

*Final Exam
Spring 2019*

Conflict of Laws

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Monday, April 22, 2019

Pickup: 8:30 a.m., Registrar's Office

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

MECHANICS

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

STYLE

Please download the exam template from the course website (under “Resources/G. Exam/xxxxxxx_220-01ConflictOfLaws_Sachs_Spring2019.docx”) 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 answers, please use the provided template to start each separate 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 on the exam.

CONTENTS

The exam consists of three questions. Your entire answer must not exceed 3500 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.

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. In the words of the now-repealed Rule 84 of the Federal Rules of Civil Procedure, the model answers on the course website “illustrate the simplicity and brevity that these [instructions]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.”

The exam is completely open-book and open-note; 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.*

CONTACT

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.

SUGGESTIONS

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.* 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 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.

3. *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. 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.

4. *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.

5. *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.

6. *If there are issues that you're not sure of or that require more information than is provided, you should say so.* Some of them may be intentional!

7. **This one is very 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 to win or lose on that issue. Don't assume that I'll know you know the basics; show me that you do!

GRADING

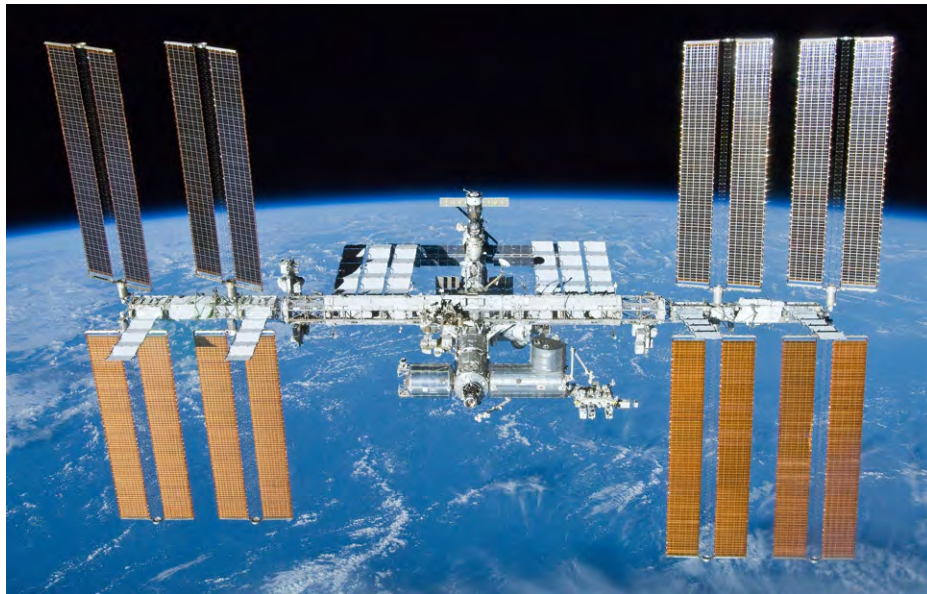
Answers will be graded on your understanding and analysis, as well as on clarity of exposition. Individual questions will be curved, to reward those who do well on harder questions, as will the exam as a whole. Final grades will be calculated in compliance with Duke's grading policies.

Good luck!

— START OF EXAM —

Q.1: Conflicts . . . in . . . SPAAAAACE! (50 pts, ~3 hr 20 min, ~1750 words)

It is the year 2028. The International Space Station is now entering its fourth decade in orbit. A joint project of NASA, Roscosmos, the Japan Aerospace Exploration Agency, the European Space Agency, and the Canadian Space Agency, the spacecraft circles the earth roughly 16 times per day, completing an orbit about every 90 minutes.



The International Space Station, as seen from the Space Shuttle *Atlantis*. (Credit: NASA.)

Aboard the Station, busy days and cramped quarters sometimes cause tempers to flare. Eighteen months ago, as the Station was passing over Australia, a fistfight broke out among two Russian cosmonauts, which ended when one of them threw the other out of an airlock. The remaining cosmonaut, Capt. Tupolev, remained on board until a mission could be sent to the Station to retrieve him. He has just boarded a manned capsule and begun his return to earth. Upon landing, he expects to face a wrongful death action filed by the decedent's sole heir, a daughter who has since moved to Florida and who this past week was naturalized as an American citizen by Act of Congress.

Given the capsule's fuel load and orbital pattern, it has three potential landing destinations on earth: Cape Canaveral, Florida; Vandenberg Air Force Base,

California; and the Mid-Atlantic Regional Spaceport on Wallops Island, Va. Capt. Tupolev has no other contacts with the United States and plans to return to Russia as soon as possible. However, he anticipates that he will be served with a civil complaint and summons as soon as he lands. He has contacted his earth-bound law firm to ask which landing destination he should choose.

None of the states involved have altered their choice-of-law rules since 2019. Capt. Tupolev maintains his innocence, and the laws of the Russian Federation on provocation and self-defense are more favorable to defendants than those of other countries. Neither Russia nor Australia have anything like American-style punitive damage rules, and Russian law might also extend Capt. Tupolev charitable immunity as an employee of Roscosmos, while the laws of Australia or of the various U.S. states would not. Russia and Australia are also known for their narrow one-year statutes of limitations.

