CONFLICTS SYLLABUS Fall 2014 (Andrews)

COURSE OBJECTIVES, POLICIES AND PROCEDURES:

Course Description and Objectives: This course studies legal issues arising from disputes and transactions that have multi-jurisdictional components. By the end of the semester, you will know 1) in relative detail the theory and practical application of personal jurisdiction law, 2) the general theories and application of choice of law rules in federal court (the *Erie-Hanna* doctrine), 3) the fundamental policies and evolution of state-to-state choice of law doctrines, 4) the basic application of five different state-to-state choice of law approaches, 5) constitutional limitations on state-to-state choice of law, and 6) an introduction to the constitutional requirements for enforcement of another jurisdiction's judgment.

Texts: Casebook ("**CB**") (Conflicts of Laws: Currie, Kay & Kramer) (West, **9th Ed. 2013**), and Andrews Handout Book ("**HB**") materials

The Handout Book is new and in an enhanced format. I added introductory text (similar to my introductory class lectures) and some worksheets and problem sets. I urge you to read the introductory materials both before and after your reading and our classroom study of a topic.

Course Meeting Times and Location: Tu, Th, Fr, 9:45-10:35 (Room 175).

Attendance Policy: You must attend and sign the roster every day. If you miss more than **nine** clases you will be withdrawn from the course. Whether the withdrawal is a "pass" or a "fail" is a decision of the Dean's office.

Problem Sets: I will offer students the opportunity to write one practice essay answer to a question on choice of law. I will read and comment on the essays, but they will not directly impact the grade. I include other problem sets in the handout materials, and we will discuss these in class.

Final Examination and Grading: Your grade will be based on your performance on the final exam, which will be an in-class 3-hour exam, at the place and time scheduled by the Records Office. The exam will include both essay and multiple-choice questions.

Office Hours, Email and Conferences: My official office hours are immediately after our class and before my other class, which I teach at 2 pm on the same days. I will be in the office many other times, and I welcome your visits at any time that I am here I also am happy to go to lunch with you, in the building or to a near-by restaurant. You can email questions, and I will create a distribution list for regular email communications to the class, from me.

Seating and Special Accommodations: If you need accommodations for visual or other disability, please let me or Dean Arrington know.

Classroom Behavior -- Dress, Computer Use, Cell Phones and Recordings In Class. I ask that you show courtesy to me and your classmates. Put away and turn off your cell phones. Do not use your computers or other electronic devices in a disruptive manner. Please talk to me first, if you want to record the class for any reason. Behave in a professional manner – so, do not wear hats – and observe law school rules for classroom decorum and eating/drinking.

COURSE OUTLINE AND READING ASSIGNMENTS

I. CHOICE OF LAW -- Choosing Between the Laws of the States

Andrews text, Chapter 1, Parts I and II (HB, 5-8)

A. Traditional Choice of Law Doctrine and Rules

1. Traditional Choice of Law Standards

   a. CB Introduction (CB, 3-7)
   Andrews text, Chapter 1, Part III (HB, 8-14).

   b. Torts – *Alabama Great Southern* & Notes (CB, 7-19)
   Review: 1st Restatement Excerpts Re Torts (HB, 15-27)

   c. Contracts – *Milliken* and Notes (CB, 20-28)
   Contract Hypo, (HB, 28)

   d. Property – *Barrie's Estate, White* & Notes (CB, 28-40)

   e. Procedure
   Grant, Bournias and notes (CB, 53-64)
   Etheridge (HB, 31)

   f. Other standards (CB, 40-43)

2. Implementation Issues

   a. Characterization – *Levy, Haumschild* & Notes (CB, 43-53)

   b. "Renvoi" -- *Haumschild* (last ¶ at CB, 47); Notes 1, 2, 4, 6, and 7 (CB, 70-75)

   c. Proof of foreign laws – Notes 1- 3 (CB, 94-96)

3. Exceptions

   a. Public policy -- *Loucks* (CB, 76-79) and Notes 1, 4, 5-7 (CB, 83-86)

   b. Penal law -- Notes 1 through 6 (CB, 86-89)

   c. Statutory solutions – Notes 1, 3 and 5 (CB, 99-105)

   d. Party autonomy -- choice of law clauses
   Siegelman & Notes 5, 10 & 11(CB, 108+); Note 2 re UCC (CB, 100)

4. Work on "Tammy Contract" Hypo for traditional only (California) (HB, 29)

B. Modern Approaches

Andrews text, Chapter 2, Part I (HB, 35).

