

STUDENT ID:

SPRING EXAM 2018

TAKE HOME EXAM INFORMATION

Instructor: Stephen E. Sachs

Course Name: Conflict of Laws

Course #: 220_01

Pick Up: 8:30 a.m., Friday, April 20, Registrar's Office

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

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

INSTRUCTOR'S EXAM INFORMATION

Please follow the Professor's instructions starting on the next page.

EXAM BEGINS ON NEXT PAGE

Conflict of Laws
Final Exam, Spring 2018

Professor Stephen E. Sachs
April 20, 2018

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This is a one-day take-home exam. You may pick up the exam from the Registrar's office beginning at 8:30 a.m. **You do not need to return the questions** to the Registrar's Office.

Please **download the exam template** from the course website (under "Resources / F. Exam") 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.

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

The exam consists of **three questions**, and your entire answer **must not exceed 4000 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.

In writing the exam, you may use **any digital or paper materials** you find helpful, including a hard copy English dictionary. This includes the textbook, the coursepack, your notes, other people's notes, commercial outlines, etc.

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 are 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, a half-hour for lunch, and twenty minutes at the end for proofreading.

2. Organize your answers clearly. 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.) You don't need to follow any particular format with rigor, but it greatly helps 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 chapter-and-verse citations are a waste of your time; it's 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 answers on the course website "illustrate the simplicity and brevity that these [instructions] contemplate."

3. 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. (Likewise, not every issue suggested by the fact pattern is actually relevant to the question asked; discussing irrelevancies will only cost you time.) If a particular legal standard hasn't received any substantial attention either in the readings 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 that we haven't addressed at length—or, indeed, at all.

4. 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 Symeonides excerpt on our syllabus (attached); 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.

5. Apply the law 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 it's understood on the date of the exam.

6. IMPORTANT: 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 for a party to win or lose on that issue. Don't assume that I'll know you know the basics; show me that you do!

* * *

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 then the exam as a whole will be curved. Final grades will be calculated in compliance with Duke's grading policies.

Good luck!

TABLE 2. ALPHABETICAL LIST OF STATES AND CHOICE-OF-LAW METHODOLOGIES FOLLOWED

States	Traditional	Significant Contacts	Restatement (Second)	Interest Analysis	<i>Lex Fori</i>	Better Law	Combined Modern
Alabama	T+C						
Alaska			T+C				
Arizona			T+C				
Arkansas		C				T	
California				T			C
Colorado			T+C				
Connecticut			T+ C?				
Delaware			T+C				
Dist. of Columbia				T			C
Florida	C		T				
Georgia	T+C						
Hawaii							T+C
Idaho			T+C				
Illinois			T+C				
Indiana		T+C					
Iowa			T+C				
Kansas	T+C						
Kentucky			C		T		
Louisiana							T+C
Maine			T+C				
Maryland	T+C						
Massachusetts							T+C
Michigan			C		T		
Minnesota						T+C	
Mississippi			T+C				
Missouri			T+C				
Montana			T+C				
Nebraska			T+C				
Nevada		C	T				
New Hampshire			C			T	
New Jersey			T				C
New Mexico	T+C						
New York							T+C
North Carolina	T	C					
North Dakota		T					C
Ohio			T+C				
Oklahoma	C		T				
Oregon							T+C
Pennsylvania							T+C
Puerto Rico		T+C					
Rhode Island	C					T	
South Carolina	T+C						
South Dakota			T+C				
Tennessee	C		T				
Texas			T+C				
Utah			T+C				
Vermont			T+C				
Virginia	T+C						
Washington			T+C				
West Virginia	T		C				
Wisconsin						T+C	
Wyoming			T+C				
TOTAL 52	Torts 9 Contr. 11	Torts 3 Contr. 5	Torts 25 Contr. 24	Torts 2 Contr. 0	Torts 2 Contr. 0	Torts 5 Contr. 2	Torts 6 Contr. 10
T = Torts							C = Contracts

— START OF EXAM —

Q.I: A Diamond Is Forever® (45 pts, 3 hr 15 min)

Alfred and Belinda met as sophomores at the University of Kansas, but their backgrounds were very different. Alfred came from the wealthy town of Atherton, California, while Belinda grew up on a farm in upstate New York. While on a Spring Break ski trip in Montana during their junior year, Alfred proposed to Belinda, presenting her with a diamond engagement ring. But a few months later, Alfred unexpectedly broke off the engagement while the two were working summer jobs in St. Louis, Mo.



Fig. 1. The fateful ring. Dublin Diamond Factory, cc-sa 4.0, <https://goo.gl/DhJ35P>.

