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**EXAMINATION
FEDERAL COURTS – LAW 232
Siegel
Spring, 2010**

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 and 5 exam pages numbered 1 through 5.
4. There are four questions. All students must answer all questions.
5. The recommended time allocations are 45 minutes per question. The questions are of equal weight.
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)

Article I, § 8 of the United States Constitution provides that Congress shall have power “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” The federal Copyright Act provides that any person who infringes a copyright shall be liable to the copyright owner for monetary damages, attorney’s fees and costs. The Act also provides that a court may enter an injunction prohibiting infringement of a copyright. The Act also provides that “States are bound by this Act, shall not be immune from suit in federal court under this Act, and shall be fully subject to all remedies provided by this Act.”

Kenta Hamada, a citizen and resident of Pennsylvania, is the author of a book on architecture that contains, among other things, several pages describing the Pennsylvania State Capitol building. The book is copyrighted and Hamada owns the copyright. While Hamada is visiting the Pennsylvania State Capitol building one day, he discovers that the “Visitors Guide” distributed to the public there contains a verbatim, 2000-word quotation from his book. Investigation reveals that the employee who prepared the Visitors Guide has left state employment, but the person with ultimate responsibility for the guide is Robert Keystone, the Administrator of the Pennsylvania State Capitol, a state official.

On May 1, 2010, Hamada brings suit in federal district court against Keystone and against the state of Pennsylvania itself for copyright infringement. He seeks monetary damages, an injunction against further infringement, costs, and attorney’s fees. The defendants seek dismissal of the case. Each side makes all arguments that might be expected on the above facts.

You are the law clerk to the district judge considering the case. Your judge says to you, “Obviously a copyright infringement has occurred. But what should I do? Please write me a memo discussing the issues raised by the case. Please make a recommendation as to how to rule on each issue and on the overall case.”

Part A. Write the requested memorandum. (In case you missed them, be sure to read instructions 6-9 on the cover page.)

The judge receives your memorandum, but some time passes before the case comes before the court for decision. On September 1, 2010, the defendants notify the court that they have revised their Visitors Guide so that it no longer contains any material from Hamada’s book. Hamada does not dispute this factual assertion.

Part B. The judge asks for a supplemental memorandum explaining whether this new fact has any impact on the case. Write the memorandum. (There is no need to repeat arguments already made in Part A.)

QUESTION TWO
(45 minutes)

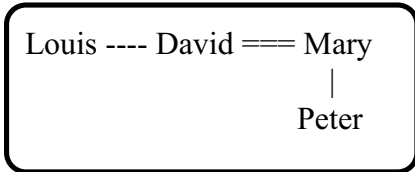
The Servicemen’s Group Life Insurance Act (SGLIA), a federal statute, provides that the U.S. military shall offer its members, as a job benefit, the opportunity to purchase life insurance. The Act directs each military service (Army, Navy, etc.) to enter into a contract with a private insurance company pursuant to which the service purchases a “master” policy from the company and then permits service members to buy life insurance pursuant to the master policy.

The SGLIA provides:

Upon the death of an insured service member, the proceeds of the life insurance policy shall be paid to the beneficiary or beneficiaries the member designated in writing prior to death, if any. If there is no such designated beneficiary, the proceeds shall be paid to the first person or people on the following list who survive the service member:

- (1) the member’s widow or widower;**
- (2) the member’s children and other descendants;**
- (3) the member’s parents; or**
- (4) the member’s siblings.**

David Green is a member of the Army. He is a domiciliary of the state of Illinois, but he moves frequently as he is transferred by the Army among various posts. In 2005, while he is stationed in Iraq, he purchases \$250,000 worth of life insurance under the SGLIA. David is married to Mary Green. He has no children, but Mary has one son, Peter, by a prior marriage. David has not adopted Peter. David’s only living relative is his brother, Louis. (See diagram at left.) Using a government-provided form, David



designates Mary as the primary beneficiary of the life insurance policy, and designates Peter as the contingent beneficiary should Mary predecease David.