1. Currie Interest Analysis

   a. Introduction
      Andrews, Chap 2, Part II (HB, 35-41)
      Currie article and Notes (CB,135-50) [*review Milliken* (CB, 20)]
      Notes 2 & 4 (CB, 164, 168); Note 1 (CB, 171); Note 2 (CB, 181)
      Andrews worksheet exercises (HB, 42-43)

   b. Application
      Erwin, *Lilienthal* & notes (CB, 169-84)

2. Most Significant Relationship and the Second Restatement

   a. Introduction: Overview (CB, 223-28); Notes 3 & 4 (CB, 246-49)
      2d Restatement Section 6 and Comments (HB, 47-52)
      Andrews text, Chapter 2, Part III (HB, 44-46).
      Review: All 2d Restatement Excerpts (HB, 47-61)

   b. Contracts:
      Wood (CB, 242)
      Notes 3, 4, 6-9 (CB, 112-18)
      Note 1 (CB, 245)
      2d Restatement, Contracts Excerpts (HB, 59-61)
      2d Restatement, §6 Principles (HB, 47-52)

   c. Torts:
      Casey (discussed in *Erwin*) (CB, 181)
      Phillips (CB, 228)
      Notes 1 and 3 (CB, 245-47)
      Townsend (HB, 62)
      2d Restatement, §169 (HB, 58)
      Second Restatement, §6 Principles (HB, 47-52)

   d. Procedure:
      2d Restatement, Procedure Excerpts (HB, 54-58)
      CB Note 3 (CB, 60)
      Compare borrowing statute, Note 4 (CB, 102)

3. The New York approach

   a. Introduction: Note 2 re *Auten* and *Haag* (CB, 245-46)
      Tooker (CB, 150-57)
      Note 1(CB, 164)
      Andrews, Chap 2, Part IV (HB, 76-78)

NY Approach Application:
Schultz (CB, 158)
Note 3 (CB, 166-68)
Edwards and Notes (CB, 207-19)

4. Leflar "Better Law" Approach
Leflar article, *Milkovich* and *Jepson,* Notes (CB, 249-66)
Andrews text, Chapter 2, Part V (HB, 79).

5. Choosing an approach
Paul and Notes (CB, 282-89)
Fitts (HB, 80)
Note 4 (CB, 222); Notes 4 & 5 (CB, 248-49)
Andrews text, Chapter 2, Part VI (HB, 79)

Finish Tammy Contract problem – Illinois and Tennessee

C. Federal Constitutional Limitations on Choice of State Law

Andrews text, Chapter 3, Parts I and II (HB, 85-86).

1. Due Process -- US Const, Amend 14 (CB, 1036)
Dick & notes (343-50)

2. Full Faith and Credit -- US Con, Art. IV (CB,1035)
[Review *Clapper* (CB, 350]

3. The Modern View – Convergence of Due Process and FFC
Hague, Shutts and notes (CB, 364-84)
Wortman (HB, 88)
Andrews text, Chapter 3, Part III (HB, 87)

II. CHOICE OF LAW -- Choosing Between Federal and State law (the *Erie* doctrine)

Andrews text, Chapter 4, Parts I and II (HB, 105-07)

A. The Rules of Decision Act and the *Erie* Case
RDA, 28 U.S.C. §1652 (CB,1037)
Erie and Notes (CB, 804-14)

B. Early Variants on *Erie*

1. Outcome Determinative Test
Guaranty Trust v. York & notes (CB, 815-19)
2. Balancing of Interests
Byrd and notes (CB, 819-23)

