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Examination No. _____

UNM School of Law
Professor Occhialino

December 13, 2002
Three Hours
9:00 a.m. – 12:00 p.m.

Final Examination

Conflict of Laws

INSTRUCTIONS

1. Write your examination number on this exam and be sure to return this exam when you hand in your bluebooks.
2. This is a closed book exam.
3. There are three questions.
4. Two questions are essay questions. Begin each essay question in a separate bluebook.
5. **** Write on only one side of a page and only on every other line in the bluebooks.
6. The final question consists of twenty multiple choice questions. Answer them using pencil on the bubble sheet provided. **** Be sure to properly identify your bubble sheet as indicated on the following page.

Use pencil only in answering the multiple choice questions as provided on the answer sheet.

Please mark your examination number on the answer sheet in the area provided for "Identification Number" and be certain to fill in the appropriate circles beneath the "Identification Number" as shown on the example below.

BIRTH DATE			IDENTIFICATION NUMBER										SPECIAL CODES					
MO.	DAY	YR.	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Jan.	<input type="radio"/>																	
Feb.	<input type="radio"/>			6	2	6												
Mar.	<input type="radio"/>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Apr.	<input type="radio"/>	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
May	<input type="radio"/>	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Jun.	<input checked="" type="radio"/>	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
Jul.	<input type="radio"/>	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4
Aug.	<input checked="" type="radio"/>	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
Sep.	<input type="radio"/>	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6
Oct.	<input type="radio"/>	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7
Nov.	<input type="radio"/>	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
Dec.	<input type="radio"/>	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9

Question One
Suggested Time: Ninety Minutes

Original Balloon Company was incorporated in Arizona and had its principal place of business in Eastmost, Arizona. Original manufactured hot air balloons, sold balloons to others and also provided balloon rides for a fee for persons who wanted to go up in balloons. In 0000, Zia Balloon Company, a large New Mexico corporation with its principal place of business in New Mexico, bought out Original and discontinued the manufacture of Original's balloons but continued Original's business of providing balloon rides for a fee. The documents by which the Original/Zia deal was completed were signed in Arizona.

Zia Balloon consulted a lawyer about whether it would be preferable to move the ride business from Eastmost, Arizona to Farmington, New Mexico, just a few miles away. The lawyer advised that the ride business continue to be conducted in Eastmost, Arizona. As a result, Zia received all reservations for rides in Eastmost, Arizona either by mail, by phone or by fax. All contracts for rides were presented to persons with reservations when they arrived at Eastmost and were signed in Eastmost. All balloon rides took off from Eastmost.

Rob Porter, an Albuquerque resident and a reporter for the Albuquerque Journal, which is a New Mexico corporation with its principal place of business in New Mexico, was assigned to do a story about Arizona Balloon Rides for the travel section of the Journal. From his office in Albuquerque, he called Zia at Eastmost to make a reservation and received confirmation that he had a reserved ride. At the allotted date and time he went to the Zia launching site at Eastmost for his ride. While there, as was Zia's standard practice, Porter was presented with a contract to sign. The contract contained in bold letters the following:

NOTE: The purchaser of this ride hereby assumes all risks of injury whether caused by act of God or by the negligence of Zia Balloon Company or the existence of a defect in the balloon and agrees that Zia Balloon Company is not liable for any harm that the purchaser of this ride may suffer arising out of or related to the transportation provided pursuant to this contract.

The contract also contained in bold letters the following:

NOTE: This contract is to be controlled by the internal law of Arizona and any disputes arising from or concerning this contract shall be determined in accordance with the internal law of Arizona, including but not limited to issues concerning the validity of this contract or any portion thereof.

