

### **EXAMINER'S ANALYSIS OF QUESTION NO. 13**

This question calls for a Michigan choice-of-law analysis. Under the facts as stated, Michigan law does not allow recovery for negligent infliction of emotional distress (NIED) unless the plaintiff and injured person are immediate family members, whereas New Jersey law affords "bystander liability" protections to engaged, cohabiting couples.

"In tort cases, Michigan courts use a choice-of-law analysis called 'interest analysis' to determine which state's law governs a suit where more than one state's law may be implicated." *Hall v General Motors Corp*, 229 Mich App 580, 585 (1998). Under this analysis, Michigan courts "will apply Michigan law unless a 'rational reason' to do otherwise exists." *Id.* quoting *Sutherland v Kennington Truck Serv, Ltd*, 454 Mich 274, 286 (1997); *Frydrych v Wentland*, 252 Mich App 360, 363 (2002).

In performing the interest analysis, the court first examines whether any foreign state has an interest in having its law apply. *Hall*, 229 Mich App at 585. "If no state has such an interest, the presumption that Michigan law will apply cannot be overcome." *Id.* quoting *Sutherland*, 454 Mich at 286. "If a foreign state does have an interest in having its law applied," the court uses a balancing approach to determine "if Michigan's interests mandate that Michigan law be applied, despite the foreign interests." *Id.*

The first step in the choice-of-law analysis is examining whether New Jersey has an interest in having its NIED law apply. The only connection with New Jersey is that Peter is a resident there. "[T]he plaintiff's residence, with nothing more, is insufficient to support the choice of a state's law." *Sutherland*, 454 Mich at 287 (1997), citing *Home Ins Co v Dick*, 282 US 397, 408 (1930).

Michigan, on the other hand, has a strong interest in having its law applied. The accident took place in Michigan, and thus Michigan is where both the wrongful conduct at issue and resulting injury occurred. In addition, Dennis is a Michigan resident. Under the facts of this case, Michigan has an interest in regulating "conduct within its borders," *Frydrych*, 252 Mich App at 364, that clearly outweighs New Jersey's relatively minimal interest.

As a result, the presumption that Michigan law applies has not been overcome, and Dennis' motion summary disposition should be granted.