C. The Modern View

Rules Enabling Act, 28 USC § 2072 (CB, 1044)
Hanna & Notes (CB, 823-30)
Sibbach (HB, 113)

D. Application of the Modern Approach to Federal Statutes

Stewart (HB, 117); Note 4 (CB, 837-38)

E. Application of the Modern Approach to Federal Rules

Sibbach (HB, 113)
Walker & Notes 1,2 (CB, 831-36)
Burlington No. (HB, 127); Note 3 (CB, 836-37)

F. The Latest from the Supreme Court on Choice of Law in Federal Court

Semtek and notes (CB, 850-56); *Shady Grove* (CB, 856-64)

G. Federal choice of state law

Klaxon and Notes (CB, 865-70)**;** *Phillips* (CB, 228)

III. PERSONAL JURISDICTION

A. Historical Bases of Personal Jurisdiction

Due Process Clauses, US Const., Am 5 & 14 (CB, 1036)
Introduction and Notes 1 - 3 re *Pennoyer* (CB, 411-15)
Andrews text, Chapter 5, Parts I and II (HB, 131-34)

B. Emergence and Early Application of Minimum Contacts Test

International Shoe, McGee, Hanson and Notes 4, 6 & 7 (CB, 415-19)
Kulko, Note 3 (CB, 442)

C. Specific Personal Jurisdiction

Andrews text, Chapter 5, Part III (HB, 134-35)

1. The two-part test for Specific PJ

Worldwide VW (CB, 421-29)
Asahi (HB, 136) (focus on 2-part structure and Part II)
Note 9 (CB, 420); Notes 1, 2 4, 5 (CB, 441-44)

2. Specific PJ – The Problem of the Stream of Commerce product fact pattern

Asahi (HB, 136) (focus on Part I)
McIntyre (CB, 429)
Notes 7, 8, 9 (CB, 445+)

3. Specific PJ – Contract cases

Burger King and Notes 1 through 4 (CB, 451-61)

4. Specific PJ – Defamation cases and other intentional torts
Keeton (HB, 143)
Note 6 (CB, 18);
Calder (HB, 150)
Note 5 (CB, 461)
Walden, (HB, 153)

D. General Personal Jurisdiction

Andrews text, Chapter 5, Part IV (HB, 159-62)

1. Extent of Contacts
Goodyear and Notes (CB, 462-72)
2. Relatedness
O'Connor (HB, 163); Note 6 (CB, 472-73)

E. Current Status of Historical Bases of Personal Jurisdiction

Andrews text, Chapter 5, Part V (HB, 173)

In rem -- *Shaffer* and Notes (CB, 473-94)
Transient -- *Burnham* and Notes (CB, 494-505)
Consent and waiver –
Bauxite - Note 6 (CB, 444-45)*;*
Bremen, *Carnival Cruise* - Note 4(CB, 461); Note 11 (CB 120);

F. PJ in Federal Court and Long-arm Statutes
FRCP 4(k) [use FRCP rulebook or find on-line]
Note 5 (CB 416); Note 8 (CB, 419-20); Note 10 (CB 447)

IV. INTRODUCTION TO RECOGNITION OF JUDGMENTS

Andrews text, Chapter 6, Parts I-III (HB, 174-77)

A. Introduction to preclusion, finality and enforcement of judgments
Overview (CB, 519-23);
U.S. Const., Art. IV, § 1 (CB, 1035);
28 USC §1738; 28 USC 1738C (CB, 1042); 28 USC § 1963 (CB, 1037+)
Semtek (CB, 850)

B. The general rule - *Fauntleroy* (CB, 523); Notes 1, 2 and 8 (CB, 532-40);

C. Limitations– Jurisdiction, modifiable decrees, procedure: Note 1 & 3(a)(CB, 588)

D. State judgments in federal courts - *Semtek* (CB, 850); 28 USC § 1738 (CB, 1037)

V. COURSE INTEGRATION AND REVIEW -- Andrews text, Chapter 7 (HB, 178)