

STUDENT ID:

SPRING EXAM 2017

TAKE HOME EXAM INFORMATION

Instructor: Stephen E. Sachs

Course Name: Conflict of Law

Course #: 220_01

** PICK UP 8:30 a.m., April 27, Registrar's Office

SUBMIT 5:00 p.m., examdeposit@law.duke.edu

You do not need to return the questions to the Registrar's Office. **

INSTRUCTOR'S EXAM INFORMATION

Please follow the instructions on the next page.

Conflict of Laws
Professor Stephen E. Sachs
Final Exam, Spring 2017

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Submit: 5:00 p.m., examdeposit@law.duke.edu

This one-day take-home exam is **10 pages** long, not including the cover sheet. (Please check to see that you have all 10.)

The exam consists of **three questions**. You may pick up the questions from the Registrar's Office beginning at 8:30 a.m. **You do not need to return the questions to the Registrar's Office.**

After you pick up the questions, please **download the exam template** from the course website (under "Resources") or use the copy that has been emailed to you along with these instructions. Make sure to include your Student ID number in the filename, according to the Registrar's instructions, and also in the header that appears on each page. There is a strict limit of **4500 words**.

To reduce implicit bias, I will grade all the answers to each question in turn, randomizing the order each time. To assist with separating answers, please use the provided template to start each answer on a separate page. Also, to ensure anonymity across answers, **please do not alter the typeface or spacing** or include any other identifying information.

In writing the exam, you may use any digital or paper materials you find helpful. That said, you are instructed not to consult anyone else or to do new research on the Internet during the exam. **Your exam must be entirely your own work.**

According to Duke policy, students may not communicate with faculty members about problems during or after an exam. In case of emergencies, **contact the Registrar's Office instead.** Also, because students sometimes take examinations at different

times, you may not discuss the exam with anyone else until the exam period has ended, or until I have notified the class that all exams have been submitted.

In general, **please review the advice** given in John H. Langbein's *Writing Law Examinations*, 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, an hour for lunch, and twenty minutes at the end for proofreading. It may be a good idea to sketch out answers to each question 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. **Remember to watch your word count.** Again, your entire answer must not exceed **4500 words**. You don't have to write that many; brevity is encouraged. But additional words won't be read—so keep an eye on the word count as you work, so that you don't have to shorten in a hurry later on.

6. **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. 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.

7. **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 (and that "Combined Modern" is equivalent to the Second Restatement); that states relying on the Second Restatement have adopted any rules 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.

8. **The allocamelus *will* be on the exam.**

* * *

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 Duke's grading policies. Good luck!

Q.1: The Strange Case of Percy Levett (*45 pts, 3 hr*)

Those fond of New England's colonial architecture will of course be familiar with Levett House in Westport, Mass. Situated on a pleasant estate that extends to the border with Little Compton, R.I., much of the house was built during the early 1700s, with some outbuildings dating to the seventeenth century. Its recent occupant, Percival "Percy" Levett, was equally familiar throughout the area as an appalling recluse, whose passion for antiquities threatened the family's dwindling fortunes. He grew yet more reclusive after a theft in 2010, in which someone smashed a locked display cabinet and stole a number of valuable items as well as an old battered briefcase. The thief was never apprehended, but the insurance money for the valuables enabled Percy to pay off his debts and to avoid selling the estate.

After Percy's death this March, both house and land were expected to descend to his adult daughter Sarah. Concerned by the upkeep, she offered to sell her interest to Mary Topham, the recent purchaser of the neighboring estate in Rhode Island; but Topham declined. A few weeks later, the Little Compton police apprehended a man digging on Topham's estate at night. The next morning revealed the trespasser to be Mary's younger brother Elias. In the hole that he had dug lay the battered briefcase once stolen from Levett House; in the battered briefcase lay an old bundle of cloth; and in the old bundle of cloth lay wrapped the Golden Allocamelus of Samarkand.

At this point some further explanation is necessary. The Golden Allocamelus is a half-camel, half-donkey figurine, approximately seven inches high, honoring the lowly pack animals who had carried so much wealth to that city on the Silk Road. Believed to have been commissioned in the Abbasid period,

prior to the city's conquest by the Mongols, the figurine reappears in the historical record at the start of the fifteenth century, when it was given by Timur (known in Europe as the conqueror Tamerlane) to Ruy Gonzalez de Clavijo, ambassador from the court of Henry III of Castile. The ambassador began his return journey to Castile in 1406, but there is no record of the Allocamelus returning with him, and his memoirs state that many of his goods were stolen as he crossed through Armenia. Centuries later, a group of English merchants formed the Company of Merchants of the East (also known as the Eastland Company), ostensibly to trade with the Baltic States, but secretly in the hopes of recovering the Golden Allocamelus from its rumored location in Livonia before it fell into the clutches of the Hanseatic League. Having failed to recover the Allocamelus, the Company fell out of favor with Charles II; it lost its monopoly under the Trade Act 1672 and soon sank into obscurity.



