

St. Mary's University School of Law

Conflict of Laws -- LW7356

Final Examination

Fall Semester 1996

1. This examination consists of five pages, not including this cover page. Please check to be sure you have all pages.

2. You will have three hours to complete the exam. There are three questions, all based on the same facts. A percentage allocation is provided for each question. **You should answer the questions in order, because the facts are cumulative and additional facts are provided in each question.**

3. This is an open book exam. You may use any materials that you brought with you into the exam room. You may not share your materials with other test takers during the exam.

4. You may type your answers or write them in bluebooks. Please put your exam number on your paper, and please do not identify yourself in any other way. Any attempt by a student to identify himself or herself other than by exam number is a violation of the Code of Student Conduct.

PLEDGE

By placing my exam number below, I affirm that I have neither given nor received unauthorized assistance on this examination.

Exam Number

Facts

Ann and Donna are domestic partners. They have lived together in the state of Alpha for ten years and consider their relationship the functional equivalent of a marriage. They own their residence as joint tenants, they share a joint bank account, and they are beneficiaries of each other's life insurance policies. Ann is an engineer employed by A-1 Construction, a highway construction company headquartered in Alpha and doing business in several states. Donna is a physician.

In January of 1997, the state of Delta amends its marriage laws to allow same-sex couples to marry. Coincidentally, Donna is offered a position as chief of staff at a hospital in Delta. After much deliberation, Ann and Donna decide to move to Delta and marry. Donna accepts the position as chief of staff at the Delta hospital and begins work in March of 1997. She moves into a furnished apartment in Delta and begins looking for a suitable house. Ann stays behind to complete the project she is currently working on -- a freeway interchange in the state of Panic.

Ann interviews with several engineering firms in Delta and accepts an offer on June 1, 1997. She is to begin work on August 1, 1997, and she gives notice to A-1 that she will be leaving at the end of July. On June 15, Ann and Donna sell their house in Alpha. Ann moves into a furnished apartment in Panic, near the job site. The women store their furniture at a warehouse in Alpha. They decide to build a house in Delta, and construction on the house begins in late June.

Ann and Donna are married on the morning of July 1, 1997, in a civil ceremony in Delta. That afternoon, Ann flies back to Panic to check on the interchange project, and Donna returns to work at the hospital. On the morning of July 2, 1997, Ann is killed on the Panic job site when a crane overturns.

Question I

20%

The Alpha and Panic worker's compensation statutes both provide for an award to the surviving spouse of an employee who is killed on the job, and neither statute requires a showing of negligence. The Alpha statute provides for an award equal to three times the deceased employee's annual salary. The Panic statute provides for an award of five times annual salary. In both Alpha and Panic, worker's compensation claims are heard by commissions that have authority to award compensation only under the local statute. To the extent that it may be relevant, you may assume that the courts of Alpha apply the Restatement Second of Conflicts, and the courts of Panic apply the first Restatement.

Donna's attorney has contacted you because of your expertise in Conflict of Laws. He is smart enough to figure out that the Panic statute would yield a higher award, but he is concerned because the Panic legislature recently enacted the following statute:

***Prohibition of Same-Sex Marriage.** Marriages between individuals of the same sex are contrary to public policy and shall be void in this state.*

Alpha has no legislation on the subject of same-sex marriages, but the Alpha marriage statute, which has been on the books since 1846, defines marriage as "the legal union of man and wife"

Donna's attorney is trying to decide whether to file Donna's worker's compensation claim in Alpha or Panic. Please advise him.

Question II

65%

Donna's attorney is also contemplating a wrongful death suit against the manufacturer of the crane, Equipment Supply Corporation (ESC). His research discloses that the crane was manufactured and delivered to A-1 in 1982 and that this particular model had a tendency to be unstable. ESC ceased manufacturing this model in 1985 because of the stability problems. Donna's attorney is confident he can persuade a jury that the crane was negligently designed because it was inherently unsafe.

Donna's attorney has determined that jurisdiction over ESC can be obtained in the states of Alpha, Beta, and Enterprise. Enterprise is ESC's state of incorporation and principal place of business. ESC employs several hundred people at its Enterprise factory. ESC has sales offices in Alpha and Beta but has no significant assets in either state.

Alpha, Beta, Delta, Enterprise and Panic all have wrongful death acts requiring persons negligently causing the death of an individual to pay compensation to, *inter alia*, the individual's surviving spouse. You may assume that the amount recoverable is comparable under each state's act. Differences among the laws of the various states are described below.

Enterprise

In 1996, the Enterprise legislature enacted the following statute:

Same-Sex Marriages. *Marriages between persons of the same sex are void in this state, and the courts of this state shall not give effect to any right or claim asserted as a result of such a marriage.*

The courts of Enterprise apply the first Restatement of Conflicts.

Question II (Continued)

Alpha

As discussed in Question I, the Alpha marriage statute, which dates to 1846, defines marriage as "the legal union of man and wife"

The Alpha courts apply the Restatement Second of Conflicts.

