

**EXAMINATION**  
**CIVIL PROCEDURE I – LAW 6212**  
**Section 3A – Siegel**  
**Fall 2017**

**INSTRUCTIONS**

1. This is an open book examination. You may use any written materials that you have brought with you (including handwritten, typewritten, printed, or published materials). The use of computers to type answers is permitted.
2. You have **THREE HOURS** to complete the exam.
3. The exam consists of this cover page and 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. Time allocations are:

|             |            |
|-------------|------------|
| Question 1: | 45 minutes |
| Question 2: | 60 minutes |
| Question 3: | 45 minutes |
| Question 4: | 30 minutes |

The weights of the questions are proportional to the time allocations.

5. 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.
6. If you are writing your answers by hand, remember to *write legibly*.
7. 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.
8. 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.
9. Unless otherwise specified, answer all questions on the basis of current law.
10. Good luck.

## QUESTION ONE

(45 minutes)

Westek Corporation (Westek) is a corporation incorporated in Delaware with its principal place of business in California. Westek manufactures cell phones. The batteries in Westek phones are supplied by Durable Corporation (Durable). Durable is a corporation incorporated in Oregon with its principal place of business in Oregon. Durable manufactures batteries in Oregon, ships them to Westek's plant in California, and has no further involvement in Westek's manufacturing or marketing processes. All Durable cell phone batteries are identical.

In 2018, Samsung Corporation, a leading cell phone manufacturer, experiences a problem whereby some of its cell phones catch fire while customers are using them. Samsung has to recall millions of phones. After investigation, Samsung announces that the fires were caused by defective batteries manufactured by its battery supplier in Singapore.

Sensing a market opportunity, Westek places ads on television and in newspapers throughout the United States that say "Westek phones do not contain foreign batteries! All Westek phones contain batteries manufactured by Durable Corporation right here in the U.S.A.! Protect yourself and your family – buy Westek phones with Durable batteries!"

Peter Pruitt, a resident and citizen of Delaware, sees Westek's ads on television in Delaware. He buys a Westek cell phone from a retail store in Delaware, after checking that it contains Durable batteries. A month later, the phone bursts into flame while Peter is using it in Delaware. Peter's clothing catches fire and he is severely injured. An investigation of the phone suggests that the fire was caused by a defect in the Durable battery.

Peter sues Durable in the United States District Court for the District of Delaware. He seeks \$500,000 in damages for his injuries.

Durable asserts that negligent manufacturing by Westek is partly responsible for Peter's injuries, and it moves to dismiss the case under Federal Rule 12(b)(2) for lack of personal jurisdiction and under Federal Rule 12(b)(7) because of Peter's failure to join Westek as a defendant.

You are the law clerk to the district judge considering the case. The judge asks you to write a memorandum discussing the issues raised by the case and making a recommendation as to how to rule on each issue.

A statute of the state of Delaware provides that "In all civil actions, a Delaware state court may exercise jurisdiction over any person who commits a tort within this state."

**Write the requested memorandum.**

**QUESTION TWO**  
(60 minutes)

Congress passes the “Federal Seat Belt Act.” The Act provides that in any car accident case tried in any state or federal court, the plaintiff shall not recover any damages attributable to the plaintiff’s failure to wear a seat belt.

Thereafter, Alice, a resident of Connecticut, is on vacation in Paris, France. While she is driving a car there, her car is struck by a car driven by Bob, in which Curt is a passenger. Alice is severely injured. Bob and Curt were both intoxicated at the time of the accident, and Curt may have contributed to causing the accident even though he was not driving. Alice was not wearing a seat belt at the time of the accident.

Bob and Curt were also vacationing in Paris. Bob is a resident of New Jersey. Curt is a resident of Manhattan, New York. Alice, Bob, and Curt all work in Manhattan. Alice and Bob commute to Manhattan by train every business day. All three of them intend to continue their current living and working arrangements for the foreseeable future. All three are U.S. citizens.

