

## **EXAMINATION**

### **CIVIL PROCEDURE I -- LAW 212**

#### **Section 1B -- Siegel**

**Fall, 2003**

#### **INSTRUCTIONS**

1. This is an open book examination. You may use any written materials that you have brought with you (including typewritten, printed, or published materials). Computer use is permitted.
2. You have THREE HOURS to complete the exam.
3. The exam consists of this cover page plus four exam pages numbered 1 through 4. Make sure you have all the pages.
4. There are FOUR questions. All students must answer all questions.
5. The questions are of equal weight and should take about 45 minutes each.
6. Do not put your name anywhere on your answers. Do not indicate whether you are taking the class pass/fail. Do not write "Thank you for a great class" or anything similar on your exam.
7. If you are writing your answers by hand, remember to *write legibly*.
8. If, with regard to any question, you think additional facts are needed to answer the question, state clearly what facts you think are missing. Then make a reasonable assumption about the missing facts and answer the question based on your assumption. Do not change the given facts.
9. Using good judgment, address all the issues presented and assigned by the questions, even if your answers to some issues would, in real life, eliminate the need to address other issues.
10. Good luck.

**QUESTION ONE**  
(45 minutes)

Peter Putnam was born and raised in Alaska, but he has never particularly cared for the cold weather there and dreams of living in a warmer part of the United States. After graduating from high school, Peter enrolls in college at the University of Texas, which is located in Austin, Texas. Enchanted by the weather there, he makes a firm resolution early in his freshman year to move to somewhere in the continental United States after graduation. Shortly before graduation, Peter accepts a job offer from a company in Phoenix, Arizona, thinking that Arizona would be a great place to make his home.

Also shortly before graduation, Peter, who is an avid mountain climber, attends a mountain climbers' convention in Austin. At the convention, he notices a booth occupied by Highest Peaks Supply ("HPS"). HPS is a small company that is incorporated in Texas and that has its only place of business in Texas. HPS specializes in manufacturing and selling equipment for mountaineers who climb to very high altitudes. Peter is particularly taken with the HPS "McKinley Stove." Peter reads the following text on the box containing the stove:

When you're above 15,000 feet, you need a McKinley Stove! This stove is specially designed for climbers who want the challenge of America's highest peaks: the ten 15,000+-foot peaks, found only in Alaska.

Peter is seized with a desire to climb Alaska's high peaks. He buys the stove, and, immediately after graduating from college, takes it with him to Alaska to climb the 20,000-foot Mt. McKinley. Unfortunately, while he is using the stove at a high-altitude camp, the stove explodes, killing him.

Peter's father, Paul Putnam, acting in his capacity as the administrator of Peter's estate, brings a lawsuit against HPS in the United States District Court for the District of Alaska. He seeks one million dollars in damages. Paul Putnam is a citizen of Alaska. Process is properly served on the defendant.

An Alaska state statute provides, "In all civil actions, the courts of this state may exercise personal jurisdiction to the extent permitted by the Constitution of the United States."

The defendant moves to dismiss the lawsuit, citing such grounds as might be expected on the above facts, although the defendant does *not* raise any issue regarding venue.

**You are the law clerk to the district judge hearing the case. Write a memorandum discussing the issues presented and making a recommendation as to how the judge should rule on the pending motion. (In case you missed them, be sure to read instructions 6-9 on the cover page.)**

**QUESTION TWO**  
(45 minutes)

Duke's Dive is a nightclub in Florida, located not far from the border between Florida and Georgia. Duke's Dive is owned by Duke's Dive, Inc., a corporation that is incorporated in the state of Delaware. Duke's Dive is the corporation's only place of business.

Prema Patel is a citizen and resident of New Jersey. While she is on vacation in Florida, she goes to Duke's Dive. She gets rather rowdy while there, and the club's bouncer, Eddie Edwards, forcibly throws her out. Eddie uses too much force, and Prema is injured as she lands on the sidewalk. Eddie is a citizen and resident of Georgia.

Prema brings suit against Duke's Dive, Inc. and Eddie Edwards in the United States District Court for the District of Delaware. She seeks \$100,000 in damages from the defendants.