Beta

A statute similar to the Enterprise statute quoted above was introduced in the Beta legislature in 1996 and was soundly defeated. A proposed amendment to the Beta Family Code to allow same-sex marriages was defeated by a narrow margin. The courts of Beta apply governmental interest analysis as a choice of law methodology.

Panic

Donna's attorney has determined that jurisdiction over ESC cannot be obtained in Panic, but the following information about Panic law may be useful:

As mentioned in Question I, the Panic legislature recently enacted a statute providing that "(m)arriages between individuals of the same sex are contrary public policy and shall be void in this state." The Panic legislature enacted the following statute in 1990:

Additional Limitation on Actions. In addition to any other applicable limitations, no action shall be brought against the manufacturer of a product for injury arising from the use of such product more than ten years after the delivery of such product by the manufacturer.

The Panic courts apply the first Restatement of Conflicts.

Question II (Continued)

Delta

Donna's attorney has also determined that jurisdiction over ESC cannot be obtained in Delta. As described in Question I, Delta allows same-sex couples to marry. In 1995, the Delta legislature rejected a statute similar to the Panic statute quoted above (giving manufacturers a right of repose ten years after the delivery of a product). The courts of Delta apply governmental interest analysis as a choice of law methodology.

- A. Please discuss the likely outcome if Donna sues ESC in Alpha.**
- B. Please discuss the likely outcome if Donna sues ESC in Beta.**
- C. Please discuss the likely outcome if Donna sues ESC in Enterprise.**

Question III

15%

Assume that Donna's attorney decides to sue in Beta and the jury awards Donna a large judgment, which is affirmed on appeal. Since ESC has no significant assets in Beta, Donna's attorney seeks to enforce the judgment in Enterprise. As a defense to the judgment, ESC cites the Enterprise statute on same-sex marriages. The Enterprise court rules for ESC, and the ruling is affirmed by the Enterprise Supreme Court. Donna's attorney consults you about a possible appeal to the United States Supreme Court. **Please prepare a memorandum for Donna's attorney outlining potential grounds for appeal.**

Question 1

First, it is clear that, from a constitutional standpoint, the worker's compensation tribunal of Panic (place of injury) or Alpha (place of employment) can exercise jurisdiction over Donna's claim. It is also clear that as a matter of choice of law, the Alpha tribunal will apply the Alpha worker's compensation regime and the Panic tribunal will apply the Panic regime. *Pacific Employers* makes it clear that the law of either the state of injury or the state of employment can be constitutionally applied. Filing with the Panic would yield a higher award. The problem, of course, is whether Donna will be regarded as Ann's surviving spouse.

Presumably the Panic tribunal would apply the (first) Restatement of Conflicts in determining whether to recognize the Delta marriage. Under the Restatement, the courts of a state can refuse to give a particular "effect" to a marriage if that effect is sufficiently contrary to public policy. Absent the statute, it is doubtful that the Panic tribunal would deny the "effect" of allowing a surviving spouse to recover worker's compensation benefits (as opposed to, say, a right to cohabit). The crucial question is whether the Panic tribunal would read the statute declaring same-sex marriages "void" as precluding a worker's compensation award to a surviving same-sex spouse. This risk must be taken into account.

The Alpha tribunal is less likely to deny recovery to a same-sex spouse. Under the Restatement Second, the validity of a marriage is determined under the law of the state with the most significant relationship to the spouses and the marriage at the time of the marriage. That state would appear to be Delta, since Delta is the place where the marriage was celebrated, Donna's domicile, and the place that the spouses intended to live. Particularly since the incident in question is purely economic, the Alpha tribunal would be unlikely to deny recovery, even though same-sex couples can't marry in Alpha.

Then the question becomes whether to go for the relatively sure thing in Alpha or to seek the higher award in Panic. The prudent course of action would seem to be to file a claim in Alpha and then, after recovering an award, file a claim in Panic for the additional amount. *Thomas v. Washington Gas Light* endorsed this procedure under the theory that a worker's compensation board has jurisdiction to adjudicate only rights arising under the law of its own state. Thus, a workers compensation award in one state does not preclude a subsequent award in another state to the extent that the second award is higher than the first.

Question II

A. Alpha -- Restatement Second

1. Marriage -- As discussed above, Alpha court would be unlikely to invalidate marriage.

2. Statute of Repose -- Alpha courts would apply the law of the state with the most significant relationship regarding the repose issue. With regard to tort claim, place of injury is presumptive state of most significant relationship. No other state seems to have a more significant relationship, since the contacts are fairly well spread out among Alpha, Delta, Enterprise and Panic. BUT -- if a statute of repose is treated as a statute of limitations, section 142(2) says claim not barred if forum SOL hasn't run, unless the foreign SOL limits the right as well as the remedy (section 143). That doesn't appear to be the case here, since the statute of repose is generic (i.e., not part of the Panic wrongful death act).

