

Turner  
Conflicts of Law  
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PROBLEM ONE (25 points)

Ben Kingsolver, died without a will in south Bend, Indiana on April 18, 1994. Ben had been a native of India before he emigrated to the United States. While in India, he married a woman named Kaur and then two years later he married Jiwi. Under Indian law polygamous marriages were permitted.

In 1985, Ben came to the United States and brought both wives to South Bend where he taught Chemical Engineering at Notre Dame. All three lived together.. Ben introduced Kaur as his wife and he introduced Jiwi as Kaur's sister. He was concerned that the administration at the University might frown on polygamy and it was certainly against the law in Indiana. In 1992, Ben became a U.S. citizen. Neither Kaur or Jiwi became U.S. citizens.

When Ben died he had no surviving children, Kaur claims that under Indiana law she is entitled to Ben's entire estate as Ben's wife. Jiwi claims she is entitled to half of Ben's estate as a lawful wife. She points out that under Indian law both wives would share equally in the estate.

Assuming that Indiana follows the 1st Restatement approach on this issue. How should the court decide the case? Explain.

PROBLEM TWO (35 points)

Mercury Morris' car was being repaired by Alex's Body Shop in Omaha Nebraska, so he needed a rental car to use while his car was in the shop. Alex provides a rental car for customers by contracting with Used Cars Inc. which provides rental cars at a very modest price. Mercury went to Used Cars to obtain a rental. Used Cars had a requirement, however, that renters had to be over 21 years of age, and Mercury was only 19. The clerk at Used Cars asked Mercury if he was over 21, and Mercury said that "he was." When asked to show his driver's license, Mercury told the clerk that he had left it in his car at Alex's Body Shop. Rather than make Mercury go all the way back to Alex's, he went ahead and completed the rental agreement. Mercury signed the contract which included a clause that the rental car could only be operated by someone over 21, and that if a car was obtained by misrepresentation, all use of the car was without Used Cars' permission.

At the time the car was rented, Mercury Morris was a citizen of Nebraska; Alex's Body Shop and Used Cars Inc. were Nebraska Corporations. Used Cars also had outlets in Kansas and Iowa. Before moving to Nebraska, Mercury had been an Iowa citizen. The year before he left Iowa, his Iowa driving license had been suspended indefinitely. He was still able to obtain a Nebraska license, however.

After renting the car, Mercury drove it to Des Moines, Iowa, where he negligently drove the rental car through a red light and struck a pedestrian, Apollo Bell. Apollo is a citizen of Iowa.

Apollo brought a claim against Mercury and Used Cars in an Iowa Common Pleas Court. His action against Apollo was for negligence and his claim against Used Cars was based on the following Iowa statute:

"where damage is done by any motor vehicle by reason of negligence of the driver, and driven with the consent of the owner, the owner of the motor vehicle shall be liable for the damage."

Under Nebraska law, Used Cars could raise the defense of lack of consent because of the misrepresentation by Mercury as to his age at the time the rental agreement was signed. Under Iowa law, misrepresentation alone was not enough to establish nonconsent.

Assuming that Iowa has adopted the choice-of-law methodology known as "comparative impairment," what law would the Iowa court likely pick? Explain.

### PROBLEM THREE (SO points)

Jake Barnes was domiciled in Virginia and he entered into an insurance agreement with Universe-Wide Insurance company in which Universe provided \$50,000 liability coverage for his automobile, a Ford Taurus. The Taurus was the family car and, when not being driven, was kept in Jake's attached garage in Virginia. On June 30, 1992, Jake loaned his car to Pete Wilson who had agreed to pull a trailer up to a property owned by Jake in Vermont. Pete did not get to Vermont, however, because he collided with a car driven by Mario Ferry Comoin New York.

Mario filed an action against Pete and Jake in New York on November 3, 1992, but Universe refused to defend the action because it claimed Pete was an illegal

immigrant and therefore not covered by the policy. Mario obtained a judgment against Pete and Jake on September 27, 1993, in the amount of \$100,000. On October 27, 1994, Jake brought an action against Universe in Virginia claiming that Universe tortiously breached its agreement by its bad faith refusal to defend the case in New York.

New York has a statute which supports this cause of action.

It reads in part:

"If an insurance company in bad faith refuses to defend the insured against a claim covered by the policy, the insured will be entitled to punitive damages not to exceed three times the policy coverage. An action for bad faith refusal to defend must be brought within one year of said refusal."

New York also has a two year statute of limitations for tort actions and a six year statute of limitations for contract actions.

