

**LAW 454:A1 CONFLICT OF LAWS (A. Acorn)**

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*Time Allotted:* Two (2) Hours.

*Code Number:* Do not enter your name on any answer sheet or booklet. A list shall be circulated and your name is to be entered opposite a number on that sheet. That number shall be your code number for this examination only and should be entered on all examination booklets. Following these procedures will ensure anonymity during marking.

For students using a laptop computer for this exam, an anonymous number will be automatically generated through Examsoft. Ensure your examination answers are uploaded with the IT person before leaving the examination room.

- Instructions:*
1. This examination consists of 4 pages, including the cover page. Check to ensure that it is complete before starting.
  2. Answer all fifteen (15) questions. Note that not all questions are of equal value. In your responses, refer to all pertinent cases and statutes.
  3. This is an open book examination. The examination is graded out of 100 marks and is worth 100% of your final grade.
  4. Cell phones, pagers, beepers and related equipment are strictly forbidden. These items must be turned off and stowed. Unless you are writing your exam on a laptop, laptop computers are not allowed in the examination.
  5. Adhere to the time limitation imposed on this examination strictly. Failure to do so may lead to a reduction of grade or refusal to accept the examination paper. To avoid disrupting students finishing the examination, no person shall leave the examination room during the last 15 minutes.
  6. For those of you who are writing your examination by laptop:

Please enter your answers to each question in the appropriately numbered window provided in your ExamSoft document. For sub-parts of questions, note on your answers which sub-part, (a) or (b), that you are answering. As well, separate each of the sub-parts with a couple of blank lines. Disregard any windows that are provided in excess of the number required to complete your examination. You are required to close your examination file when time is called by the invigilator. In any event, at the end of the time allocated for this exam, the computer system will automatically shut down. Upon reboot proceed through the exam up-load process. You **MUST** check with the IT person to ensure that your examination file has properly uploaded before leaving. (Note: Uploads are automatically recorded online by the ExamSoft system. The IT staff can determine whether your upload has succeeded by performing an online check.

**Value**  
**(10 marks)**

**Question**  
**1.**

Imagine that you are counsel for the defendant in *Wong v. Lee*. Your client wants to appeal the decision of the Ontario Court of Appeal. What grounds of appeal would you have? What would you advise your client as to the chances of success?

**Value**  
**(10 marks)**

**Question**  
**2.**

“There is nothing to conflict of laws any more. Everything boils down to ‘real and substantial connection.’ That’s all you need to know.” Discuss.

**Value**  
**(10 marks)**

**Question**  
**3.**

The Alberta Legislature and the Supreme Court of Canada have been engaged in a protracted battle over the issue of the characterization of limitation periods as procedural rules or substantive law. Describe the events that took place in the struggle between the two institutions over that issue. Explain how, in your view, Alberta lost the battle.

**Value**  
**(10 marks)**

**Question**  
**4.**

“The conflict of laws rules relating to essential validity of marriage are relics of the past. The area of law may have been of vital concern back in the Victorian era when men couldn’t marry their deceased wife’s sisters or when people actually wanted to marry their first cousins. But today this area of law has no practical application. The only rules parties need concern themselves with are the rules relating to formal validity of marriage which is governed by the *lex loci celebrationis*.” Discuss.

**Value**  
**(10 marks)**

**Question**  
**5.**

“The rule that succession to immovable property is governed by the *lex situs* causes no end of injustice in the realm of intestate succession. The rationale behind the rule is outmoded and is bound up with the ancient English landholding system of primogeniture. The rule should be abolished and replaced with a rule that succession to all property movable and immovable is governed by the deceased’s ordinary residence at the time of death.” Discuss.

**SHORT ANSWERS:**

**Value**            **Question**  
**(5 marks)**        **6.**

Is it possible for the Alberta courts to take jurisdiction in a matter even when there is no real and substantial connection between the parties, the litigation and Alberta? If it's possible explain how. If it's not possible please clarify as to why it is not possible.

**Value**            **Question**  
**(5 marks)**        **7.**

John and Ann were married in Alberta in 1965. Both parties were domiciled in Alberta at the time of the marriage. The marriage was a rocky one and in 1966 Anne left John. She went to Sweden where she had been offered the job of her dreams as a Professor of Anatomy in the Faculty of Medicine at the University of Uppsala. Anne was of Swedish descent and had always wanted to live in Sweden. On July 1, 1966 she boarded a plane to Stockholm and arrived there with the intention of staying in Sweden for the rest of her life and never returning to Alberta. On September 1, 1966 Anne petitioned for divorce in the Swedish courts. The court took jurisdiction on the basis of Anne's residence in Sweden for the previous 2 months. Will the Alberta Courts recognize this divorce today?

**Value**            **Question**  
**(5 marks)**        **8.**

What kind of supporting documents do you need to get an order for *service ex juris* under rule 30 of the *Alberta Rules of Court*?

**Value**            **Question**  
**(5 marks)**        **9.**

In what way are the legal principles governing the enforcement of foreign judgments similar to the legal principles governing recognition of foreign divorces?

**Value**            **Question**  
**(5 marks)**        **10.**

What law governs the manner and formalities of the making of a will of movable property?

**Value  
(5 marks)**

**Question  
11.**

Is it possible for parties to a commercial contract for the sale of goods to accidentally end up having their contract governed by the *U.N. Convention on Contracts for the International Sale of Goods*? If it is possible, how does it happen? How can parties make sure to avoid the application of the *Convention* if they don't want it to govern?

**Value  
(5 marks)**

**Question  
12.**

How would you characterize the requirement in the *Statute of Frauds* that a contract of employment not to be performed within one year must be in writing? Should it be procedural or substantive?

**Value  
(5 marks)**

**Question  
13.**

Under what circumstances will a court refuse to take jurisdiction even though they are able to do so as a matter of law? Give examples of cases where the courts have exercised their discretion to refuse to hear a case even when they had a firm legal basis on which to proceed.

**Value  
(5 marks)**

**Question  
14.**

What is the difference between ordinary residence and domicile?

**Value  
(5 marks)**

**Question  
15.**

How have the courts interpreted the notion of a wrongful removal of a child under the *Hague Convention on the Civil Aspects of International Child Abduction*? Do you think the Supreme Court of Canada was right to find the removal wrongful in *Thompson v. Thompson*?

**END OF EXAMINATION**

**100 Marks**