New York state is divided into four federal judicial districts. Manhattan is in the Southern District of New York. Alice sues Bob and Curt in the United States District Court for the Southern District of New York. Her complaint asserts diversity and federal question jurisdiction. Her complaint alleges that Bob and Curt negligently caused her injuries. Her complaint also alleges that her injuries were not attributable to, or not wholly attributable to, her failure to wear a seat belt, and that the Federal Seat Belt Act does not apply to cases involving car accidents that did not occur in the United States. The complaint demands \$250,000 in damages against each defendant.

Alice hires a process server. The process server brings a copy of the summons and complaint to Curt’s apartment (i.e., his residence) in Manhattan and, finding no one home, slips the summons and complaint under the door. The process server also personally hands a copy of the summons and complaint to Bob when Bob is at Bob’s workplace in Manhattan.

Bob and Curt move to dismiss the case for lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue and insufficient service of process.

The New York long-arm statute was recently changed so that it now provides for personal jurisdiction whenever personal jurisdiction is constitutionally permitted. Another New York statute provides that “In any civil action, process may be served on an individual defendant by (a) personally delivering process to the defendant or (b) leaving the process at the defendant’s place of residence. Service under provision (b) is sufficient if the process is slipped under the door of the residence.”

**How should the court rule on the defendants’ motion? Explain.**

### QUESTION THREE

(45 minutes)

Angel Corporation (Angel), a Nevada corporation with its principal place of business in Nevada, operates a casino. Carla Cook, a citizen of California, gambles at Angel's casino, runs out of money, continues to gamble on credit, and leaves at the end of the night owing Angel \$200,000.

Carla fails to pay up, and Angel hires the Bulldog Corporation (Bulldog) to collect on Carla's debt. Bulldog is also a Nevada corporation with its principal place of business in Nevada. Rather than pay Bulldog a fee, Angel enters into a contract with Bulldog whereby Angel sells Bulldog 10% of Carla's debt for \$1 and Bulldog agrees to collect the debt on behalf of both Angel and Bulldog. Thus, Carla now owes Angel \$180,000 and Bulldog \$20,000.

Bulldog attempts to collect on Carla's debt but without success. Subsequently, Angel and Bulldog jointly sue Carla in a federal district court in Nevada. They allege that Carla owes Angel \$180,000 and that she owes Bulldog \$20,000.

Carla asserts a counterclaim against both Angel and Bulldog under the Fair Debt Collection Practices Act (FDCPA). The FDCPA is a federal statute that imposes limits on the behavior of debt collectors. Carla alleges that Bulldog violated the FDCPA by informing Carla's employer about Carla's debt to Angel, and that as a result, Carla lost her job. She claims \$50,000 in damages.

Angel then adds a claim against Bulldog. Angel asserts that the contract between Angel and Bulldog provides that Bulldog would use only lawful methods to collect Carla's debt. Angel asserts that Bulldog is in breach of this contractual provision and therefore that Bulldog must reimburse Angel for any amount Angel is made to pay Carla on Carla's FDCPA claim.

All parties then move that all claims against them be dismissed for lack of subject matter jurisdiction and for improper joinder.

**How should the district court rule on the motions? Explain.**

## **QUESTION FOUR**

(30 minutes)

You are the Legislative Director for U.S. Senator Valerie Virtue. Another Senator introduces a bill called the “Class Action Notice Improvement Act.” The bill provides:

**In any class action brought in any federal court by a plaintiff class, if notice to absent class members is required by the Federal Rules of Civil Procedure or by the United States Constitution, then:**

**(a) The court may order that the costs of notifying the absent class members must be paid by the defendant or defendants, and/or,**

**(b) The court may order that the notice may be sent by electronic means such as by electronic mail, text message, or by message delivered through a social media service such as Facebook,**

**if the court determines that an order under section (a) or (b) or both would be in the interests of justice.**

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 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 civil procedure 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**