

EXAMINERS' ANALYSIS OF QUESTION 8

This question calls for a Michigan choice-of-law analysis. Michigan law does not permit an award of punitive damages against Declan, but Mississippi law does.

"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.* See also *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. 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 Mississippi has an interest in having its punitive damages law apply. Mississippi does have an interest, given that Peter is a Mississippi resident, and that is where the accident occurred. See *Burney v P V Holding Corp*, 218 Mich App 167, 174 (1996) ("Alabama has an interest in having its law applied because one of the parties is a citizen of the state where the wrong occurred.").

The second step is to balance Mississippi's interest against Michigan's own interest in having its law applied. Michigan has an interest in applying its ban on punitive damages because Declan is headquartered in Michigan, and Michigan is its principal place of business. Michigan has a strong interest in ensuring the economic health of companies conducting business within its borders, as they employ Michigan citizens and generate revenue for the state through sales and paying taxes. Michigan also has an interest in encouraging companies to do business in Michigan.

Finally, while the accident occurred in Mississippi, the alleged misconduct largely took place in Michigan, which is where

Peter's vehicle was designed, and where Declan made the decision not to recall it. Because the purpose of punitive damages is to punish wrongdoing and deter others from engaging in similar conduct, as opposed to compensating the plaintiff, Mississippi's interest in imposing punitive damages is not as strong when the defendant is not a resident of the state. Indeed, the facts indicate that a Mississippi court even declined to exercise personal jurisdiction over Declan.

As a result, the presumption that Michigan law applies has not been overcome. Peter's motion for partial summary disposition should therefore be denied.