cal. It has a variety of different operations, including avocado farms in California, silver mines in Montana, and a factory in Illinois that makes miniature models of factories. Income from these operations is paid into ACME's account with the Bank of New York in Manhattan. ACME also has a \$500 bank balance, used for minor expenses, at the Third Bank of Waco in Texas.

In 2007, ACME purchased 4% of the shares of Amalgamated Anvil Co., a New York corporation headquartered in Manhattan. Amalgamated has a wholly-owned Ruritanian subsidiary, Anvilia Ruritan, which makes anvils out of raw steel in a factory in Gharov, the main industrial city of the Kingdom of Ruritania. Anvilia Ruritan buys the steel directly from the Ruritanian Government.

In 1993, an explosion and fire at the anvil plant caused terrible injuries to the employees and surrounding population. Amalgamated and Anvilia Ruritan took out newspaper ads in the *Gharov Times* and in *USA Today* arguing that the accident was caused by defective government-supplied steel. On behalf of the injured victims, the Ruritanian Government brought a \$1 billion negligence claim against the two companies in the Municipal Court of Gharov. The lawsuit was settled for a payment of \$50 million (and no admission of liability) in 1995.

The last Ruritanian elections were won by the nationalist party *Sznaucery w Spodnie* ("Homeland First"), whose slogan is *Chcę Trochę Pączków!* ("Make Those Foreigners Pay!"). Its campaign focused on allegations that the previous government had not pushed hard enough in the settlement negotiations.

Yesterday, the newly appointed Minister of Justice filed a new lawsuit in the Municipal Court of Gharov. The first claim alleges that the fire resulted from the defendants' negligence, and it seeks the remaining \$950 million in damages. The second claim seeks \$12 million for the newspaper advertisements under a Ruritanian statute prohibiting "scurrilous and unsavory publications that dishonor His Serene Majesty or the glorious Kingdom and People of Ruritania and that undermine confidence in the State." (It is no defense, under this statute, that the published statements are true.) The limitations period for both negligence and defamation in Ruritania is five years, "except in extraordinary circumstances."

The defendants named in the suit are Anvilia, Amalgamated, and ACME. Under Ruritanian law, all shareholders of a corporation, no matter where incorporated (and all

shareholders of those shareholders, and so on), bear unlimited joint and several liability for the corporation's torts.

According to a recent State Department report, Ruritania's courts are highly respected and largely independent of politics. They respect the traditional doctrines of claim and issue preclusion, and they regularly enforce the judgments of foreign tribunals. Article 57 of the Great Ruritanian People's Charter explicitly incorporates the U.S. Constitution's due process protections. And parties aggrieved by a ruling of the Gharov court have a right to appeal to the Gharov Regional Court for the Correction of Mistakes and ultimately to the Ruritanian House of Lords, a legislative body composed of a mixture of elected delegates, term-limited political appointees, and hereditary aristocrats. That said, there has been significant popular demand for a judgment against the foreign defendants in this case, including public death threats leveled against members of the judiciary. The presiding judge of the Municipal Court is the brother of an Anvilia employee who died in the fire.

Your firm was hired to assess the risk this lawsuit poses to ACME's assets. (Amalgamated has its own lawyers.) Lawyers for Ruritania in Washington, D.C., have threatened to enforce any judgment rendered against ACME to the fullest extent of the law. According to your research, New York and Texas have enacted the Uniform Foreign Money-Judgments Recognition Act (1962). More recently, California, Delaware, the District of Columbia, Illinois, and Montana have enacted the Uniform Foreign-Country Money Judgments Recognition Act (2005).

An answer or motion to dismiss is due to the court in Gharov in 20 days. **What should be ACME's strategy for responding to the suit and resisting any adverse judgment? Why?** Consider, in formulating your answer, the likely litigation strategy of the Ruritanian Government.

Question 3. *(20 pts.)*

Of the many rules and doctrines that we've studied in this class, **name one that you'd like to change, how you'd like to change it, and why.** (There's no single right answer, of course.)