

Conflict of Laws
Spring 2016

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Available for download: Thursday, April 28,
7:30–8:30 a.m

Must be submitted: within 8 hours after download,
or by 4:30 p.m. on April 28,
whichever is earlier

This one-day exam is **9 pages** long, including these instructions. (Please check to see that you have all 9 pages.)

The examination consists of **three questions**. To reduce implicit bias, I will grade all the answers to each question in turn, randomizing the order each time. Please use the “answer separator” function to separate your answers to each question.

Your combined answers to the three questions must not exceed **4500 words**. You don’t have to write that many; brevity is encouraged. But additional words won’t be read, so remember to watch your word count.

The exam mode is **takehome**. You are permitted to use any digital or paper materials you find helpful.

The software will allow you to access your hard drive and the Internet and to cut and paste text from external documents. That said, you are instructed not to consult with anyone or to do new research on the Internet during the exam. **Your exam must be entirely your own work.**

The Exam4 software automatically prints your Anonymous ID and word count on the exam. To preserve anonymity, please do not include your name or other identifying information. You will not be able to read or edit your exam file once it is submitted.

According to Law School policy, students may not communicate with faculty members about an exam in any way, including through email, from the start of the exam until grades for the course have been released. In case of emergencies, contact the Registrar’s Office instead. Also, you may not discuss the examination with anyone else—either while taking it or thereafter—until everyone has taken the exam.

In general, please review and follow the advice given in John H. Langbein’s *Writing Law Examinations*, which is available at <http://goo.gl/dAsZa0>.

A few specific recommendations:

1. **Make sure that you read the questions carefully.** Each question is accompanied by a point value and a recommended time allocation. Pay attention to the point values: they signal how important each question will be. The time allocations assume that you will take a half-hour at the beginning to read the whole thing, a half-hour for lunch, and twenty minutes at the end for proofreading. It may be a good idea to sketch out answers to all three questions with pencil and paper before starting to write. If you just dive in, you might get lost halfway.

2. **Organize your answers clearly.** You don’t need to follow any particular format with rigor, but it helps greatly to identify an applicable legal standard before applying it. Stating your conclusions clearly will also be helpful to me when grading. Mentioning individual cases or statutes can be useful, but detailed citations are unnecessary and probably a waste of your time. It’s much more important to state the substance correctly. In the words of the now-repealed Rule 84 of the Federal Rules of Civil Procedure, the model exams on the course website “illustrate the simplicity and brevity that these [instructions] contemplate.”

3. **When listing reasons why a particular result would be correct, don’t give just one.** Give as many as are correct, even

if one 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!

4. **Apply the law as it stands today.** The exam doesn't ask things like "how would this case have been decided in 1872?" It only tests on the law as it's understood on the date of the exam, taking account of recent Supreme Court decisions.

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 or brief presents the best arguments available, and so on. Don't try to invent new and helpful law or facts not mentioned in the exam. If there are issues that you're not sure of or that require more information, you should say so; some of them may be intentional. (Again, new research on the Internet is not permitted.) 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 particular case or statute.

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 attributed to it in the Symeonides excerpt on our syllabus; that states relying on the Second Restatement have adopted any rules that the textbook describes as belonging to the 1988 revised version thereof; and that each state's long-arm statute extends its personal jurisdiction to the fullest extent that the Constitution permits.

* * *

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, as will the exam as a whole. Final grades will be calculated in compliance with the Law School's grading policies.

Good luck!

— START OF EXAM —

Q.I: *Novus ordo allocamelorum* (50 pts, 3 hr 20 min)

At 19 years of age, Rosalind Hamilton was both a college senior and one of the most celebrated geneticists in America. In her high school biology class in Wilmington, Del., she developed the six-legged terrier now known as the hexadog. After starting at the California Institute of Technology at age 16, she produced the first successful pig-elephant hybrids, which could one day lead to the development of pig-sized elephants (or, perhaps, to elephant-sized pigs).

During her last semester at Caltech, she was met outside her Pasadena laboratory by a representative of AlphaTechniGenetiCorp (ATGC), a Delaware corporation with its headquarters near Fort Detrick, Maryland. The anonymous representative asked her to work with ATGC in reviving the allocamelus—the legendary half-camel, half-donkey referenced by noted conflicts scholar Brainerd Currie,¹ and before him by the Renaissance humanist Giulio Cesare della Scala. According to the 1658 republication of Edward Topsell’s *History of Four-Footed Beasts*, della Scala—known in England as “Scaliger”—had written “that in the land of the Giants, there is a beaft which hath the head, neck, and ears of a Mule, but the body of a Camel,” but “was never before feen in *Germany*, nor yet spoken of by *Pliny*.” (See fig. 1.)