The seal of the Eastland Company, bearing the image of an allocamelus and the motto “Dispair Not.” Even today, few recognize its true meaning. Obtained from the British Museum, <https://goo.gl/hboRQy>, under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0) license. <https://creativecommons.org/licenses/by-nc-sa/4.0/>

But the Allocamelus *had* been recovered, as proven by its sudden appearance in a field in Rhode Island. In retrospect, the explanation appeared simple enough. One prominent member of the Eastland Company was Percival Levett—sometime Sheriff of York, extensive traveler through the Baltic States, and ancestor of the reclusive Percy. Percival's son Christopher succeeded him in the Company, later exploring New England and serving as Governor of Plymouth in 1623. It was during this time that Christopher undoubtedly took the Allocamelus which his father had discovered and brought it with him to the New World. Elias Topham, being descended from the merchant Matthew Topham of York, had learned the contents of the briefcase and resolved to claim the statue as his own. His ancestor had been of higher rank in the Company than had Percival Levett, and the Company's founding instruments provided that, if it ever became defunct, its remaining property would devolve upon the eldest male-line descendants of its highest-ranking members. Though the law of corporate opportunities in sixteenth-century England was unclear—and, with it, the competing claims of the Company and Percival Levett—Elias had reasoned that he was only recovering property that by law was already his own. He had removed the briefcase, buried it under the neighbor's land, and encouraged his unknowing sister to buy the parcel so that he could dig up the statue at leisure. Yet one aspect of his story was peculiar: he insisted that he had taken nothing but the briefcase, and that all the other valuables had still been in place when he departed through the window.

That, too, was soon explained. In a hidden drawer of the old display case Sarah Levett discovered a letter from her father, explaining his financial distress and his panic at losing the Allocamelus which had been in the family for so long. He took the opportunity presented by the theft to remove many other valu-

able items in his collection, pawn them secretly, and file an additional claim for their loss with Chartered Insurance of New York (under an insurance contract that claimed to be “governed by the law of New York”). He begged his daughter not to return the payments as the insurance contract required, but to keep the matter hidden, and to recover the Allocamelus by any means necessary. She, of course, turned everything over to the police.

Mary, too, had something to reveal. She had not purchased the neighboring estate at her brother’s urging, but because she had been Percy’s unacknowledged wife for over forty years. Divorce having been restricted in Massachusetts at the time, Percy and his estranged first wife (who died shortly after he did) had gone to Maine in 1975, falsely represented themselves as Maine residents, and secured a judgment of divorce. Mary and Percy wed in a secret ceremony in Rhode Island that same week, and now she claims to own the Allocamelus, as well as Levett House.

The Allocamelus lay in the police evidence locker in Little Compton, and the lawsuits began. In London, an *in rem* action was instituted in the High Court of Justice by the Government of the United Kingdom against the Allocamelus and against the Company’s outstanding shares. That court quickly rendered a judgment escheating to the Crown the historic figurine and all interest in the Company. Back in the United States, the parties weighed their legal options. Under Rhode Island law, the theft of a chattel does not change its ownership, and a bona fide purchase of real estate conveys only those rights that were held by the previous owner. By contrast, under the laws of New York and Massachusetts, the owner of a fee simple estate owns the land and everything in it, and a bona fide purchase conveys clear title. All three states have adopted the UFCMJRA; a statutory commitment to the First Restatement in property matters; and a strong public policy against discrimination on the basis of sex in matters of inheritance. Rhode Island and Massachusetts have

a three-year statute of limitations for contract claims and an eight-year limit for torts like fraud or conversion; they also have a rule that tort actions abate upon the death of the tortfeasor, on the theory that “the living should not be mulcted for the wrongs of the dead.” New York has no such abatement rule. It does, however, have a four-year statute of limitations specific to breach-of-contract or insurance-fraud claims, as well as a six-year statute of repose.

Sarah, Mary, Elias, and Chartered Insurance are considering litigation in the state courts of Massachusetts and Rhode Island. **Who should sue whom, where, and with what chances of success? Organize your answer by plaintiff, and explain your conclusions, indicating the additional information (if any) that you might need to know.**

Q.2: Point of privilege (35 pts, 2 hr 20 min)

Beth is a psychiatrist. She lives in Northvale, N.J., and maintains an office in White Plains, N.Y., where she's licensed to practice. Abe is a former patient of hers. He used to live in Greenwich, Conn., fifteen minutes' drive from White Plains.

Abe's company reassigned him to Los Angeles, Cal. On the cross-country drive, he began experiencing acute mental health concerns outside South Bend, Ind. He called Beth's cell phone, reaching her on vacation in Delray Beach, Fla. After a half hour's conversation, she recommended an adjustment to his medication, ordering a prescription to a South Bend pharmacy which he then filled. Abe reached Los Angeles without incident and found a new psychiatrist there. He has not spoken to Beth since.

Abe recently bought a new Ford in Los Angeles and drove to Las Vegas, Nev. On arriving he was involved in a multi-car accident. He filed suit against the Ford Motor Corporation in the U.S. District Court for the Central District of California. (Ford is incorporated in Delaware and headquartered in Dearborn, Mich.) Other parties in the accident sued other manufacturers in other jurisdictions. All of the suits were then consolidated by the Judicial Panel on Multidistrict Litigation for pre-trial proceedings in the Western District of Tennessee.

Ford has sent Beth a subpoena seeking the content of Abe's call, in the hopes of supporting a contributory negligence defense. Some of the jurisdictions involved would treat Abe's communication as privileged, but others would not. Ignore for a moment any answer supplied by the Federal Rules of Evidence—or, indeed, by any of the choice-of-law regimes we've studied. **In your view, approaching the problem on a blank slate, whose law should apply in this situation? Can such a question be answered without knowing the choices that the relevant jurisdictions have made? What difference should those choices make, if any? Explain and defend your answer.**

Q.3: A perennial question (*20 pts, 1 hr 20 min*)

Of the many rules and doctrines that we've studied in this class—but not yet discussed in detail on this exam—**name one rule or doctrine 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 —