

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 real 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 1

Alan lived in State X from 1940 to 1960. During this time he worked as an interior painter. The drywall he frequently painted contained asbestos. In 1961 he moved to State Y and began a different kind of work. In 1989 Alan developed a persistent cough and was diagnosed as having lung cancer. He died in 1990. His widow brought a wrongful death action in State X against asbestos manufacturers located in State X and State Y.

Defendants' answer asserted that Y law should control the action, including its statute of repose, which provided:

A cause of action (for wrongful death, among others) shall not be deemed to have accrued until the act giving rise to the injury first causes substantial injury or, if the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall the period be extended more than ten years beyond the time of the act giving rise to the cause of action.

Both states bar a wrongful death cause of action two years after the cause of action accrues. The action was brought in 1990.

Decide the case.

QUESTION 2

David, in the course of randomly reviewing probate files in a county in Arizona, discovered the estate of Roy, who apparently had died with no known heirs. He conducted genealogical research to identify heirs and eventually entered into agreements with three potential heirs. Bernard, a licensed attorney and the father of David and Nancy, represented these potential heirs in the probate proceedings.

A few months later an assistant attorney general told Bernard there was an heir with superior claims. Bernard told David, who then located Carol, Roy's daughter, in New York. David and Carol executed an agreement by which Carol appointed Nancy to obtain the inheritance and assigned to her 40 per cent of whatever she might receive; the agreement provided that it would be governed by Illinois law. Bernard contacted Carol and agreed to send her genealogical materials; he did so, along with advice about probating the estate and potential tax liability of the estate. Carol later employed an attorney, who wrote Bernard stating that Bernard was not authorized to act on Carol's behalf, and that the agreement Carol had signed with David was unenforceable.

Carol then filed a complaint in Arizona to rescind the heir locator agreement or, in the alternative, to have it reformed to establish a fair and equitable fee. The trial court granted summary judgment for rescission, stating that the 40 percent fee was unenforceable because it was contrary to express provisions of an Arizona statute, and that Nancy could not enforce the agreement because she did not have an Arizona private investigator's license, making the agreement illegal and void as against public policy.

Defendants appealed, asserting that the trial court should have used Illinois law or, if not that, New York law on the basis that the contract was negotiated and signed in New York. The plaintiff argued that Arizona law should control, and that even if Illinois or New York law would be otherwise proper, they should not be used because the contract was against Arizona public policy. The court of appeals affirmed, holding in addition that Arizona law was the appropriate choice.

Decide the appeal. Arizona uses Restatement 2d for choice of law.

QUESTION 3

Paula sued in State X to recover general and special damages for personal injuries from an automobile collision that occurred in X. Paula was a passenger in Don's car; both were residents of State Y attending college in X, and the car was registered in Y. Dora, the driver of the other car, was a resident of State Z driving a car registered in Z. Paula incurred \$7800 in medical expenses; these were paid in full under her mother's personal injury protection insurance policy, which had been issued in accordance with the law of Y. At trial, both defendants objected to any evidence of Paula's medical expenses, arguing that under Y law they were not recoverable against the tortfeasor. The trial court admitted the evidence, and the jury verdict included the medical expenses. The court granted a judgment notwithstanding the verdict to exclude the medical expenses.

Paula appealed, alleging that X law should control because X had an interest, and that X could not constitutionally deny to Paula the benefit of its law.

Decide the appeal.

QUESTION 4

Jones died domiciled in State X with a will giving all his property to Alice. Sam, his son, objected, claiming to be a pretermitted child. The trial court found that he was not a pretermitted child and that the will was valid. He appealed.

Alice filed an ancillary proceeding in State Y for the distribution of the testator's real property located in Y. The court found that Sam was not a pretermitted child and ordered the Y property distributed to Alice. Sam did not appear at the proceeding, although he had notice. The judgment became final when he did not appeal. The X court of appeals then reversed the X trial court's decision and held that Sam was a pretermitted child and was entitled to his intestate share. Alice petitioned for close of the estate and submitted an accounting. Sam objected because it did not include the Y property and without it there was no property to distribute after payment of debts. Alice asserted that the Y judgment was entitled to full faith and credit. Sam argued that it should not be controlling because the Y court had erred in using Y law and the Y court should have stayed a final determination of the pretermitted child issue until the X decision was final on appeal.

Decide the case.