

THE UNIVERSITY OF BRITISH COLUMBIA  
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2020

LAW 325.001  
Conflict of Laws

Professor Edinger

**EXAM PASSWORD: 7pJHab**  
RESUME CODE: ABB1E9

**TOTAL MARKS: 100**

(8:50 AM PST) **PREPARATION TIME ALLOWED:** 10 minutes

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED:** 3 hours 10 minutes

**8:50-9:00 AM Preparation Time (Exam writing not permitted)** – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

**9:00 AM Exam Writing Time** – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

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This is an open book examination, meaning that you can refer to your 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.

**If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question. Do not email your professor or anyone else about this while the exam is in progress.**

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### ACADEMIC INTEGRITY

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

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- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

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You must also upload to Canvas your hand-written exam answers into the "Exam Answer File Upload (Word Processor or Hand-written ONLY)" folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

Your answer file should be named, and the coversheet of your answers should be titled with:  
Your Exam Code, Course Number, Name of Course, and Instructor Name  
i.e., **XXXX LAW 325.001 Conflict of Laws – Edinger**

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**MARKS**

1. ABC Sound Ltd. (ABC) is a B.C. company which manufactures high end theatre sound systems. In January 2019, ABC entered into a contract with GK Theatres Inc. (GK), a Thai company, to sell a large quantity of sound equipment to GK. The shipment was delivered in June 2019 but payment was not forthcoming from GK. ABC made numerous demands for payment without success. GK finally responded and informed ABC that, as a result of the economic crisis, the Thai government had just enacted a statute imposing exchange controls which prohibit Thai residents, including GK, from remitting any money abroad and from making any payment in foreign currency.

ABC then demanded return of the goods and was informed that GK no longer had possession, having sold the sound systems at a great profit in September 2019. ABC informed GK that it was about to commence an action in B.C. GK immediately commenced an action in Thailand seeking a declaration that the contract was void.

ABC then commenced an action in B.C. claiming the cost of the goods under the contract or, in the alternative, damages in tort for conversion. GK, served with the B.C. notice of civil claim, gave notice of objection to jurisdiction pursuant to the B.C. Rules of the Supreme Court.

ABC's lawyer, realizing at this point that she knows nothing about Conflicts law, seeks your opinion as to ABC's options. She informs you that the 'GK' of GK Theatres was once a law professor in Canada at Allard Hall, UBC, and that the contract includes a "Governing Law" clause because he insisted on it. The clause is set out below.

This agreement shall be governed by and construed in accordance with the laws of Thailand. Buyer and seller hereby irrevocably submit for all purposes of or in connection with this agreement and each transaction to the jurisdiction of the courts of Bangkok, Thailand.

She tells you also that she has done some preliminary research on Thai law. The Thai limitation period for contract actions is 6 years. The Thai limitation period for tort actions is 1 year; the B.C. limitation period for contract or tort actions is 2 years. Prejudgment interest is not available under Thai law but is automatic under B.C. statute law. Thai law apparently does not have a tort of conversion although there is something vaguely equivalent. GK Theatres carries on business only in Thailand but GK himself has become wealthy since abandoning the teaching of law and has assets in many other jurisdictions, including B.C. Finally, she tells you that she fears that the Thai courts are not as independent and impartial as Canadian courts and points to the recent civil unrest in Bangkok as another reason for litigating in B.C.

Draft a memorandum advising ABC's lawyer:

- 20 (i) whether B.C. has territorial jurisdiction and whether the B.C. court is likely to find B.C. has territorial competence;
- 15 (ii) whether ABC can prevent GK from continuing the action in Thailand;
- 15 (iii) whether B.C. will recognize either a Thai anti-suit injunction or a Thai declaration that the contract is void if the Thai action is continued and is decided first;

2. A class action has been commenced in British Columbia Supreme Court against two corporate defendants, Copper Inc. (Copper), a mining company incorporated in British Columbia, and Rio Blanco, its Peruvian subsidiary. The claim is for compensatory, exemplary and punitive damages amounting to \$50 million for conspiracy to injure the plaintiffs, for assault and for failure to prevent assault. The claim asserts, in the alternative, that Copper is vicariously liable for Rio Blanco's actions.