B. Beta -- Interest Analysis

1. Marriage -- There is a conflict between the law of Beta (no same-sex marriages) and Delta (same-sex marriage OK). This is likely a false conflict, since Beta has no interest in invoking its marriage law to deny recovery to a Delta spouse, while Delta has an interest in the validity of its marriages and in seeing that its domiciliary is made whole for her loss. ESC will assert that Enterprise has an interest in having its statute invoked to void the marriage in order to protect its corporate defendant. This seems to be a stretch -- protecting resident defendants against workers compensation claims by same-sex spouses probably was not one of the main considerations by the Enterprise legislature in enacting the statute, particularly in cases where the injury occurred outside of Enterprise and, to our knowledge, neither the decedent nor the surviving spouse have ever set foot in Enterprise.

2. Statute of Repose -- There is a conflict between the law of Panic (statute of repose) and the laws of Alpha, Beta, and Delta (no statutes of repose). First, we will assume that Beta has no "borrowing statute." If so, Beta might apply the Panic statute of repose as a statutory matter. (*But See* Scott v. First State Insurance Co.) Assuming no statute of repose, we have to determine whether the conflict is a true conflict or a false conflict. Beta has no interest other than the interest of "doing justice" as the forum state. Delta has an interest in seeing its domiciliary recover for her loss, and Alpha has an interest in seeing its employee and (former?) domiciliary's death "avenged" (quaere whether this is a "legitimate" interest in the constitutional sense -- a la Allstate v. Hague). Certainly Panic has no judicial housekeeping interest to protect, since it is not the forum. Does Panic have a substantive interest in denying recovery and protecting a defendant who has no connection with the state? Arguably not. This may well be a false conflict, in which case the statute of repose would not apply (because no legitimate interest of Panic would be advanced by applying it).

If the court finds that Panic does have an interest, there is a true conflict. In that case, the court would apply forum law (i.e., no statute of repose).

C. Enterprise -- (first) Restatement

1. Marriage -- As worded, the Enterprise statute seems to preclude a suit by Donna, since her claim against ESC is a consequence of her marriage to Ann. The question is whether the courts of Enterprise would construe the statute as broadly as it is written. The possibility that an Enterprise court would give this effect to the statute is sufficient reason not to sue in Enterprise.

2. Statute of Repose -- Assuming a suit in Enterprise gets past the hurdle of the statute invalidating same-sex marriages, the question becomes whether Donna's suit is barred by the Panic statute of repose. Under the (first) Restatement, courts ordinarily apply the law of the place of injury, which in this case would be Panic. The forum court normally applies its own "procedural" law, however, and statutes of limitation traditionally have been regarded as procedural for this purpose. A statute of repose might be regarded differently, however, since it involves less "judicial housekeeping" and more "substance." In (first) Restatement terminology, ESC's argument would be that a right of action could not have "vested" in Panic because the possibility of such a right had expired before the accident occurred. Since a plaintiff's rights must vest at the time and place where the injury occurs, Donna has no right to sue. The alternative analysis would be to categorize the statute of repose as "procedural" and not apply it.

Question III

Donna's basic argument is that the Full Faith and Credit clause of the United States Constitution requires Enterprise to recognize the Beta judgment. But for the Defense of Marriage Act, this would clearly be the case. But the Defense of Marriage Act provides, in part, that "no . . . state shall be required to give effect to any act, record, or judicial proceeding of any other state . . . respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other state . . . or a right or claim arising from such relationship."

Donna's attorney must make two arguments. First, that DOMA does not mean that a state can refuse to recognize a liquidated judgment for a sum of money, and second, that *if* DOMA in fact does mean that a state can refuse to recognize a liquidated judgment, it is unconstitutional.

In this case, Donna is seeking to enforce a money judgment against ESC that was rendered by the courts of Beta. Her argument should be that a liquidated judgment is not a

"claim arising from (a same sex)relationship" for purposes of the Act. The courts of Beta have already upheld that "claim," and now it is merged into the judgment. The origin or nature of her claim is of no concern to the courts of Enterprise, much like the gambling debt in *Fautleroy v. Lum*. In light of well established Full Faith and Credit jurisprudence, Congress could not have intended to authorize courts to look behind liquidated judgments.

If DOMA does extend to liquidated judgments, Donna's fall back argument is that DOMA is unconstitutional. There are two separate bases on which to make this argument. First, Congress cannot single-handedly amend the Constitution. ESC will cite the language in the Full Faith and Credit clause authorizing Congress to prescribe by statute the "manner in which (public) acts, records, and judicial proceedings shall be proved, and the effect thereof." Donna's response is that the drafters of the Constitution merely authorized Congress to establish a procedure for authenticating out of state judgments and did not intend to give Congress the power to repeal the Full Faith and Credit clause by legislatively removing entire categories of cases from its scope. Donna's alternative constitutional argument is that DOMA, as applied to her case, violates the Equal Protection clause because there is no rational basis for discriminating against judgment creditors who had standing to sue because of same-sex marriages.