

Spring 2022

Conflict of Laws: Final Exam

STEPHEN E. SACHS
Harvard Law School

Available for download: Friday, April 29, 2022
between 8 and 8:30 a.m. EDT

Must be electronically submitted: Friday, April 29, 2022
due 8 hours after download
or by 4:30 p.m. EDT, whichever is earlier

The exam mode is TAKEHOME. This exam is 6 pages long. Please check to see that you have all 6 pages.

MATERIALS

This exam is completely open-book and open-note. While taking it, you may consult any digital or paper materials that you find helpful. That said, you must not consult anyone else or do new research on the Internet during the exam. *Your exam must be entirely your own work.*

By submitting your exam answer(s), you acknowledge the above instructions, and certify that the work you are submitting is your own, that you have not received unauthorized assistance on the exam, and that you have followed applicable rules, including rules for accessing reference and other materials during the exam.

ANONYMITY

Exam4 automatically prints your Anonymous ID and word count on the exam. The exam may be administered to some students at different times, so don't discuss its contents with anyone until after the exam period ends.

To help with the anonymous grading of separate questions, *please use the "Answer Separator" function* to distinguish one question from another.

Harvard prohibits student contact with faculty in regard to the scheduling or administration of an exam for that student in particular before, during, and after the exam, until the student's grade is posted. Such contact is prohibited even if the anonymity of the student's exam is preserved; this policy extends to communications to the full class. As a result, I'm not allowed to communicate with you, including through email or the course website, while the exam is in progress or until the posting of final grades. (I will, however, be thinking about you guys!) In case of emergencies, *contact the Registrar's Office instead.*

CONTENTS

This exam consists of **two essay questions**. Your answers are limited to **3000 words** in total. This is a strict limit; additional words won't be read. (This isn't intended as a penalty, but as a uniform way of ensuring fairness across different answers.)

Of course, you aren't required to write that much, and brevity is appreciated. Make sure to watch your word count, so that you don't find yourself making substantial cuts in the last few minutes.

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.

SUGGESTIONS

In general, please follow the advice given in John H. Langbein's *Writing Law Examinations*, available on the website. A few specific recommendations:

- (1) *Make sure that you read each question carefully.* Pay attention to the point values: they signal how important each question will be. The time allocations assume that you'll reserve thirty minutes at the beginning to read the whole thing, thirty minutes for lunch, and thirty minutes at the end for proofreading, all of which I encourage you to do. I'd also encourage you to spend up to one-third of your time on each question just sketching out the answers with pencil and paper before starting to type. If you just dive in, you'll get lost halfway.
- (2) *Organize your answers clearly.* You don't need to follow any particular format with rigor (IRAC, etc.), but it greatly helps to identify an applicable legal standard before applying it. Stating conclusions clearly will also be helpful to me when grading. Mentioning individual rules, statutes, or cases can sometimes serve as useful shorthand, but chapter-and-verse citations are a waste of your time. In the words of the now-repealed Federal Rule of Civil Procedure 84, the model answers available on the course website "illustrate the simplicity and brevity that these [instructions] contemplate."
- (3) *State the substance accurately.* 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 provision we haven't addressed at length—or, indeed, at all.
- (4) *Apply the doctrine 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 is understood in the courts of the United States as of the date of the exam, including any recent developments or statutes.
- (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, brief, or response presents the best available arguments for its position; and so on. Don't try to invent new and helpful facts or law not mentioned in the exam.
- (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 listed in the emailed Symeonides excerpt; that each state follows the approach of § 187 of the Second Restatement when applying contractual choice-of-law clauses; 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 as far as the U.S. Constitution allows.

- (7) *If there are issues that seem inconclusive 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 necessarily relevant to the question asked; discussing irrelevancies will only cost you time.
- (8) **This one is very important:** *When listing reasons why a particular result would be legally correct, don't give just one;* give as many as are correct, even if just one of them 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, and then the exam as a whole will be curved. Final grades will be calculated in compliance with the syllabus and with Harvard's grading policies, both written and customary.

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Good luck!

— START OF EXAM —

Q.1: “The Shadow of that Hyddeous Strength” (54 pts, ≈3.5 hr, ≈1600 words)

Since the beginning of time, man has yearned to destroy the sun. A landowner in State *A* decides that he will do the next best thing: block it out. He builds a very tall structure, entirely on his own property, that blocks any sunlight from reaching his house. At various times of day, the structure’s shadow also extends over many neighboring parcels, including some in the neighboring State *B* and even a few across the border in Canada.



Fig. 1. Artist’s rendition of the new structure.

Plaintiff, a State *B* landowner, sues in *B* court on behalf of a putative class of all owners of affected parcels. The property and tort laws of *B* and of Canada recognize a right to unimpeded sunlight, enforceable through both damages and injunctions; those of *A*, by statute and public policy, do not.

- (a) Is jurisdiction available in the courts of *B*?
- (b) On the various choice-of-law approaches we have studied, how might the *B* court decide?
- (c) If the suit succeeds, how might *B*’s judgment be enforced in *A*?
- (d) How might your answers differ if the same suit were brought by a Canadian in Canada’s courts instead?

Explain your answers; if there are additional facts or legal propositions you need to know, just say so.

Q.2: “Agree or Disagree?” (46 pts, ≈3 hr, ≈1400 words)

Consider the following statements:

- (a) “Under current doctrine, if we repealed the Full Faith and Credit Clause tomorrow, most of the field of conflict of laws would remain the same.”
- (b) “As a practical matter, the most fundamental considerations in the field of conflict of laws are—and should be—the expectations and choices of the parties.”

Explain whether (and why) you agree or disagree with each statement.

(Reminder: Your exam answers, in total, should not exceed 3000 words.)

— END OF EXAM —