Virginia does not permit the recovery of punitive damages for an insurance company's bad faith refusal to defend. Virginia has a two year statute of limitations on tort actions and a six year statute of limitations on contract actions. With respect to choice of law issues, Virginia follows the 1st Restatement approach.

If you were representing Jake, which state's law would you want to apply to the issues? What well-reasoned arguments would you make for the application of those laws?

#### PROBLEM FOUR (35 points)

In June of 1993, Frank and Mary Skeffington and their three children, all New York citizens, were visiting their friends Robert and Beverly Fowles on their farm in Ontario Canada. Debra Skeffington was a rather active four year old who liked "playing" with the Fowles' dog, Happy. Robert Fowles told the Skeffingtons that Happy was not always too happy and that it would be better if Debra left him alone. One morning, however, while Happy was eating from his dish in the kitchen underneath the table, Mary Skeffington set Debra on the floor under the table, presumably in response to Debra's plea to "say good morning to Happy." Moments later Debra screamed, Happy had attacked and injured Debra.

Frank and Mary Skeffington commenced an action against the Fowles in the United States District Court for the Southern District of New York, seeking money damages for Debra's personal injuries and loss of Debra's services. The claim was based on Ontario's Dog Owners' Liability Act which holds dog owners strictly liable for injuries caused by their dogs.

Robert and Beverly Fowles filed a counterclaim against Frank and Mary, seeking indemnification and contribution for the Skeffingtons' negligent supervision of Debra. The Fowles' claim was based on Ontario law which permits such contribution claims when the parents' failure to supervise is in part responsible for the child's injuries.

New York law does not permit a non-parent tortfeasor, whose negligence has injured a child, to recover contribution from the child's parents under a theory of negligent supervision. To allow such suits would conflict with New York's doctrine of intrafamily tort immunity. In New York, family members cannot sue each other for negligence. To permit the third party to assert a contribution claim against the parent for negligent supervision would be like permitting the child to sue the parent for negligent supervision. Such intrafamily claims could severely jeopardize family relationships.

Assuming that New York is still following the Neumeier and the Boy Scouts of America approach, how will the court resolve the choice-of-law issues in this case? Should the Fowles' counterclaim be dismissed? Explain.

#### PROBLEM FIVE (35 Points)

Jack Johnson owned an exterior building cleaning business in Topeka, Kansas. He purchased a scaffold for his business from Omega Building Supply Co., which was the Kansas distributor for Spider Web Corporation. Spider is a Washington corporation with its principal place of business in Washington. The particular scaffold in question was manufactured in Washington as are all Spider's scaffolds. The scaffolds are marketed throughout the country by local distributors but the actual contractual agreement is between the purchaser and Spider. In this case, the scaffold was shipped from Washington directly to Jack. According to the agreement, title to the scaffold passed to Jack at the time and place of shipment.

Jack fell from this scaffold and was severely injured. He has commenced an action in the Kansas Federal District Court in which he claims the scaffold was defectively designed. Kansas, in an attempt to address the products liability "crises," has recently enacted a statute which limits the amount of unliquidated

damages one can recover in products liability cases to \$100,000. Thus, damages for pain and suffering cannot exceed \$100,000. Washington, on the other hand, does not have an unliquidated damages cap in product liability cases.

The dilemma for the judge, of course, is which law should she apply? The Kansas state courts generally follow the 2nd Restatement's Choice of Law approach with some consideration given to Leflar's "better rule" idea as a factor. How should the judge rule? Explain.

#### PROBLEM SIX (20 points)

In 1992, Ivan Raskolnikov was convicted in Virginia state court for the abduction of a young girl. He was sentenced, however, to treatment and confinement in the Psychiatric Institute of Washington D.C. In 1993, he was released into a loosely structured and generally unsupervised out-patient program. The month after Ivan was released, he murdered a young woman, Natalia Turgenev.

Shortly after Natalia's death, her mother, Katherina, brought a wrongful death action in the Arlington County Common Pleas Court of Virginia against the Psychiatric Institute for negligent supervision. Katherina could have brought the action in Washington D.C. also, but chose Virginia. Katherina received a judgment for the maximum award of \$50,000 under Virginia law for loss of solace and companionship in September 1994.

In October of 1994, Katherina filed a wrongful death suit in the Washington D. C. Federal District Court for the death of Natalia. Washington D.C. has a wrongful death statute that is similar to Virginia's but its damage limitation for solace and loss of companionship was \$100,000.

Virginia follows the choice-of-law approach of the 1st Restatement. The District of Columbia follows the choice-of-law approach that presumes forum law should apply.

The Psychiatric Institute has moved to dismiss Katherina's complaint. How should the court rule? Explain.

END OF THE EXAMINATION