

### EXAMINERS' ANALYSIS OF QUESTION NO. 3

This question calls for a Michigan choice-of-law analysis. Under Wisconsin law, Diana is absolutely immune from liability, while under Michigan law, Paige has a viable argument that Diana was grossly negligent and is thus not entitled to governmental immunity.

"When resolving a conflict of law question," courts "apply Michigan law unless a rational reason to do otherwise exists." *Frydrych v Wentland*, 252 Mich App 360, 363 (2002). The court first examines whether any foreign state has an interest in having its law apply. *Id.* "If no state has an interest, the presumption that Michigan law will apply is not overcome." *Id.* "If a foreign state does have an interest in having its law applied," the court then determines "if Michigan's interests mandate that Michigan law be applied, despite any foreign state interest." *Id.*

"However, application of a state's law may not violate a party's due process rights." *Id.* "When a court chooses a state's law, the state must have a significant contact or significant aggregate of contacts that create state interests such that choice of its law is neither arbitrary nor fundamentally unfair." *Id.* at 363-364.

Here, Wisconsin has a strong interest in having its law apply, as all of the parties are Wisconsin residents. Wisconsin also has a strong interest in protecting its teachers. Michigan, on the other hand, "has little or no interest in affording greater rights of tort recovery to a foreign state resident than those afforded by the foreign state." *Frydrych*, 252 Mich App at 364. "While Michigan, a state where the injury occurred, has an interest in conduct within its borders, the interest in the litigation is minimal when none of the parties is a Michigan resident." *Id.* Michigan no longer follows "the traditional doctrine of *lex loci delicti*, or application of the law of the place of the wrong." *Id.*

There is also a forum-shopping concern presented in this case. "[T]here is a presumption that the plaintiff will bring suit in the forum whose law is the most advantageous." *Frydrych*, 252 Mich App at 364. "This raises the concern that applying the law sought by a forum-shopping plaintiff will

defeat the expectations of the defendant or will upset the policies of the state in which the defendant acted or from which the defendant hails." *Id.* Here, it is apparent that Paige's parents, who are not residents of Michigan, filed suit in Michigan in order to avoid Wisconsin's less favorable governmental immunity law. This forum-shopping concern weighs in favor of applying Wisconsin law.

Finally, "there is no indication that Michigan has any significant contacts such that application of Michigan law would not violate [Diana's] due process rights." *Id.* at 365