Before boarding, the astronauts had all signed an agreement to submit any disputes arising from their voyage to the High Court of Justice in London, and in any case that these disputes would be resolved according to the law of the United Kingdom, which happens to have abolished liability for tortious injuries occurring in space. (None of the astronauts are British, however, as the post-Brexit United Kingdom is no longer part of the European Space Agency and has no connection to the Station.)

Where should Capt. Tupolev land the ship, and why? If you're not sure, or if it doesn't matter, just say so.

Q.2: Interplanetary Shoe (30 pts, ~2 hr, ~1050 words)

Further efforts at space exploration have resulted in an extensive network of private satellites in geosynchronous orbit. A British company, Orbitelligence plc, has launched a group of satellites capable of reflecting the sun's light in a coordinated manner, as if they were pixels on a computer screen. As a result, the satellites can spell out messages readable on the earth's surface.



Artist's rendition of a commercial communications satellite. (Credit: NASA.)

Orbitelligence uses its satellite network primarily for advertising. Its most profitable satellite network was launched aboard French Ariane rockets from the Guiana Space Centre in South America. These satellites orbit along the celestial equator, above a spot in international waters slightly west of Ecuador. The network is easily seen from both North and South America, and it is frequently used to advertise to the American, Canadian, and Latin American markets. Orbitelligence does not, however, review any messages before they are displayed; the company's operations are limited to maintaining the satellite network and its automated display system.

Recently, Orbitelligence experienced several public relations setbacks. First, a group of pranksters pooled their money and purchased several hours' worth of Orbitelligence satellite time. They uploaded messages to the company's website, orbitelligence.co.uk, impugning the sobriety of the well-known California actress Shirley Jones. As a result, for many minutes "SHIRLEY JONES IS A DRUNK" blazed in shining letters across the Western Hemisphere's night sky.

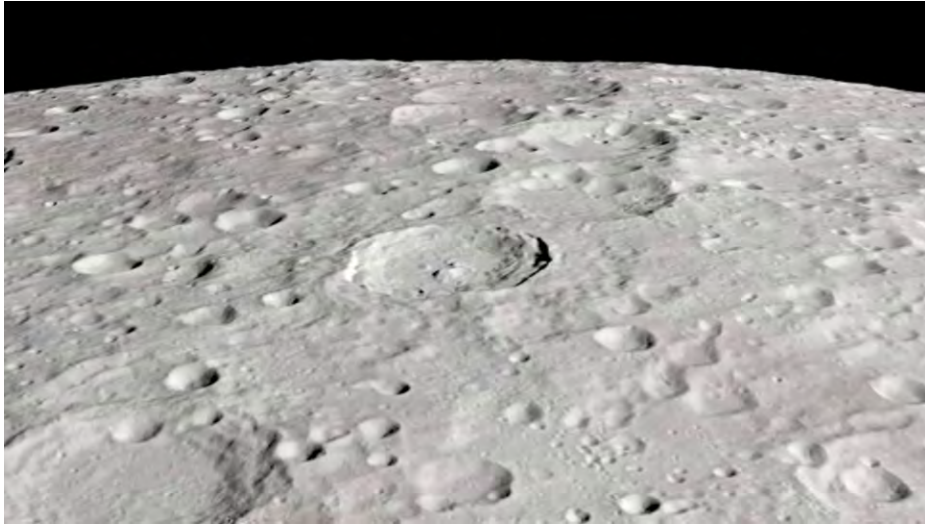
Second, one of Orbitelligence's best customers, the BlueSky penny-stock company that trades on the NASDAQ exchange in New York, was revealed to be a Ponzi scheme.

Jones has filed suit against Orbitelligence and the pranksters (named as "John Does 1-20") in state court in California. She seeks damages for defamation, as well as discovery to help her identify the pranksters. She is joined by several California-based plaintiffs who saw BlueSky's advertisements ("BLUESKY STOCK ONLY GOES UP"), bought the stock, and lost their money. They assert claims against Orbitelligence, BlueSky, and BlueSky's New-York-based officers and directors under a unique California statute offering treble damages for stock fraud.

How likely are Jones and the other plaintiffs to succeed? Explain your answer.

Q.3: Treaties on the Moon (20 pts, ~1 hr 20 min, ~700 words)

The establishment of permanent colonies on the surface of the moon led to a bloody war of independence and the eventual establishment of an independent Lunar Republic. That Republic is now seeking to normalize its diplomatic relations with other nations, including through treaties on judgment recognition.



The surface of the moon. (Credit: NASA.)

You have been asked by the Republic to review various treaty proposals. Some are modeled on the Uniform Acts that exist in various U.S. states; others on the U.S. Constitution's Full Faith and Credit Clause and its implementing statute; others on the never-adopted draft Hague Convention. Some proposals have special provisions for money damages or defamation suits; others apply the same general rules to all forms of relief or all causes of action. And so on.

What rules, if any, should the Republic seek to adopt? (Explain your answer at the level of policies, rather than technicalities; for example, it's unnecessary to draft specific treaty language.)

— END OF EXAM —

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	