

QUESTION I

Paul, a resident of Iowa, was injured while he was visiting his daughter in Minnesota. He was struck by a car owned by Ann and driven by Bob; both were residents of Minnesota. Each had automobile liability insurance with policy limits of \$25,000. Paul had two policies covering two vehicles, both issued in Iowa, with under insured motorist coverage. Paul brought an action in Minnesota against his insurer, alleging that his injuries were greater than the amounts he had received from the liability insurers and asking that he be allowed to stack his under insured motorist coverage. There were anti-stacking clauses in his policies that were valid in Iowa but invalid in Minnesota at the time of the accident. The Minnesota legislature has since enacted a statute prohibiting stacking of under insured motorist benefits.

The trial court gave summary judgment for Paul. The court of appeals affirmed, finding that the insurer had no reason to expect that Iowa law would govern its policies in all states, Minnesota's governmental interest would be advanced by application of Minnesota law, and Minnesota law was the better law. It relied on a Minnesota Supreme Court case refusing to apply the statute retroactively in a purely domestic case. That court said that the new statement of public policy (by the legislature) does not affect enforceability of clauses in policies issued prior to the effective date of the amendments. The contract was against public policy when issued and the amendments to the statute did not change that. The insurer appealed. Decide the case.

QUESTION 2

Henry and Wilma were married in Maryland in 1974. Before their marriage they executed an antenuptial agreement providing that each party waived all rights in the other's estate except as otherwise provided in the contract, and that Henry's will, leaving everything to his daughters by a prior marriage, would remain in effect. They moved to Georgia in 1978 and he died in 1981. His daughters filed the will for probate. His widow objected and claimed an intestate share.

The court found that the antenuptial agreement and the will would be valid under Maryland law. The will, however, would be revoked by Georgia law, which provides that a will is revoked by a subsequent marriage. Decide the case.

QUESTION 3

Bill Brown, a resident of New York, is an investment banker specializing in mergers and acquisitions. He contacted Apex, a California corporation that he thought wanted to acquire another company. Paula Porter, the president of Apex, said they were interested. Brown knew that Thomas Transportation Company might be interested in being acquired. He attended a

meeting of the board of Thomas and acquired some information about their interests. He asked Porter, in a telephone conversation from New York, if Apex would be interested in a transportation company. She indicated they would. He next asked about the fee Apex would be willing to pay. Porter said they would pay 1% of the price. After this conversation, Brown negotiated an acquisition of Thomas, which was completed. Apex refused to pay the fee, asserting the New York statute of frauds, which requires that brokerage contracts be in writing. Brown sued in California.

The California trial court found that the New York statute extends to foreign principals who use New York brokers. "It is common knowledge that New York is a national and international center for the purchase and sale of businesses and interests therein. We conclude therefore that the Legislature intended to protect not only its own residents, but also those who come into New York and take advantage of our position as an international clearing house and market place." *Intercontinental Plannincl, Ltd. v. Gystrom, Inc.*, 248 N.E.2d 576, 300 N.Y.S.2d 817 (1969). It then found that California had no interest in having its law, which does not apply to brokerage contracts, applied in this case, and dismissed the case. Brown appealed.

1. Argue the case for Brown.
2. Argue the case for Apex.

The court of appeals reversed and remanded for trial. The trial court gave a verdict for Brown. Apex negotiated an agreement by which it would pay the amount of the verdict in monthly installments for two years. The agreement provided that if Apex defaulted on any payment, the entire amount would become due with statutory interest from the date of judgment. A consent judgment was then entered.

Apex paid the first four installments, then defaulted. Brown sued on the judgment in New York, where Apex kept bank accounts. Apex appeared and contested enforcement of the judgment on the ground that the statutory interest would be a penalty, unenforceable in New York. Decide the case.

QUESTION 4

The following is from a proposed codification of the rules of conflict of laws for Louisiana.

CHAPTER I: GENERAL PROVISIONS

Article 2. General and residual Article. Except as otherwise provided in this Title, the law applicable to an issue in a case having contacts with other states is the law of the state whose policies would be most seriously impaired if its law were not applied.

That state is determined by evaluating the strength and pertinence of the relevant policies of all involved states in light of: the relationship of each state to the parties and the dispute; and the

policies and needs of the interstate and international systems, including the policies of upholding the Justified expectations of parties and minimizing the adverse consequences that might follow from subjecting the parties to the law of more than one state.

CHAPTER VII: LAW APPLICABLE TO CONTRACTUAL AND QUASI-CONTRACTUAL OBLIGATIONS

Article 29. Contractual and quasi-contractual obligations: The general rule. Except as otherwise provided in this chapter, contractual and quasi-contractual obligations are governed by the law of the state whose policies would be most seriously impaired if its law were not applied to the particular issue.

That state is determined by evaluating the strength and pertinence of the relevant policies of the involved states in the light of: the pertinent contacts of each state to the parties and the events giving rise to the dispute, including the place of conduct and injury, the domicile habitual residence, or place of business of the parties, and the place where the relationship, if any, between the parties was centered; and the policies mentioned in Article 2, as well as the policies of deterring wrongful conduct and repairing the consequences of injurious acts.

Article 30. Issues of conduct and safety. Issues pertaining to standards of conduct and safety are governed by the law of the state in which the conduct that caused the injury occurred. If the injury occurred in that state or in another state whose law did not provide for a higher standard of conduct.

In all other cases, these issues are governed by the law of the state in which the injury occurred, provided that the person whose conduct caused the injury should have foreseen its occurrence in that state.

The preceding paragraph does not apply to cases where the conduct that caused the injury occurred in this state and was caused by a person who was domiciled in, or had another significant connection with, this state. These cases are governed by the law of this state.

Article 31- - Issues of loss distribution and financial protection. Issues pertaining to loss distribution and financial protection are, as between a person injured by an offense or quasi-offense and the person who caused the injury, governed by the law of:

1. The state in which both of them were domiciled at the time of the injury;
2. The state in which at least one of them was domiciled at the time of the injury, if the injury and the conduct causing it occurred in that state; or
3. The state in which the injury occurred, if: (a) the injured person was domiciled in that state; (b) the person who caused the injury should have foreseen its occurrence in that state; and (c) the law of that state provided for a higher standard of financial protection for the injured person than

did the law of the state where the injurious conduct occurred.

For the purposes of this Article, persons who, at the time of the injury, were domiciled in states whose law on the particular issue is substantially identical shall be treated as if domiciled in the same state.

Article 34. Exceptional cases. If, from the totality of the circumstances of the particular case, it is manifest that, under the principles of Article 29, the policies of a state would be significantly more impaired than the policies of the state whose law is applicable under Articles 30-33, the law of the former state shall apply.

You are counsel for the legislative committee that is studying this proposal. They have asked you for a memo comparing the proposed code to current choice-of-law methods nationally and discussing the workability of the code. Write the memo.