

## **EXAMINATION**

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

#### **Section 3D -- Siegel**

**Fall, 2005**

#### **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)

Duncan Darby is a self-employed musician. Unable to get a recording contract, he decides to promote his music himself over the Internet. He creates a website where anyone can listen to his music and download his songs to their computers. There is no charge for the downloading, but Darby sells advertising on his site and collects a fee from his advertisers based on the number of people who visit his site.

Duncan is a citizen and resident of California, and his website is physically maintained on a computer within California.

Paula Portman, a citizen and resident of Ohio, while surfing the web from her home computer, comes across Duncan's website and downloads some of his music onto her computer. The copy-protection feature of the music severely interferes with Paula's computer and renders it unusable. As a result, Paula has to pay \$1,000 to get her computer fixed and, because she can't access files on her computer during a critical time, she loses a business deal worth \$20,000.

Paula brings a lawsuit against Duncan in an Ohio state court of general jurisdiction. She files a complaint that alleges the above facts and that seeks damages of \$21,000. She has process properly served on Duncan at his home in California.

Ohio has adopted rules of procedure for use in its state trial courts that are identical to the Federal Rules of Civil Procedure. Duncan moves to dismiss the complaint for lack of personal jurisdiction and lack of subject matter jurisdiction.

An Ohio state statute provides in relevant part that "the courts of this state shall have personal jurisdiction over any person who commits a tortious act within this state."

**Part A. You are the law clerk to the trial judge hearing the case. Write a memorandum discussing the issues 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.)**

Possibly following your advice and possibly ignoring it, the judge decides to deny the motion to dismiss on both grounds. The judge then says, "In fact, I was thinking of sanctioning the defendant under Ohio Rule 11 (which is identical to Federal Rule 11) for making the motion. Would that be appropriate?"

**Part B. Answer the judge's question.**

## QUESTION TWO

(45 minutes)

Allison Allbright, a citizen of Delaware, is a Construction Site Manager at Bethlehem Building, Inc., a corporation incorporated in and having its principal place of business in the state of Pennsylvania. A Regional Manager position at the corporation opens up, and she puts in for promotion to that position. However, the corporation promotes someone else, a man, instead. Allbright believes that the company discriminated against her on the basis of her gender, in violation of Title VII of the Federal Civil Rights Act of 1964. Based on the difference in salaries between the two positions, Allbright believes that she has been damaged in the amount of \$60,000.

On the same day, at a construction site in Delaware managed by Bethlehem Building, an accident occurs. A cement truck goes out of control, drives off the site, and crashes into the home next door, which just happens to be Allbright's home. Allbright's home is damaged in the amount of \$30,000.

Allbright brings suit against Bethlehem Building in the United States District Court for the Eastern District of Pennsylvania. She asserts the two claims suggested by the above facts. Bethlehem Building seeks to dismiss the claims against it based on lack of subject matter jurisdiction and for improper joinder.

**Part A. 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 to rule on the pending motion.**

Possibly following your advice and possibly ignoring it, the judge denies the motion to dismiss. Bethlehem Building then asserts that, although it had overall responsibility for the construction site at which the accident occurred, the job had actually been subcontracted to Cartwright Construction, Inc., and that Cartwright Construction is responsible for the accident. Cartwright Construction is a corporation incorporated in Delaware with its principal place of business in Pennsylvania. Bethlehem Building seeks to add a claim against Cartwright Construction for \$30,000.

Upon learning these facts, Allbright also seeks to add a claim against Cartwright Construction for \$30,000.

Cartwright Construction moves to dismiss both claims against it for lack of subject matter jurisdiction and for improper joinder.

**Part B. You are still the law clerk to the district judge hearing the case. Write a memorandum discussing the issues presented and making a recommendation as to how to rule on the pending motion. Your judge remarks, "Hmm . . . that last claim (Allbright v. Cartwright Construction) looks tricky – think about it carefully."**

### QUESTION THREE

(45 minutes)

Peter Park is a long-time resident of Detroit, Michigan, where he manages a small branch of Bullseye, a national chain store. In February, 2006, he gets a call from Sally Sandalow at the company's headquarters, who offers him a position managing a bigger branch in Nashville, Tennessee. Sandalow says, "We'll give you six month's trial in the new position, and assuming you work out, which I'd say is a 95% chance, we'll give you the job permanently." Park agrees. He rents out his home in Detroit on a one-year lease and buys a home in Nashville, to which he moves on March 1, 2006. His wife finds a job in Nashville and he enrolls his children in Nashville schools.

Tennessee is divided into three judicial districts: Eastern, Middle, and Western. Nashville is in the Middle District. Knoxville, Tennessee is in the Eastern District. On April 1, 2006, Park is driving in Nashville when his car is hit by a truck, apparently because of negligent driving by the truck driver. Park is injured and his car is damaged. The truck is owned by Daredevil Deliveries and driven by Ernie Edwards. Daredevil Deliveries is a corporation incorporated in the state of Tennessee and having its principal place of business in Knoxville. Ernie Edwards is a citizen and resident of North Carolina.

On August 1, 2006, Park brings suit against Daredevil Deliveries and Ernie Edwards in the United States District Court for the Eastern District of Tennessee. Park seeks \$100,000 in damages from each defendant. Park hires a process server to serve the defendants with process. The process server goes to the home of Bert Bigwheel, the President of Daredevil Deliveries, to serve the papers on the company. Bert is out, but the process server leaves a summons and a copy of the complaint with Bert's wife. As to Ernie, the process server mails a summons and a copy of the complaint by certified mail, return receipt requested, to Ernie at Ernie's home in North Carolina.

The defendants move to dismiss the case for improper venue and insufficient service of process.

A statute of the state of Tennessee says, "In any civil action, an individual defendant may be served by sending a summons and a copy of the complaint to the defendant's place of residence by certified mail, return receipt requested."

On September 1, 2006, Sandalow tells Park, "Sorry, but you just didn't work out. I can't keep you on at the Nashville store." Park sells his Nashville home and moves back to Michigan. The defendants' motion then comes before the court for decision.

**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 to rule on the pending motion. In giving you the assignment, the judge says, "Please be sure to address any issues that we have a duty to consider on our own motion, even if not raised by the parties."**

## QUESTION FOUR

(45 minutes)

You are the chief legislative aide to United States Senator Paula Truepenny. Another Senator introduces the “General Jurisdiction Abolition Act of 2005,” which provides as follows:

**For cases filed after the effective date of this Act, no federal court shall assert personal jurisdiction over a defendant on the basis of any form of general jurisdiction. Only specific jurisdiction shall be allowed.**

Senator Truepenny asks you to write a memorandum that evaluates this bill. Your memorandum should explain what the likely effects of this bill would be, discuss whether it is constitutional, and evaluate whether the bill is a good or a bad idea. If you think the bill 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 memorandum.**

**END OF EXAM**