Hamilton was impressed by the offered salary, but she was concerned by the representative’s evasiveness as to ATGC’s interest in the work, especially when he described allocameli as potentially useful “as an army of mutant donkeycreatures—I mean, for farm work.” After discussing the issue over the phone with her parents in Wilmington, she decided to accept, emailing ATGC

1. See Friedrich K. Juenger, *How Do You Rate a Century*, 37 WILLAMETTE L. REV. 89, 106 (2001) (quoting Currie, via DAVID F. CAVERS, *THE CHOICE-OF-LAW PROCESS* 39 (1965), as criticizing doctrines that allow plaintiffs to assemble “half a donkey and half a camel, and then ride to victory on the synthetic hybrid”).



Fig. 1. An image of the allocamelus from Topsell's *History of Four-footed Beasts*, as reprinted in *The History of Four-footed Beasts and Serpents* (1658).

a copy of her signed contract while on spring break in Panama City Beach, Florida. ATGC's employment division opened the email in its offices in Maryland and sent Hamilton a confirmation of receipt. The contract gave ATGC an exclusive one-year license to use genetics techniques that Hamilton had developed and patented while still in college. It also provided that she would start the work after finishing school, wherever she might be living at the time. (Hamilton was then deciding between genetics labs at Caltech and at MIT.)

Eventually Hamilton decided to settle in Pasadena, renting lab space and pursuing a Ph.D. in Recombinant Cryptozoology

at Caltech. As she worked, she sent regular updates by email to ATGC’s home office. But the relationship soon soured. Hamilton felt the company was making unreasonable demands for progress, and she was annoyed by its insistent questions about whether the allocamelus—which Topsell had called a “moft gentle and meek beaft like the *Cameloparda!*”—could be bred for high aggressiveness, meat-eating, and a willingness to follow orders. Hamilton was also concerned by media reports about ATGC geneticists who had inexplicably disappeared or been killed in bunsen-burner accidents. Before three months had passed, she was contacted over email and hired away by the Irish genetics firm Allocamelus Industries plc, a subsidiary of the Dutch holding company Amalgamated Camel.

Hamilton has now contacted you for legal advice. She worries that ATGC will sue to enforce the noncompete clause in her contract. She is also concerned that it will sue for infringement of its exclusive patent license, claiming that it has suffered economic losses at its headquarters in Maryland. Her employer and its parent company may be targets as well: Amalgamated Camel is known to be a deep pocket, while Allocamelus Industries has virtually no assets and is essentially judgment-proof.

Your initial research has revealed the following:

- The noncompete clause in Hamilton’s contract purports to bar her from working for any other genetics companies for five years after leaving her employment with ATGC. It provides that this particular clause “shall be governed by the laws of Maryland, the law properly governing the remainder of this contract notwithstanding.”
- Noncompete clauses are fully enforceable in Maryland. They are also allowed in Florida, though subject to a \$100,000 damage cap. Both Maryland and Florida make third parties liable in tort for soliciting the violation of a

noncompete clause, deeming it tortious interference with contractual relations and imposing treble damages.

- Neither California nor Delaware generally enforces non-compete agreements, whether in contract or in tort. California even has a statute refusing to enforce noncompete agreements under other states' laws, based on a "strong public policy" in favor of free labor within its borders.
- Delaware, Maryland, and California have each adopted the principles, more or less, of § 187 of the Restatement (Second) of Conflict of Laws. Florida law generally does not recognize choice-of-law clauses. ATGC is known for aggressively enforcing these clauses where allowed; it has frequently brought Full Faith and Credit challenges to the application of any state's laws but those of Maryland.
- Alone among the fifty states, Delaware fixes the age of majority at 21. Delaware law does not allow minors to change their domiciles. It also deprives them of capacity to enter noncompete agreements or to license intellectual property, rendering all such agreements voidable.
- Claims arising under the patent laws must be brought in federal court under 28 U.S.C. § 1338. Related state-law claims may be brought there under § 1367.
- Each circuit court of appeals has recently adopted the First Circuit's doctrines for determining state citizenship.
- The allocamelus described by Topsell was probably a llama anyway. ("They said that it was an *Indian* Sheep, out of the region of *Peru*, and so was brought to *Antwerp*, six thousand miles distant from that nation.")

Describe ATGC's probable litigation strategy. Whom is it likely to sue? Where, and why? How likely is it to succeed? Hamilton is willing to file a declaratory judgment action against ATGC if that would allow her to select a more favorable forum. **Should she file first? If so, where, and why?**

Q.2: Recognizing judgments (*35 pts, 2 hr 20 min*)

Assume that the Revised Uniform Enforcement of Foreign Judgments Act (UEFJA) and the Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA) are both in force in a given state. **Describe the procedures and standards that apply in federal courts in that state for recognizing and enforcing the judgments of other courts—whether federal, state, or foreign. How those rules differ depending on the judgment’s origin? Do those differences make sense to you?**

Q.3: A perennial question (*15 pts, 1 hr*)

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.)

— END OF EXAM —