Making matters worse, Alfred then sued Belinda in Missouri state court for return of the engagement ring, or alternatively for its value in cash. She defended, citing among other grounds the Missouri Conflict Diamond Regulation Act. This Act requires all commercial diamond distributors to obtain a license from the Missouri Department of Economic Development, one condition of which is a certification that none of the distributed diamonds had been mined in specified foreign conflict zones. The Act also states as a matter of public policy that no action may be maintained in a Missouri court with respect to a piece of diamond jewelry if its most recent commercial distribution occurred without such a license. Alfred had purchased the ring online via SketchyGem.com (“The Cheapest Gems, No Questions Asked!”), and SketchyGem, Inc., a Delaware corporation headquartered in Hackensack, N.J., possessed no license from

the Department of Economic Development at the time that it shipped the contested ring to Alfred at his campus address.

At this point, the Texas Midlands Bank appeared and intervened in Alfred's lawsuit, alleging that it held a secured claim to all diamonds shipped by SketchyGem. Two years ago, SketchyGem and its directors and officers had been sued by multiple wealthy shareholders living in California, who alleged that the directors and officers had failed to keep adequate records to avoid falling afoul of various provisions of California corporate law. Although SketchyGem shipped approximately 40% of its output to California, far more than any other state, it did not appear in any of the consolidated cases in California state court. So the court that heard *In re SketchyGem, Inc., Shareholder Litigation* entered judgment by default, awarding the shareholders an indefeasible 100% ownership interest in all of SketchyGem's then-existing inventory worldwide. (This included the particular diamond—then sitting in a drawer in Hackensack—that was later incorporated into the engagement ring shipped to Alfred.) After SketchyGem went bankrupt and its directors and officers fled abroad, the shareholder plaintiffs pooled their interests and sold them to the Texas Midlands Bank, which is now trying to collect in various courts nationwide.

Who should win? Explain in detail. You may assume that the state laws regarding engagement rings are as described in the attached article from the *New York Times*. You may also assume that all the relevant states follow First Restatement principles with respect to property law, but that they categorize the law of gift as a subfield of contract law for conflicts purposes. As noted in the instructions, give as many reasons for the proper disposition as are correct, even if one would be enough for a party to win or lose on that issue. If you're unsure or need more information, just say so.

WEDDINGS

Should You Give the Engagement Ring Back?

By JANE GORDON JULIEN JAN. 18, 2018

Diamonds, at least in the New York courts, aren't forever. Diamonds aren't even dreamy. Diamonds, given after a "will you marry me?" with a "yes" to follow, are a contract. This is why so many of them end up in court.

The New York legal system deems, in essence, that a broken engagement is no one's fault, and the ring should be given back to the giver, with few exceptions. Most states have adopted that approach.

But Montana hasn't: It classifies the ring as an unconditional gift. The recipient keeps it.

California and Texas take a middle-of-the road approach: the recipient of the ring is expected to return it, unless the giver called off the engagement.

When will New York courts reconsider?

1. When one half of the couple is already married to someone else.
2. When a ring is clearly given as a Christmas gift, Valentine's Day gift, or birthday gift or such without the proposal accompanying. But once a marriage proposal is extended and accepted — once the promise is made — no matter what day of the year, that ring is no longer considered a gift. It's a contract to enter into marriage.

3. The ring was considered payment for financial agreements between the couple. That could include a down payment on a house, a loan, or living expenses.

Most states embraced the no-fault rule after the 1997 case of *Heiman v. Parrish*. There, the Kansas Supreme Court decided that no matter who broke the engagement, the \$9,033 ring should be given back to the giver. “Ordinarily, the ring should be returned to the donor, regardless of fault,” the court found.

The Kansas court then put forth reasons relationships end, in explaining why the court would want to wash its hands of the entire mess:

- The parties have nothing in common.
- One party cannot stand prospective in-laws.
- The parties’ pets do not get along.
- One party has untidy habits that irritate the other.
- A rebound situation that is now regretted.
- Too hasty in proposing or accepting proposal.
- A minor child of one of the parties is hostile to and will not accept the other party.
- An adult child of one party will not accept the other party.

As is the case with most failed relationships the list, the Kansas courts said, “could be endless.”

Here’s how to repurpose jewelry given to you by a former spouse.

Continue following our fashion and lifestyle coverage on Facebook (Styles and Modern Love), Twitter (Styles, Fashion, and Vows) and Instagram.

A version of this article appears in **print** on January 21, 2018, on Page ST12 of the New York edition with the headline: When the Wedding Is Off, and the Ring Seems Like a Keeper.

Q.2: Tort reform (35 pts, 2 hr 30 min)

Congress is considering a bill that would amend two provisions of Title 28 of the U.S. Code: the Federal Tort Claims Act (§ 1346) and the Rules of Decision Act (§ 1652). As amended, the provisions would read as follows. (New material is in underlined italics.)

§ 1346. United States as defendant

...

(b)

(1) Subject to the provisions of chapter 171 of this title, the district courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the internal law of the place where the act or omission occurred.

§ 1652. State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply. For purposes of this section, a state's law applies to an issue of tort law if it is the state in which the allegedly tortious act or omission occurred.

Describe the effect of this bill. Should Congress enact it? Why or why not?

Q.3: A perennial question (*20 pts, 1 hr 25 min*)

Of the many rules and doctrines that we've studied in this class, but are *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 —