In 2010, while David is stationed in the state of Georgia, Mary, who is having an affair with another man, murders David. Mary is prosecuted and convicted for the murder and sentenced to life in prison. Peter played no role in the crime. The possibility that an insured service member might be murdered by the designated beneficiary of his life insurance policy is not mentioned in the SGLIA.

State courts have long followed the rule of the classic New York state case, *Riggs v. Palmer* (NY 1889), which held as a matter of common law that a murderer may not inherit from his victim, even though no such restriction is contained in the state inheritance statute. States have long applied

a similar common law rule to bar murderers from collecting life insurance because of the victim's death, regardless of whether such a rule is contained in state life insurance statutes.

States differ, however, on the issue of exactly what should happen to the proceeds of the victim's estate or life insurance policy. The majority of states apply the rule that the proceeds should be distributed as though the murderer predeceased the victim, which could lead to the proceeds passing to relatives of the murderer. A minority of states, however, provide that the murderer's relatives are also barred from receiving anything (except that the murderer's children may receive the proceeds *if* they were also the victim's children). Georgia follows the majority rule; Illinois follows the minority rule.

Almost all states' conflict of laws principles provide for issues relating to life insurance policies to be resolved according to the law of the state where the insured person was domiciled at death. The SGLIA contains no choice of law provision.

Mary, Peter, and Louis each claim the insurance money. A proper action is filed in a federal district court in Georgia in which the three are parties. The parties make all appropriate arguments.

You are the federal district judge presiding over the action. Write a thoughtful opinion deciding who should get the insurance money.

QUESTION THREE

(45 minutes)

In 2011, the U.S. Congress passes the Religious Freedom Protection Act (RFPA) which provides:

The federal district courts shall have power to issue injunctions prohibiting state prosecutors from proceeding in any criminal case in state court in which a conviction would violate a person's right of Free Exercise of religion as protected by the First Amendment to the United States Constitution.

Danielle Dawson is a state prosecutor in the city of Burlington, Vermont. Dawson is staunchly opposed to circumcision, which is the removal of the foreskin from the penis, and which is traditionally performed on Jewish baby boys on the eighth day of their life, in accordance with the commandments of the Jewish religion. Dawson regards circumcision as barbaric bodily mutilation.

In 2012, Dawson prosecutes David and Sarah Goldblum, residents of Burlington, who are Jewish and who have just had their new baby boy circumcised in the traditional way. Dawson prosecutes the Goldblums in state court for the crime of mayhem, which is defined in a Vermont statute as including "willful and permanent crippling, mutilation, or disfigurement of any part of the body," and which is a felony punishable by up to 15 years imprisonment.

While the criminal case against them is pending in state court, the Goldblums bring an action against Dawson in federal district court in Vermont. They assert that a conviction in their state court case would violate their right to freely exercise their religion. They ask the district court to enjoin Dawson from continuing to prosecute them. Dawson raises all defenses that might be expected on the above facts and seeks dismissal of the federal case. Both sides make all appropriate arguments.

You are the law clerk to the federal district judge hearing the case. The judge says to you, "If the state statute covers the Goldblums' conduct, I am convinced that a conviction in the state court prosecution would violate their right to freely exercise their religion. So I don't need any advice on the Free Exercise issue per se. But it's not clear to me what I should actually do. The case involves both state and federal statutes, and of course the federal Constitution is always in the background. So please write me a memorandum discussing the issues and making a specific recommendation about how I should resolve the case."

Write the requested memorandum.

QUESTION FOUR
(45 minutes)

You are the Legislative Director for United States Senator Valerie Virtue. Another Senator introduces a bill called the “Law Enforcement Improvement Act of 2010,” which provides:

The doctrine of standing, as a requirement for bringing suit in federal court, is abolished. The federal courts shall exercise their jurisdiction without regard to whether any plaintiff satisfies the doctrine of standing.

Senator Virtue asks you to write her a memorandum evaluating this bill. Your memorandum should explain what the likely effects of adopting the bill would be, discuss how courts might respond to it, 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 Virtue 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. The Senator is not an expert on federal courts so some basic explanation of what the bill is all about would be useful, but the main focus of your memorandum should be your evaluation of the bill from a policy perspective.

Write the requested memorandum.

END OF EXAM