

## Question MPT-1 – July 2022 – Selected Answer 1

To: Marianne Morton  
From: Examinee  
Date: July 26th, 2022  
Re: Walter Hixon Matter

Memo on Walter Hixon's Marriage Annulment

*I: Does Columbia or Franklin law govern the ground for annulling Mr. Hixon's marriage to Ms. Tucker?*

Columbia law is more likely to be applied than Franklin law in governing the grounds for annulling Mr. Hixon's marriage to Ms. Tucker. This becomes clear after applying the approach adopted by Franklin courts and its Supreme Court, and applying the factors of the Second Restatement of Conflict of Laws embraced by Franklin.

Franklin law embraces the Second Restatement of Conflict of Laws approach to determining the choice of law determination in a marriage validity issue. 283(1). Under 283(1), the "most significant relationship" analysis of the Second Restatement is embraced.

The most significant relationship approach was utilized in *Simeon v Jaynes* (Fr. Sup. Ct. 2009), where the court evaluated the decision of a Franklin court to apply its own law to annul a marriage entered to in Columbia. In *Jaynes*, the marriage met one of the categories under Franklin law 19-5(a)(1) as being "void from the start", and by its facts met Columbia's definition of a "voidable marriage", thus requiring a judicial action to end. The Franklin Supreme Court held that the fact that the Plaintiff and Defendant "had lived together only in Columbia, owned property there, and had incurred debts there", was grounds to reverse the Trial Court's decision to apply Franklin law over Columbia law. Thus, living together, owning property, and incurring debts in a jurisdiction has been isolated by Franklin's Supreme Court as a strong factor towards finding a "significant connection" between spouses and a state under the Second Restatement of Conflict of Laws.

Similar to *Jaynes*, Hixon lived together with his spouse entirely in one state (in Hixon's case Columbia) and purchased property in that state. Thus, Hixon's marriage under *Jaynes*' factors leans toward Columbia being the more 'significantly connected'

state, even though H and T did not incur debt in Columbia. However, there are other factors under the second restatement approach to weigh.

Under the Second Restatement approach taken by Franklin courts, most recently in Fletcher v. Fletcher, a divorce case which raised the issue of Conflict of Laws in our jurisdiction, various factors are discussed from 6(2)(c),(d)(f)(g).

The first factor is straightforward. "The relevant policies of other interested states and the relative interest of those states in the determination of the particular issue". In Fletcher v Fletcher, the court recognized there is equal strength of interest between states in policy involving marriage decisions. Thus, under this factor there is no clear frontrunner.

The second factor leans toward Columbia. "The protection of justified expectations". In Fletcher, the court pointed to the parties living together in one state, buying property, and sharing property in one state, and one party unilaterally spending some time in another as "strong" suggestion that the parties would have a "justified expectation that the state of their shared living would govern the terms in which their marriage ended" (Fletcher). Here, Hixon and Tucker similarly established a strong connection with Columbia, although Hixon lived longer in Franklin than the plaintiff in Fletcher.

Under the fourth factor discussed in Fletcher, Columbia is also the probable law to be applied in Hixon's dispute. The fourth factor is "certainty predictability, and uniformity of result". The Fletcher court describes that "all of the important events in the marriage" occurred in one state, and thus considerations of ease and administrative efficiency strongly suggest that state being the applicable law. In Hixon's marriage to Tucker, 'all of the important events' similarly occurred in one state, Columbia. The marriage, ceremony, house purchase, and cohabitation, all occurred there. Thus, this factor weighs in favor of applying Columbia law.

In conclusion on this point, Franklin courts would likely apply the Second Restatement approach and find that Columbia has a more significant relationship to the marriage.

*II: Must Mr. Hixon file a lawsuit to annul his second marriage? if yes, would he be able to obtain an annulment under the applicable law?*

Mr. Hixon must file a lawsuit to annul his second marriage, but he will be able to obtain an annulment under Columbia law.

Also 283(2) establishes that marriages that "satisfy the requirements of the state where the marriage was contracted" will be valid in Franklin unless it "violates the strong public policy of another state which had the most significant relationship to the spouses and the marriage at the time of the marriage." 283(2).

Hixon's marriage to Joan Prescott does not meet the requirements to be recognized and protected in Franklin under 283(2). Hixon married Prescott in 1886, and after drifting apart and moving apart, learned of her death and formed an honest belief of her death in 2001. Because of these facts, the marriage does not 'satisfy the requirements' of Columbia's marriage laws, which is evidenced by it falling under 718.02.