The claim arose in Peru. In the summer of 2017, a group of approximately 300 rural farmers in the mountains of northern Peru marched in protest to the site of a proposed mining development occupied by Rio Blanco. They were concerned about the harmful effect of the mining development on the environment. The protesters were unarmed (except, possibly, with sticks and stones). The protesters allege they were shot at and that thirty of them were handcuffed and taken into the mining site by local police. They were detained for three days. During those three days, the women claim to have been raped and the men to have been tortured both by the police and by employees of Rio Blanco. One man did die from a gunshot wound. The Peruvians who engaged in the protest are penniless and barely literate but a member of the Faculty of Law at the Allard Hall, University of British Columbia, heard about the incident and persuaded a local class action law firm to act for them on a *pro bono* basis. The lead representative plaintiff is called Guerrero and so the action is called *Guerrero*.

Unsurprisingly, Copper is disputing the jurisdiction of the British Columbia court on *forum non conveniens* grounds.

The law firm acting for the plaintiffs seeks your assistance on the conflicts issues. It provides you with the following information, acknowledging that you may require other information. It assumes that you are familiar with British Columbia law.

Peruvian law does not award either exemplary or punitive damages. It does award compensatory damages for loss of income, special damages and damages for pain and suffering and it has no cap on the amount it can award. Peruvian law awards post judgment interest but not prejudgment interest. The limitation period for claims in obligations (tort) is three years. Vicarious liability is not a term known to Peruvian law but it has a not dissimilar mechanism. The courts in Peru are not well known for their independence and impartiality but there is no evidence that they are corrupt.

Title to the mine is registered in Peru in the name of Rio Blanco but Rio Blanco is said not to have an independent operating mind; it is said to be completely controlled by Copper. The founder and CEO of Copper, Edward Eager, was, in fact, in Peru throughout the relevant period. The defendants were aware of local community opposition to the proposed development and were warned of the demonstration. Employees at the site were evacuated in anticipation of the demonstration and the local police were called in. The local police are known throughout Peru for their brutality and corruption.

10 (i) Advise the law firm acting for the plaintiffs of the arguments which it can make to persuade the British Columbia court to retain jurisdiction on *forum non conveniens* grounds in *Guerrero*.

15 (ii) What law should the court apply?

25 3. Wod Chemicals Inc. is in the pesticide business. It carries on its business of manufacturing and distributing pesticides nationally and internationally. Wod carries on business in British Columbia but was incorporated in Delaware

Claims have been made in various countries that exposure to Wod's pesticides causes sterility as well as kidney, liver and spleen damage. An action against Wod was commenced in British Columbia five years ago but Wod persuaded the court that its 'home' jurisdiction, Delaware, was a clearly more appropriate forum and the British Columbia action was stayed.

Two years later, Nicaragua enacted *Special Law 364 (SL 364)* specifically to deal with such pesticide damage claims by Nicaraguan plaintiffs. *SL 364* presumes irrebuttably that exposure to pesticides caused the damage alleged, provides for a minimum compensation award of \$125,000 to each plaintiff, and provides for payment of all plaintiffs' costs by Nicaragua. In order to defend, defendants are required to post security both for court costs and for the full amount of the damages claimed. The form of action employed for pesticide claims by *SL 364* is referred to as a 3-8-3 summary proceeding: 3 days to enter a defence; 8 days for the parties to present evidence; and 3 days for the court to issue a decision. *SL 364* is expressly

made retroactive. No stay of execution of an *SL 364* judgment is permissible, even if the defendant appeals.

An action was brought against Wod in Nicaragua under *SL 364*. Wod chose not to post security and so could not appear and defend. Judgment was issued in the amount of \$97.4 million. An action for recognition and enforcement of the Nicaraguan decision has now been commenced in British Columbia.

Wod retains you. In addition to providing you with the above information about *SL 364*, Wod informs you that it has appealed the damages judgment to the Nicaraguan court on grounds that *SL 364* breaches the Nicaraguan constitution. Wod asserts further that it has evidence that many of the Nicaraguan plaintiffs did not actually work at the places where the Wod pesticide is used and where they claimed to have been exposed and that some of those complaining about sterility had many children and, in fact, some had recently become fathers.

Draft a memorandum setting out how, if at all, Wod may resist recognition and enforcement of the Nicaraguan judgment.

**END OF EXAMINATION**