A Zia official told Porter that he must sign the contract as written or he would not be permitted in the balloon and that if he chose not to sign it, he would not be liable to pay for the ride he had reserved. Porter read the contract, signed it and ascended in the balloon from the launchsite in Eastmost on the morning of October 1, 0000. Balloon

rides from Eastmost usually proceed westward over Arizona space, and this ride was no exception. Over Mideast, Arizona, apparently due to a defective propane burner in the balloon manufactured by Original Balloon Company, the propane flame ignited the balloon and the basket, causing the balloon to crash in downtown Mideast, Arizona. Porter was badly injured and rushed by medi-vac helicopter to Lovelace Hospital in Albuquerque where he received extensive treatment for his injuries.

On October 4, 0003 more than three years after the balloon crash, while still a patient at Lovelace Medical Center, Porter died of his injuries sustained in the balloon crash. From the time of the injury to the time of his death, he received Worker's Compensation benefits under the law of Arizona.

On December 1, 0003, Porter's personal representative consulted an attorney in your law firm. The attorney agreed to represent the personal representative and sent you the following inquiry:

I am considering filing a diversity-action wrongful death law suit seeing \$1 million dollars in Arizona Federal District Court, naming as defendants the Zia Corporation and Peter Pilot, an Arizona citizen who was the pilot of the balloon that crashed. Please advise me on the following questions, assuming that I do file such a lawsuit:

Question One:

A) Does the federal district court in Arizona have jurisdiction over the proposed lawsuit? Explain fully but concisely.

B) i) If I were to file the proposed lawsuit and there was no subject matter jurisdiction, could I succeed in a motion under 28 U.S.C. Sec. 1404 or 1406 to transfer the action to the federal district court in New Mexico? Explain fully but concisely.

ii) Please explain fully but concisely the implications of each such motion upon the issue of whose choice of law system would be applied if one or the other motion were granted.

The attorney for Porter's personal representative tells you that the personal representative of Porter applied for and received death benefits from the Arizona Worker's Compensation system. The attorney tells you that he has just learned that Arizona's payment is substantially less than that which could be recovered under New Mexico's Worker's Compensation system for an work-related death. The attorney asks you:

Question Two:

Can New Mexico make an award of death benefits to the personal representative of Porter despite the fact that Arizona has already made an award of death benefits under Arizona law? Explain fully.

Assume for the remainder of this exam that the Table below accurately reflects the current law of New Mexico and Arizona.

Issue	New Mexico	Arizona
Choice of Law System	Traditional/Restatement One	Modern/ Restatement Two
Statute of Limitations for Wrongful Death	Three years from date of death	Three years from date of injury causing death
Wrongful Death Beneficiary	--Porter's Mother who lives in Tucumcari, NM. --The award includes high "value of life" damages.	--The estate of Porter which passes by his will to the "Legalize Heroin Assoc. of Tucson, Arizona" --The award is based only on the economic loss to the estate of the deceased.
Successor Corporation Liability	Successor Corporation Is Liable for Torts of Predecessor Corporation	Successor Corporation Is Not Liable for Torts of Predecessor Corporation
Economic Duress	Economic Duress is a Basis for Voiding a Contract	Economic Duress Is Not Recognized as a Basis for Voiding a Contract
Releases	Signed Release of Liability for Negligence Is Not Valid Defense to a Tort Action	Signed Release of Liability for Negligence Is a Valid Defense to a Tort Action

The attorney for the personal representative states that he is considering suing the Zia Corporation in the State District Court in Arizona because Arizona jurors are known to be much more liberal in assessing damages in wrongful death actions than are New Mexico jurors. The attorney asks you:

Question Three:

What is the apparent single most compelling reason for not suing in the Arizona State District Court despite Arizona's liberal jurors and what additional information would you like to know and why before you provide a definitive answer to that question? Explain fully.

Assume for the remainder of this examination question that

- You have convinced your attorney not to sue in State District Court in Arizona.
- Instead, the attorney has filed the wrongful death action in the State District Court in New Mexico located in Albuquerque.
- The action alleges a cause of action in strict tort liability and in negligence and a cause of action for breach of contract of transportation.

