

UNIVERSITY OF MISSISSIPPI
SCHOOL OF LAW

CIVIL PROCEDURE I
Professor Secunda

FINAL EXAM

Date: August 2, 2006

Time Allowed: 3 Hours, 30 minutes

Instructions

1. This is an open book examination. You may refer to any materials.
2. Please "sign" the following pledge by writing your examination number on the line after the pledge. DO NOT write your name on this examination or on any bluebook.

By the act of submitting my examination, I do pledge, on my honor, that I have neither given nor received any improper assistance and that I will report any improper assistance given or received by others of which I am aware.

Exam No. _____

3. No examinations may leave the examination room. Return your examination to the front of the room at the end of the examination.
4. The first thirty (30) minutes of the examination is recommended for the purpose of reading over the examination and organizing your thoughts.

GOOD LUCK AND HAVE A GREAT REST OF THE SUMMER!

DO NOT TURN TO THE NEXT PAGE UNTIL INSTRUCTED

THREE PARTS (100 Points)

PART ONE (5 Short Answers, 12 minutes each, 7 points each (35 points total))

- A. Stan Starling, a resident of Mississippi, sues Gary Goodman in state court in Mississippi seeking damages for breach of contract. Gary, a resident of Pennsylvania, does not appear in Mississippi court to defend himself against the suit and, consequently, a default judgment is entered in Stan's favor by the Mississippi state court. When Stan seeks to have his judgment against Gary enforced by the Pennsylvania state court, Gary defends on the ground that the Mississippi judgment is invalid because that court lacked personal jurisdiction over him.

May Gary proceed on this basis? In what other ways might have Gary challenged the Mississippi court's jurisdiction over him?

- B. Buella Beckett parks her car at the A-OK parking garage in Lansing, Michigan. On the back of the parking ticket she receives from the garage is language that states: "By parking your car in this garage, the parties agree that any litigation arising out of this parking arrangement shall be brought in Memphis, Tennessee, where A-OK is headquartered."

When Buella tries to pick up her car, it is not there. She brings a tort claim for negligence against A-OK in Michigan state court seeking compensation for the value of her missing car. What result? Does your answer change if Buella claims that she did not have adequate notice of the statement on the back of her parking garage ticket?

- C. Bart Bryant, born and raised in Minnesota, but now attending a private college in California, believes that he is being sexually harassed by Edie Evans, a classmate and California resident. Bart sues Edie under state law for intentional infliction of emotional distress and sues the California college for permitting the sexual harassment to occur under federal civil rights law. He sues Edie for \$100,000 in compensatory and punitive damages and the college for \$25,000 in compensatory and punitive damages.

Bart files suit against Edie and the college in federal court in California. Does the court have subject matter jurisdiction over the claim against Bart?

If subject matter jurisdiction does not exist for Bart's claim against Edie independently, is there an alternative way for the federal court to obtain jurisdiction over Bart's claim against Edie?

- D. Gerry Green sues Ginny Greene in federal court for breach of contract. Ginny believes that there is no diversity and seeks to dismiss the claim for lack of subject matter jurisdiction.

If Ginny's motion is denied, can she thereafter challenge the personal jurisdiction of the court by motion?

If the first motion was to transfer venue under Section 1404 and that motion was denied, can she then bring a motion to dismiss for lack of personal jurisdiction?

- E. Gale Grisham is in a motor vehicle accident with Guy Guntherberg. One of the issues under contention is whether Guy was acting in the scope of his employment for Harris Humvees, as Gale may be able sue Harris Humvees directly under a theory of vicarious liability if that were the case.

Scope of employment issues are decided by a jury in federal court as a matter of federal practice and by the judge in state court as a matter of state practice. If Gale brings this case against Guy and Harris Humvees in federal court based on diversity jurisdiction, should a jury or a judge decide the scope of employment issue?

