

Conflict of Laws  
Law 186-001 (19652)

Prof. Claeys  
Spring 2025

Syllabus  
Current as of January 16, 2025

Meeting Times: Monday, Wednesday, 6:05-7:30 p.m.

Final exam: Monday, May 5, 2025, 6 p.m.

*Office hours and contact information*

My phone number is (703) 993-8247. My email address is [eclaeys@gmu.edu](mailto:eclaeys@gmu.edu). The course also has a TWEN site, and I am reachable on the discussion board of that site. Please register for the TWEN site; it is my primary medium for group communications with students.

This semester, I will hold office hours Tuesdays, 4-5 p.m. These are “drop-in” hours, meaning that I do not have any other appointments during them. You are free to come in to my office without appointment. However, I am happy to schedule appointments if you have a conflict during office hours or if you prefer for other reasons.

When I hold Tuesday office hours, I will be in my office, and I will also have open my Zoom personal room. You are free to consult me in person or virtually. (The link for my Zoom personal room can be found on the TWEN site. Go to the TWEN calendar. I’ve made a calendar note for every office hour. Each note contains a link to my Zoom personal room.)

*Course coverage*

We live in an interconnected world. When I say “interconnected,” I mean that people move and do business among many different countries or U.S. states. Assume that people or associations of people (esp. in companies) get into a dispute. And, that the people (or associations) come from different states (or foreign countries), or that some of the events producing the dispute take place in states (or foreign countries) different from the parties’ states (or countries) of residence.

In such disputes, lawyers and judges need to address several legal issues before they get to the “primary” law (in property, tort, contract, family law, agency law, &c) that will settle their dispute. Here are three main issues: (1) When a party asks a court in one state (or foreign country) for legal relief for the dispute, can that court establish jurisdiction over the parties against whom the complaining party is praying for relief? (2) Assume that a court in one jurisdiction handed down a judgment relevant to the dispute, and that the complaining party wants that judgment enforced in a different state or foreign country. In what circumstances may

or must a court in the second jurisdiction give effect to the judgment of a court in the first? (3) Assume that the court in which the lawsuit is brought has jurisdiction. The court must make decisions about choice of law: Which jurisdiction's "primary" substantive law supplies the rule of decision on any issue in the litigation?

Since this class has only 3 course-hours, we can't study all three of those topics exhaustively. We'll spend about 70% of our class sessions on (3) choice of law issues. We'll focus primarily on choice of law issues that arise between different states. We'll spend 2-3 classes on choice of law issues that arise between state courts and federal courts. (We'll discuss international choice of law in passing but not in depth.) The other 30% of our time will be spent studying (1) jurisdiction or (2) the recognition in one jurisdiction of judgments handed down in courts of a different jurisdiction.

### *Learning outcomes*

When this course is over, I hope that you understand the traditional and modern approaches to choice of law. I hope that you understand the basic tests for establishing jurisdiction over foreign parties. I hope also that you understand the basic tests and issues involved in doctrine about recognizing and giving effect to judgments from foreign courts.

### *Cancellations, online classes, and make-up classes*

At this time, I do not anticipate canceling any classes. If I need to cancel class suddenly due to illness or some emergency, I will have my secretary post notices in the atrium and on the door of our classroom, and I will send an email to the class via the course TWEN page's email system.

At this time, I know I need to convert one of our classes from an in-person class to an online class—Wednesday, February 5, 2025. I'll post to the TWEN site a Zoom link for that class. (Since the class is taking place at the regularly-scheduled time, it will be a mandatory-attendance class as all in-person classes are.)

### *Class reading*

Reading will average 25 pages of casebook reading per 85-minute class session. For a couple of classes, there will be up to 40 pages of reading, but only a couple.

### *Class attendance*

Regulation 4.1 in the law school's Academic Regulations requires that students attend classes regularly. The same regulation specifically states: "If a student is absent for any reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course." For a 26-class-session course like Conflict of Laws, AR 4.1 requires that students not be absent for more than 5 classes. I do not enforce this requirement when I need to reschedule class due to illness or non-GMU commitments. Otherwise, however, I do follow this regulation, and I

administer it by distributing and asking you to sign an attendance sheet during class. (When I need to teach online, as on February 5, I save a list of students who logged in for the class.)

