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**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

**FINAL EXAMINATION
DECEMBER 2018**

**LAW 325
CONFLICTS**

**SECTION 1
PROFESSOR EDINGER**

TIME ALLOWED: 3 HOURS PLUS 10 MINUTES READING TIME

TOTAL MARKS: 100

Note: this is an open book examination. Students may bring in and use their notes and casebooks.

In any Conflicts problem, as in any case, there may be too little or too much information given. Do not assume, therefore, that every fact is relevant and do state, where necessary, what other information would be required and for what purpose.

40 1. In 2013, the Wangs met the Lins in Vancouver. They became friends. In 2015, the Lins wanted to purchase real property in West Vancouver but their money was in China, subject to foreign exchange controls and so not available in Canada. The Wangs agreed to loan the Lins \$1M. A loan agreement was drawn up and signed in West Vancouver. It was written in Chinese. Material terms and associated facts were as follows:

- Both the borrower and the lender were Chinese nationals and all listed addresses in Beijing. The Wangs had been in British Columbia since 2010 and were permanent residents. The Lins arrived in 2013 and were not proficient in English. The Lins resided only a part of each year in the province.
- The loan is described in the agreement as being “for personal reasons”. The Lins deny that the loan was for the purchase of real property. But the Lins did purchase a residence in West Vancouver after receiving the loan.
- The borrower’s bank is described as the HSBC on Marine Drive in West Vancouver and the loan was paid into the Lin’s account in that branch.
- The borrowers, the Lins, were required to make interest payments into a Wang bank account in a bank in Beijing and interest was calculated according to the Bank of China rate.
- The agreement stated that the loan was due on December 31, 2017. It was not paid on that date and has not been paid since.
- The Wangs did not take any security for the loan.
- Clause 7 of the loan agreement provided that “any dispute arising out of this agreement during the course of its performance shall be resolved through amicable negotiations between the parties. If negotiation fails, either party may bring a suit in the people’s court in the area where the lender resides in accordance with the law.”
- Clause 10 provided, “any matter not provided for in this agreement shall be carried out in accordance with applicable provisions under the contract law of the People’s Republic of China.

The Wangs brought an action against the Lins in British Columbia to recover the loan. The Lins argue that the British Columbia court has no jurisdiction and should stay the action.

- a. Draft a memorandum advising the judge on the jurisdiction issue and making recommendations about whether to grant a stay.
 - b. Would it make any difference to your answer in a. above if the real property purchased was located in Hong Kong?
 - c. What substantive law will be applied to the loan contract?
- 20** **2.** After knowing each other for only one month, John and Judy, both resident and domiciled in British Columbia, decided that it would be romantic to get married in Paris. They flew to France and were married in a religious ceremony in a small church in Paris two days later.

Within a year, John decided that the marriage to Judy had been a mistake. Among the facts that John now knows is that Judy had already been married and had obtained a divorce decree from her first husband only two weeks before she and John had met. He has also learned that both he and Judy were both conceived by artificial insemination and that, although they have different mothers, by a remarkable coincidence, they share a father.

John consults you. He plans to divorce Judy but asks you to check first to ensure that he is validly married to her. You do some preliminary research into French law and the law of British Columbia. Your research results are as follows:

- Articles 165 to 171 of the Civil Code require a civil ceremony in addition to any religious ceremony.
- Article 228 prohibits a woman from contracting a new marriage until 10 months have elapsed following the dissolution of the first marriage, either by death or divorce.
- Article 162 provides that in the collateral line, marriage is prohibited between brother and sister, legitimate or natural, and the kindred of the same degree.
- The French choice of law rule for validity of marriage is that it is governed by the *lex patriae* (the law of the nationality).

- In British Columbia, parties may be married using either a civil or a religious ceremony but brothers and sisters are prohibited from marrying each other. There is no waiting period required after the final divorce decree.

Explain to John whether and how French law might be relevant to the validity of his marriage to Judy in proceedings in British Columbia.

- 20** **3.** Antonio, an Italian national, resident and domiciled in England, and Luigi, resident and domiciled in Italy, signed a contract when Luigi was visiting London.

Antonio, commenced an action in England against Luigi, claiming that Luigi had breached the contract. Because he owned property in England which he thought might be seized, Luigi made a conditional appearance in the English proceedings objecting to the jurisdiction of the English court. But the English court decided to exercise jurisdiction and, from that point, Luigi withdrew from the English proceedings. The contract had a choice of law clause stating that it was governed by Italian law.

The English court gave judgment in the amount of \$1,000,000 (converted to Canadian dollars) and issued a world-wide freezing order (an injunction prohibiting Luigi from disposing of any property he might own, wherever located.)

Luigi has insufficient English assets to satisfy the English judgment but he owns valuable real property in downtown Vancouver which Antonio knows about. Antonio commences an action in British Columbia for recognition of the English judgment.

Luigi consults you. He insists that he never submitted to the jurisdiction of the English courts because, according to Italian law, a defendant is permitted to withdraw from the action if he loses on jurisdiction. He tells you that Antonio lied to the English court and so had misled it. He also asserts that he had a good legal defence but that, although the English court had applied Italian law, it failed to apply the Italian law correctly.

Advise Luigi as to whether a British Columbia court will recognize both the freezing order and the damage award issued by the English court.

- 20** **4.** In May 2014, a Cessna airplane crashed in the Yukon while attempting to make an emergency landing. The engine failure was apparently due to problems with the crankshaft.

The injured passengers were British Columbia and Yukon residents. They commenced an action in British Columbia against a number of defendants:

- the operator of the airplane, Great River, a Yukon incorporated air service;
- the manufacturer of the engine, Continental (CMI), incorporated in Delaware, with its principal place of business in Alabama and with no presence in British Columbia; and
- Okanagan Aero Engine (OAE) incorporated in British Columbia, which had overhauled the engine before it was purchased by Great River for use in the Cessna.

The parties agree that the engine was manufactured in Alabama, was sold to a Florida purchaser and, after being overhauled by OAE, finally was installed in the Great River Cessna.

The plaintiffs dropped their action against the manufacturer, CMI, but OAE issued a third party notice against it. OAE regularly performed work on engines manufactured by CMI and, for that purpose, purchased an annual subscription to materials published by CMI concerning engine maintenance. OAE was designated and approved by CMI to carry out repairs and maintenance to engines manufactured by CMI.

- A.** The first problem for the court is whether it has jurisdiction in the third party action brought by OAE against CMI.

OAE claims that CMI is liable in tort. CMI argues that any tort liability (which it denies completely and absolutely) occurred in Alabama where the engine was manufactured. CMI asserts that the only connection with the province is the overhaul of the engine by OAE and that that is a trivial connection.

OAE argues that CMI failed to warn it about problems with the engine and argues that it relied on the materials published by CMI to which it subscribes.

What can OAE argue to persuade the British Columbia court that it has jurisdiction?

- B.** The second problem for the court will be to determine the applicable law.

What law will the British Columbia court apply to the merits of the main tort action?

What law will the British Columbia court apply to the third party claim brought by OAE against CMI?

END OF EXAMINATION