Zia Corporation set up as an affirmative defense that Porter signed the contract containing the release which released Zia from liability for any injury arising out of the balloon ride. Porter's personal representative asserts two defenses to Zia's claim of release: First, the release is invalid under New Mexico law which applies to resolve this issue: Second, the doctrine of economic duress, recognized in New Mexico, applies to determine the validity of this particular release even if Arizona law concerning the general validity of releases is applicable in this proceeding.

Question Four:

A) Whose law concerning the general validity of releases of liability will the New Mexico Court apply? Explain fully.

B) Assuming that the New Mexico court determines that the general validity of the release is to be determined by New Mexico law, whose law applies to determine whether economic duress is a defense negating the validity of this specific release? Explain fully.

Porter's personal representative argues that the New Mexico Wrongful Death Act applies in the lawsuit brought in the New Mexico State District Court so that the proceeds will go to Porter's mother.

Question Five:

Whose law of wrongful death will apply in this lawsuit? Explain fully.

Zia Corporation moved for a partial summary judgment as to the count alleging design defects in the balloon manufactured by Original Balloon Company which Porter was riding in when it crashed. Zia based its motion on Arizona law holding that a successor corporation is not liable for the torts of a predecessor corporation. Porter's personal representative opposed the motion on the ground that New Mexico law applied to this issue.

Questions Six, Seven and Eight:

The attorney for Porter's personal representative tells you that as to this successor-corporation issue only the attorney wants to know:

Six. Whether you believe that New Mexico should adopt the Second Restatement approach to choice of law in this case. Explain fully.

Seven. The attorney has a new case in the office involving choice of law issues. If the Supreme Court of New Mexico adopts the Second Restatement approach in Porter, how would that ruling affect the case of Consumer v. Big Corporation which the attorney is planning to file sometime after the Supreme Court of New Mexico would resolve the Porter case? Explain fully

Eight. Assuming that the New Mexico now adopts the Second Restatement, whose law of successor corporation law will apply in this lawsuit? Explain fully.

Appendix to Question One

28 U.S.C. 1404. Change of venue

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

(b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district.

Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties

request transfer.

(c) A district court may order any civil action to be tried at any place within the division in which it is pending.

(d) As used in this section, the term "district court" includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term "district" includes the territorial jurisdiction of each such court.

28 U.S.C. 1406. Cure or waiver of defects

(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

(b) Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

(c) As used in this section, the term "district court" includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term "district" includes the territorial jurisdiction of each such court.

End of Question One

Question Two
Suggested Time: Sixty Minutes

A law professor recently wrote the following letter to Senator Bingaman:

Dear Senator:

Symmetry and logic are important in the law. There should be only one test for the so-called "public policy exception" in the application of the Full Faith and Credit Clause of the Constitution and of 28 U.S.C. Sec. 1738. Both the "public acts" of a state and the "judicial proceedings" of a state should be subject to a "public policy exception," if at all, for the same reasons and using the same test. This is because neither the Constitution nor 28 U.S.C. Sec. 1738 distinguishes between state law and state judgments in mandating full faith and credit.

Please draft and pass into law an amendment to 28 U.S.C. 1738 that makes the test the same for the "public policy exception." I don't care whether you make the current "public policy exception" for state judgments applicable to state law or whether you make up a new, wise "public policy exception" so long as there is only one and it applies both to state law and to state judgments.

Professor Currie

Memo

From: Senator Bingaman
To: Louise; Legislative Aide

Attached is a letter from Professor Currie. It has been a long time since I studied Conflict of Laws at Stanford so it is difficult for me to assess the merits of Professor Currie's proposal.

Please review the letter, consider the matter and then:

- 1) Summarize the current "public policy exception" applicable to state laws;
- 2) Summarize the current "Public policy exception" applicable to state judgments;
- 3) Explain your own views on the matter and propose appropriate legislative changes, explaining your reasoning fully. If you disagree with Professor Currie, explain your reasoning with particular fullness and clarity, as Professor Currie is a wise man and I must be convinced not to accept his proposal. Please write the memo.

End of Question Two