In Columbia revised statute 718.02, the statute lays out that "A marriage is voidable if any of the following conditions existed at the time of the marriage", and it continues to outline in 718.02(A)(1): that one of those conditions is if "the spouse of either party was living and the marriage with that spouse was then in force and that spouse was absent and not known to the party commencing the proceeding to be living for a period of five successive years immediately preceding the subsequent marriage for which the annulment decree is sought". Hixon's marriage to Tucker is voidable.

This is in contrast to Franklin law, under Franklin Domestic Relations Code 19-5(a), where the statute lays out that "the following marriages shall be void, without the need for any decree of divorce, annulment, or other legal proceeding, and 19-5(a)(1) specifies that one of those marriages includes "All marriages between parties where either party is lawfully married to another person."

Thus, because the marriage is voidable in Columbia, it is not subject to protection and recognition in Franklin under 283(2). Also, 718 provides the basis for the argument that the marriage itself is "strongly" against the public policy of Columbia, which is the state with the strongest relationship to the marriage, implicating 283(2). Thus, Mr. Hixon should be able to obtain an annulment under applicable Columbia law.

*III (A). If Mr. Hixon files an annulment action in Franklin, would a Franklin court have jurisdiction to annul the marriage?*

Yes, a Franklin court could have jurisdiction to annul the marriage.

Hixon moved to Franklin City in 2019 according to his July 14th interview. He has presumably been in Franklin since 2019, and has thus established residency by living in Franklin for more than six months, for purposes of using in rem jurisdiction, which

only requires the court to have jurisdiction over one party. Franklin law has long established that 'in personam' jurisdiction is not required to terminate a marriage relationship through annulment. (*Carew v. Ellis* (Fr. Sup. Ct. 1957), as long as the plaintiff has established residency in Franklin for at least six months. (*Daniels v. Daniels* Fr. COA 1997).

*III (B). If Mr. Hixon files an annulment action in Franklin, would a Franklin court have jurisdiction to dispose of the parties' property?*

Probably not. There are Due Process concerns to a court utilizing in rem jurisdiction over one party in order to divide property in equitable division if that property is located in another state and there is no personam jurisdiction over the other party.

Hixon and Tucker own property located in Corinth, Columbia. Tucker still lives at the house in Columbia, where they lived together until 2019, when Hixon moved to Franklin City for work. To divide the house, a court in Franklin would have to subject property in Columbia to equitable division.

In Franklin, Annulment actions may address the same issues as those that arise in divorce, such as equitable division of property, as explained in Franklin Domestic Relations Code 19-7. If the Franklin court has jurisdiction, a Franklin court can use the same rules of property division available in divorce in an annulment. See 19-7. When division of property is at issue, a Franklin court can exert in rem jurisdiction over property in Franklin without in personam jurisdiction over the other party, if that property is located in the jurisdiction. (*Daniels v. Daniels*).

Thus, for property located in Franklin, Hixon could properly utilize Franklin courts to effectuate equitable division. This could provide an avenue for him to reach some non-real property in the equitable division, if he has established any stores of property, savings, or other assets in Franklin. Depending on the outcome of the Columbia house dispute, this may require more investigation.

Under *Shaffer v. Heitner*, 433 U.S. 186 (1977), the Supreme Court of the US explained in dicta that "when claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant" a state court may exercise jurisdiction over the property". However, this dicta is probably not sufficient grounds for a Franklin court to effectuate the equitable division of property located in Columbia, where the defendant is living. Further, Tucker has never been to Columbia, according to Hixon's July 14th interview.

Thus, the most likely outcome is that a Franklin court would be able to properly effectuate an annulment, but would be unable to have proper jurisdiction over a property division of the house in Columbia, but would be able to reach property in Franklin

*IV. Should we advise Mr. Hixon to file in Columbia or in Franklin?*

I believe we should advise Mr. Hixon to file in Columbia. Under the applicable rules the law of Columbia would likely be applied, and Columbia would be the forum required to effectuate an equitable division of the house, and property located in Columbia, which could be significant beyond the house.

There are concerns with needing to commute back and forth between Franklin and Columbia if court dates and appearances are in Columbia, but if Mr. Hixon wants to have equitable division of the house in Columbia it would be necessary.

There would be possible balancing of administrative burden because there would be less delay in determining applicable law, and Columbia would have clear jurisdiction over all of Mr. Hixon's administrative tasks (filing for annulments, seeking changes in title, equitable division and separation of assets). If we have the capabilities to assist him in a case in Columbia, I can see his matter being one that could result in numerous further tasks we partner with him on.