PART TWO (Fact Pattern; One Hour; 35 points)

Harry Hartley is a law student at Pumphrey Prince Law School (PPLS), a small, private law school in Repka, Vermont. The law school is a non-profit corporation chartered in the state of Vermont. PPLS has a website on the internet which, in addition to providing a wide range of information about the school, allows applicants to either apply by email, or print up a copy of the application and fill it out by hand. Concerned about the possibility of glitches in the email process, Harry printed up the application and sent it in by regular mail. Harry was one of 10 students in his first year class of 200 from Pennsylvania. PPLS has students from all fifty states and from 23 different foreign countries.

On the last day of school before Winter Break, Harry stopped by the campus dining hall and picked up a bacon, egg, and cheese sandwich, and hopped into his car for the 8 hour drive to his parents' home in Philadelphia, Pennsylvania. About half way there, Harry's stomach started making weird noises. By the time he arrived at his parent's house, he was violently ill, and his mother immediately took him to the office of Manny Manasco, their family doctor.

Dr. Mansco, a lifetime resident of Philadelphia, Pennsylvania, examined Harry and concluded that he simply had a bad case of stomach upset and gave him some Pepto Bismol and sent him home. But later that night, Harry's symptoms had not improved so his parents drove him to the hospital. He was immediately admitted, and diagnosed with a severe case of food poisoning. Emergency surgery was performed, and Harry was given

antibiotics to fight the fast moving infection. Harry survived, but he was required to stay in the hospital for more than a month.

While Harry was recovering in the hospital, his parents contacted a lawyer, Sarah Smith, and asked her to look into the possibility of bringing a lawsuit against anyone potentially responsible for the illness of their son. In the course of Sarah's initial research into the case, she determined that the employee at PPLS responsible for the food service was Max Maxwell. Maxwell is a resident of Vermont and is part owner of a family cabin in the Poconos Mountains in Pennsylvania. Additionally, Maxwell's daughter, Maureen Morris, lives with her family in Philadelphia, PA.

The attorney also discovered that the food that Harry ate on the day he became sick was provided by Parker Pastries (a New York corporation with its principal place of business in Brooklyn, New York) through a contract with PPLS. Parker Pastries provides a wide range of prepared foods to 30 colleges and Universities in the Northeastern States of Massachusetts, Vermont, New York, New Jersey, Rhode Island and Maine.

The Parkers' lawyer would like to file a lawsuit against: PPLS, Max Maxwell, Parker Pastries and Dr. Monasco in Pennsylvania state court. Assume for the sake of this question that the Pennsylvania long arm statute provides that "a court in this state may exercise jurisdiction on any basis not inconsistent with the Constitution of the United States." Also assume that while watching television from his hospital room, Harry happened to see Max Maxwell (who he knew from school) in the crowd at a Philadelphia Eagles game in Philadelphia, PA (Max had received tickets to the game from his son-in-law, Maureen's husband, Titus Morris). Harry, knowing about the lawsuit, called his attorney, who immediately sent a process server, Vinny Villane, to the game, who served Maxwell with a summons and a copy of the complaint at his seat in the stands where he was watching the game with Wayne Wright.

A. What are the arguments that Harry's attorney can make to support the assertion of personal jurisdiction over these various defendants in Pennsylvania in this lawsuit and is the court likely to find personal jurisdiction in each instance?

B. Assuming that personal jurisdiction exists, can the defendants remove the case to the Eastern District of Pennsylvania two years after the case is originally filed in Pennsylvania state court? Assume all of Harry's claims against the defendants are based on state law.

C. Assuming removal is proper, does venue lie anywhere else for this case, or in other words, can this case be properly transferred to another federal district?

D. Assuming that the case is properly removed to federal court, would the federal court be allowed to follow its informal federal practice of allowing each party only 20 interrogatory questions during discovery, even though Pennsylvania state practice would permit 50 such questions?

PART THREE (Policy Question; One Hour; 30 points)

Comment critically on the following statement:

"In deciding whether a court has personal jurisdiction over a defendant, the only thing that should matter is whether the exercise of jurisdiction is consistent with notions of fair play and substantial justice."

Integrate cases and policy arguments from class in supporting your answer. In answering, please first state what the current law *is*. You should then argue what the law *should* be.