AR 4.1 applies to absences “for any reason.” In other words, it is your responsibility to keep track of your absences. It is also your responsibility to anticipate possible absences. You may decide you need to be absent to explore professional opportunities, to observe holidays in your religion, or to take care of personal matters. It is your responsibility to limit the number of class days for which you’re absent for such reasons, and also to factor in the possibility that you may be absent from class unexpectedly for illnesses or personal emergencies.

I do not need to be notified in advance if you’re going to be absent. Ordinarily, over the course of the semester, I communicate with you about the number of classes for which you’ve been absent. In such correspondence, I am not interested in knowing the grounds for absences; my intention is to administer AR 4.1, and that being so my intention is simply to get on the same page with a student about the number of class-hours attended and missed.

I reserve authority to take measures reasonably appropriate to ensure compliance with the law school’s attendance requirements. If a student misses more classes than allowed by AR 4.1-1, the student is not eligible to sit for this course’s examination. In extraordinary circumstances, I reserve discretion to have a student ineligible for the exam under AR 4.1-1 perform substitute work equivalent to class attendance ... as long as the student does not miss more than eight (8) 110-minute class sessions total. Students who believe they are eligible for this exception should petition me in writing and explain why (AR 4.1-2) they “have merit” in their request to substitute work for class lectures missed over the 5-class limit.

If a student misses more classes than allowed by AR 4.1-1, and does not receive the benefit of an exemption consistent with AR 4.1-2, I notify the law school’s administration and the student is not eligible to sit for this course’s final examination.

### *Class preparation and participation*

I expect you to be prepared for class. For any case excerpted at any length longer than a page, I expect you to understand the facts, the lawsuit, the theories of the case adopted in the majority and any separate opinions.

When the casebook presents a “squib” case—that is, a case consolidated into a paragraph or so, I expect you to know the facts, the holding, the rationale, and the contribution to the general line of doctrine covered in class. When the casebook refers to statutes, I expect you to read them closely enough to answer questions about them.

I call on students during class, to answer questions about cases and doctrines under discussion. For cases, I often make students role-play, so one student advocates for the plaintiff in a case and another for the defendant. I expect students to take turns answering questions, so all students answer questions about as often as other students. To that effect, on the first day of class I’ll

circulate a sign-up sheet. I'll ask students to sign up to be "on call" for approximately a half-dozen classes, spaced evenly throughout the semester.

I reserve the authority to take actions reasonably appropriate to ensure compliance with the participation policies discussed in this section. In particular, if students refuse to be on call at all, or if they are unprepared when they are scheduled to be on call, such refusals may justify lowering final grades below the grade earned on the final examination. (The typical grade-drop is 1/3 of a letter-grade.) The same goes for asking off the class call list too often.

### *Classroom decorum*

During class, I expect you to be generally respectful to me and your classmates. Imagine the standards of comportment you would use if you were a lawyer, sitting in front of a judge, watching as the judge engages another lawyer in the proceeding. Please treat me and any of your colleagues with whom I am conversing with the same professional courtesy.

This respect and courtesy also extend to dress. (I'm sorry I need to raise the subject, but it became an issue teaching remote students during the pandemic.) Please dress in a manner appropriate for a classroom setting. If it helps, please avoid attending class (in person or virtually) in sleep wear, gym wear, or beach wear; please try to dress as you would if going to a nice mall or to a public meeting. I reserve the authority to ask students to leave class if they are dressed inappropriately (with appropriate repercussions following for class attendance).

### *Virtual classroom management and logistics*

Herewith some policies for online or virtual learning. On February 5, and on any other days when we need to go to a virtual class teaching session:

- If I need to teach hybrid, I'll teach synchronously in person and on Zoom. I'll set up the meeting links on Zoom, and I'll send those to everyone in advance of class.
- *Everyone* will be expected to sign in and join class on Zoom. This requirement applies to students attending in person and also students attending virtually.
- On your videoconference platform account, please make sure that your first name, last name, and school profile picture are all uploaded.
- *If you are attending in person*, please keep your computer microphone muted at all times. Keep your microphone muted even when you speak; we'll rely on ceiling microphones to carry your comments on Zoom. You may have your video feed OFF when you are not speaking in class. However, whenever you speak in class, please turn your video feed back ON.

