CONFLICT OF LAWS
Professor Mortland
Page 1 of 4 Due Date:

Final Examination Spring 1991 Friday, May 10, 6 P.M.

GENERAL DIRECTIONS

You may use one bluebook if you write on both sides of the pages, or two bluebooks if you write on only one side (or every other line, or anything that adds up to one bluebook on both sides). If you type, make a good faith estimate of the equivalent and place the pages inside a bluebook.

You may use any materials you wish, but nothing beyond the casebook, supplement, and class discussion is necessary.

When a question is set in a particular state, use that state's choice of law method, but accept my statement of other rules of law. When a question is set in a hypothetical state, assume the state has no recent choice of law cases.

QUESTION I

Paul owns farmland in State X. It abuts on land owned by Dora in State Y. The tracts are on a slope, with Paul's being higher. Dora has recently constructed a building on her land that causes rain water to back up and lie in pools on Paul's land. Paul filed a suit in State X seeking damages for interference with drainage from his lot.

State X law imposes a servitude on the lower land to accept water from the upper land so long as the upper land is undeveloped. If either or both has been developed, the lower owner is liable only if her use is unreasonable. State Y law provides that the lower land must accept water from the upper land as long as both are in their natural state. Dora defended on the basis that her use was reasonable and presented evidence, objected to by Paul, of reasonableness. The jury gave a verdict for Dora. Paul appealed, arguing that the evidence should not have been admitted and the jury should not have been instructed on reasonableness. Decide the case.

QUESTION 2

Ann and Bill, citizens of the District of Columbia and New Hampshire, respectively, were killed in the crash of a Chinese plane on a flight from Nanjing to Beijing, China. Both had bought their tickets through a New York travel agent, and the tickets for this flight were part of an itinerary that began and was to end in New York. Representatives of their estates brought wrongful death actions in New York; the cases were consolidated for trial. The trial court found jurisdiction over defendant, the Chinese airline; the New York Court of Appeals affirmed, and the U.S. Supreme Court denied certiorari.

On trial, defendant asked for partial summary judgment limiting its liability to \$20,000 per person, based on a Chinese law that limits an airline's liability for wrongful death of a non-citizen to \$20,000. The trial court granted the motion. The jury awarded \$120,000 to Ann's representative and \$100,000 to Bill's representative. The judge reduced the awards and gave

judgment for \$20,000 to each. Both plaintiffs appealed.

New York and the District of Columbia do not limit death damages. New Hampshire has a \$50,000 limit unless the plaintiff is a spouse, child, parent, or dependent relative of the decedent. Bill was single with no children and his parents were dead; no relatives were dependent on him. Federal courts have held that in actions against foreign governments subject to the Foreign Sovereign Immunities Act (as China is) the federal courts must use the choice of law rules of the state in which the action is brought. Plaintiffs argue on appeal that New York's choice of law rule points to New York law, and that if it does not, it is unconstitutional.

Decide the case.

QUESTION 3

Dan's Auto Sales, doing business in New Jersey, sold a car to a resident of Pennsylvania, who took the car back to Pennsylvania and ran into Pam, a resident of Pennsylvania, as she was crossing a Pennsylvania street. Pam sued Dan's Auto Sales in a Pennsylvania court, alleging that because it had failed to transfer the certificate of title, as required by New Jersey law, it remained the owner and was vicariously liable for the acts of the buyer under the Pennsylvania law that makes the owner of a car liable for the acts of any person driving with his permission. New Jersey also has a statute requiring automobile dealers to transfer title on sale, but it does not impose liability on the owner of a car unless the car is being driven for the owner's benefit. Dan's argued that New Jersey law should control. The trial court gave summary judgment for Dan's. Pam appealed.

- 1. Argue the case for Pam.
- 2. Argue the case for Dan's Auto Sales.

QUESTION 4

Henry and Wilma, formed a corporation for a condominium project in State X. The corporation borrowed \$1.4 million from First National Bank of State Y, and mortgaged the condominium property; Henry and Wilma guaranteed the loan. The project failed. First National filed a foreclosure action in State X, asking for a deficiency judgment against the corporation if sale of the property did not bring enough to pay the loan. The bank also began a State Y action to recover on the guaranties. This action was stayed pending conclusion of the foreclosure action. The foreclosure was granted and the bank purchased the property at a sheriff's sale for \$1,453,000; the court entered an order confirming the sale. The court found the total amount owed to the bank was \$1,794,380. The bank sold the property four years later for \$1,475,000. No deficiency judgment was entered or requested.

The bank resumed its State Y action, against Henry and Wilma as guarantors. They moved to dismiss, alleging failure to state a claim, estopped due to the X judgment, and lack of personal

jurisdiction. The motion was denied. The court found personal jurisdiction because the loan guaranty was executed by Henry and Wilma in Y and this was a substantial contact with the state. They then filed pleadings that included affirmative defenses restating the three grounds of the motion to dismiss. A jury trial resulted in a judgment of \$400,000 for First National. The judgment was affirmed on appeal.

First National filed a petition to register the judgment in State Z. The court gave summary judgment for the bank. Henry and Wilma appealed, contending the judgment is void due to lack of subject matter Jurisdiction, or because State X had primary jurisdiction; that the bank was barred by collateral estoppel and res judicata from prosecuting the deficiency action in State X; and that State Z cannot enforce the State Y judgment because the Y court failed to give full faith and credit to the earlier X decision. The court of appeals affirmed. Henry and Wilma appealed to the supreme court of Z. Decide the case.