A Florida state statute provides: "In all civil actions, process may be served upon any defendant that is a corporation by delivering the summons and a copy of the complaint to any employee of the corporation."

Prema hires a process server who goes to Duke's Dive in Florida and hands a summons directed to Duke's Dive, Inc. and a copy of the complaint to Wanda Walters, a waitress. Wanda is an employee of Duke's Dive, Inc. Wanda forgets about the papers and later throws them away.

A Georgia state statute provides, "In all civil actions, process may be served upon an individual by personally delivering the summons and a copy of the complaint to the individual or by sending the summons and a copy of the complaint to the individual by certified mail, return receipt requested."

Prema's process server proceeds to Georgia, where he goes to Eddie Edwards's home. Eddie is out, but the process server leaves a summons directed to Eddie and a copy of the complaint with Eddie's wife. Eddie gets the papers and later brings the lawsuit to the attention of Duke's Dive.

Both defendants move to dismiss the lawsuit for improper venue and for insufficient service of process. All parties make all appropriate arguments.

**You are the law clerk for the district judge trying the case. Write a memorandum discussing the issues and advising the judge as to how to rule on the pending motions.**

### QUESTION THREE

(45 minutes)

In 2004, Congress decides to encourage drivers to wear seat belts. Congress passes the Federal Seat Belt Act, which says:

In any civil action arising out of an automobile accident, the plaintiff shall be deemed contributorily negligent if the plaintiff was not wearing a seat belt at the time of the accident. The plaintiff shall not be permitted to recover from the defendant the portion of the plaintiff's damages that is attributable to the plaintiff's failure to wear a seat belt.

In 2005, Arnold Andrews, a citizen of Maryland, is driving in Maryland when his car is hit by a bus. Arnold is seriously injured and his car is totaled. Arnold was not wearing a seat belt at the time of the accident.

Arnold discovers that the bus is owned by Big Bus, Inc. Big Bus is a corporation incorporated in Virginia with its principal place of business in Virginia. Arnold brings suit against Big Bus in the United States District Court for the District of Maryland. He seeks \$200,000 in damages.

Big Bus admits owning the bus, but states that it had leased the bus to Common Carrier, Inc. and that Common Carrier was operating the bus at the time of the accident. Common Carrier is a corporation incorporated in Maryland but having its principal place of business in Virginia. Big Bus alleges that the leasing contract between Big Bus and Common Carrier provided that Common Carrier would reimburse Big Bus for any damages Big Bus is made to pay as a result of Common Carrier's use of its buses. Big Bus files a third-party complaint against Common Carrier. The complaint seeks reimbursement for any damages Big Bus is made to pay Arnold.

In addition, Big Bus's complaint against Common Carrier asserts that Common Carrier owes Big Bus \$50,000 in unpaid bus rental fees from 2004.

Upon learning these facts, Arnold amends his complaint to add a claim against Common Carrier. He seeks \$200,000 in damages against Common Carrier.

At this point, both defendants seek to dismiss all claims against them for lack of subject matter jurisdiction and for improper joinder. All parties make all appropriate arguments.

**You are the law clerk for the district judge trying the case. Write a memorandum discussing the issues and advising the judge as to how to rule on the pending motions.**

**QUESTION FOUR**  
(45 minutes)

You are the chief legislative aide to Senator Paula Truepenny. Another Senator introduces the following proposal:

**The Constitution of the United States shall be amended as follows:**

**Amendment XXVIII (28): In all civil cases, any court, state or federal, shall have power to exercise personal jurisdiction over any defendant who resides within 100 miles of the location of the court. This power is in addition to any other personal jurisdiction the court possesses. For purposes of this amendment, a corporate defendant shall be deemed to reside at its principal place of business.**

Senator Truepenny asks you to write a memorandum that evaluates this proposal. Your memorandum should explain what the likely effects of adopting the proposal would be, discuss how courts might respond to it, and evaluate whether the proposal is a good or a bad idea. If you think the proposal could be improved by any relevant amendments that Senator Truepenny could offer to it, you should mention those, or you may recommend that she support it as is or that she just oppose the whole thing.

**Write the requested memorandum.**

**END OF EXAM**