- *If you are attending on line*, when class is in session, you are expected to have your computer camera ON and your microphone OFF. (Of course, please do turn your microphone on when you participate in class discussion.)
- If you're attending in person and have something to say, please put your hand up.
- If you're attending on line and have something to say, please send me a message via Zoom's chat function. I prefer that you send a short message that you have a question, and that you ask the question orally. (If you don't, I'll read your question back to the class anyway before answering it.)
- You are encouraged (though not mandated) to use a microphone or earphone/mike headset during class.
- To a large extent, we'll need to play things by ear if we need to go to remote learning for the whole class. That said, it is very likely that, for reading assignments that DON'T already have problems assigned, I'll construct problems in advance of class and we'll discuss those in addition to the materials assigned in the reading schedule below.

### *Recording classes*

I reserve all property rights in my class lectures, presentations, and discussions. As a general rule, I prefer that classes not be recorded, and if I need to make recordings I prefer not to pass them on. I like to encourage free and frank discussions of class materials, and in my experience wide distribution of class recordings tends to chill discussions. However, I will grant permission to record (or, pass on recordings) in specific cases when a student can demonstrate a special need. If you think you have such a need, please inquire.

*How* you should inquire depends on the nature of the need. If your need is COVID-related, please let me know a.s.a.p. I'll record class and make the lecture available.

If you think you have a disability-related need, please contact GMU's [Office of Disability Services](#). ODS has a process for administering disability-related requests for accommodations, and in that process ODS serves as a go-between between a student-applicant and that student's instructor.

If your need is neither COVID- nor disability-related, you are free to ask me in personal communication or to ask me anonymously. To make an anonymous request, please contact Annamaria Nields, Associate Dean for Student Affairs ([anields@gmu.edu](mailto:anields@gmu.edu)). Dean Nields will be happy to explain the basis for a recording request to me while leaving a student's identity out of the request.

### *Grading*

The grade for this class will be based on a 3-hour final examination at the day and time set by the law school (see page 1 of this syllabus).

On the final examination, you will be expected to write an essay and answer multiple choice questions. You will be expected to spend more than half of your time on the essay in each case, but I'll work out the ratio of time (and grade weight) between essay and multiple choice when I construct the exam. (I'll announce the ratio shortly in advance of the final examination.)

If it is possible for the final examination to be administered in person, it will be. If it is possible for the final examination to be administered as a secure, closed-book, closed-note exam, it will be. If the final examination must be administered online, it will be administered online with whatever exam-taking software the Records Office chooses and it will be open-book, open-note.

The only inputs into your grade for the course are your exams unless I downgrade you for a serious breach of the class participation policy (see pp. 3-4 above, section on "Class preparation and participation).

### *Course materials*

We will rely primarily on a casebook: R. Lea Brilmayer, Jack L. Goldsmith, Erin O'Hara O'Connor & Carlos Vasquez, Conflict of Laws: Cases and Materials, 8<sup>th</sup> ed. (Aspen Publishing, 2019). The ISBN-13 is 978-1454899563.

I will assign a few supplemental readings. I'll post copies of the supplemental readings on the TWEN site. Hard copies of the readings will be available by the beginning of the work day on Friday, January 17, on the third floor of the law school, at the front of the faculty suite on the third floor. (The main door to that suite is across from the doors to the Records Office.) Every reading in the hard-copy supplement is also posted on line in the TWEN site, for "Course Materials."

### *Course reading*

Below there are 26 assignments. Please read unit 1 for our first class, on Wednesday, January 22. I will do everything in my power to cover one assignment per class (so please don't be surprised if I cut off discussion halfway through some class to finish the assignment). But I reserve the right to cut out assignments if we run behind.

In the assignments to follow, references to "Pp. 3-5" assign you to read pp. 3-5 of the Brilmayer et al. casebook. "Supp. 1-4" assign you to read pages 1-4 of the hard-copy supplement.

## Ch. 1: Overview

1. Wednesday, January 22. Ch. 1. Pp. 1-15. Sample problems. For some choice-of-law problems in our commonwealth, please read also Supp. 1-12: Fant v. Miller & Mayhew (Va. 1866); Hazelwood v. Lawyer Garage, LLC (Va. App. 2024).
2. Monday, January 27. Historical and theoretical foundations of choice of law. Read Supp. 13-42: U.S. Decl. Of Independence selections; excerpts from Articles of Confederation (1787); excerpts from U.S. Const., Va. Const. art. VI; excerpts from Murray v. McCarty (Va. 1811); Emerich Vattel, The Law of Nations (1773), book I, chs. 1-2 [in course supplement]; Joseph Story, Commentaries on the Conflict of Laws, Foreign and Domestic (1<sup>st</sup> ed., 1834), pp. 4-10.

I may lecture on, but it is optional for you to read, Supp. 43-54: James Kent, Commentaries on American Law pp. 1-4, 15-20 (1<sup>st</sup> ed., 1826).

## Ch. 2: The Traditional Approach to Choice of Law

3. Wednesday, January 29. Ch. 2. Pp. 15-42. (Stop before Linn.) Torts, start contracts.
4. Monday, February 3. Ch. 2. Pp. 42-48. (Stop before Section C.), pp. 79-97. Finish contracts, cover property.
5. Wednesday, February 5. (Online Zoom class.) Ch. 2. Domicile, marriage. Pp. 48-63, pp. 63-79.
6. Monday, February 10. Ch. 2. Corporations, and wrinkles in the traditional approach (1/3). Pp. 97-108, pp. 108-22.
7. Wednesday, February 12. Ch. 2. Wrinkles (2/3). Pp. 122-46.
8. Monday, February 17. Ch. 2. Wrinkles (3/3). Pp. 146-70.
9. Wednesday, February 19. The basis for the traditional approach. Supp. 55-74: Story, Commentaries on the Conflict of Laws (1834), ch. 2. After you read this material, ask: Do the principles Story recounts make sense in the sense of being understandable? Do they make sense in being satisfying normatively? Do they provide a satisfying explanation for the doctrines we studied in Chapter 2?

## Ch. 3: Modern Approaches to Choice of Law

10. Monday, February 24. Interest analysis. Pp. 171-202 (stop before the note on interest analysis in other nations).
11. Wednesday, February 26. Collective impairment and the “better rule.” Pp. 203-27.

12. Monday, March 3. The Second Restatement and wrinkles in the modern approach (1/2). Pp. 227-54.

13. Wednesday, March 5. More wrinkles in the modern approach (2/2). Pp. 254-80.

#### Ch. 4: Constitutional Limitations

14. Monday, March 17. Constitutional limitations (1/2). Pp. 281-97. Supp. 21: U.S. Const. Art. IV § 1 (Full Faith and Credit Clause); amend. XIV § 1 (Due Process clause).

15. Wednesday, March 19. Constitutional limitations (2/2); the obligation and right to provide a forum. Pp. 297-39.

16. Monday, March 24. Constitutional limitations on interstate discrimination and extraterritorial regulation. Pp. 339-61. Supp. 20-21: U.S. Const. art. I cl. 8 § 3 (the Interstate Commerce Clause); U.S. Const. art. IV § 2, cl. 2 (the Privileges and Immunities Clause); U.S. Const. amend. XIV § 1 (Equal Protection Clause).

#### Ch. 5: Jurisdiction of Courts over Persons and Property

17. Wednesday, March 26. Consent and waiver; activities as a basis for jurisdiction (1/3). Pp. 363-83.

18. Monday, March 31. Activities as a basis for jurisdiction (2/3). Pp. 383-413.

19. Wednesday, April 2. Activities as a basis for jurisdiction (3/3). Pp. 413-42.

20. Monday, April 7. Jurisdiction based on property. Pp. 445-64.

#### Ch. 6: Conflict of Laws in the Federal System

21. Wednesday, April 9. Swift v. Tyson versus Erie Railroad v. Tompkins. Please read pp. 465-75. Please read Supp. 75-79: Swift v. Tyson (1842); and Southern Pacific Co. v. Jensen (1917). Please also read Supp. 21, specifically U.S. Const. art. III § 2 (the constitutional basis for diversity jurisdiction) and the 1789 Judiciary Act provisions quoted in the footnotes of Swift.

22. Monday, April 14. Choice of law and recognition of judgments under Erie. Pp. 475-500.

#### Ch. 7: Recognition of Judgments

23. Wednesday, April 16. Substantive interests of the enforcing state. Pp. 516-45.

24. Monday, April 21. Jurisdictional requirements, and the enforcing state's law of judgments. Pp. 501-16, pp. 547-58.

25. Wednesday, April 23. Domestic relations. Pp. 558-74.

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## Ch. 10. Choice of Law in Complex Litigation

26. Thursday, April 24. I'll give a one-class survey on the three main approaches to this topic summarized in Ch. 10. Please read pp. 737-41, pp. 741-57, pp. 757-63, and pp. 773-85.