

MID-TERM EXAMINATION
CIVIL PROCEDURE -- LAW 6212

Section 3A – Siegel

Fall 2019

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 ONE HOUR to complete the exam.
3. The exam consists of this cover page plus two exam pages numbered 1 and 2.
4. There are TWO QUESTIONS. All students must answer both questions.

The questions are of equal weight and should take about 30 minutes each.
5. Do not put your name anywhere on your answers.
6. If you are writing your answers by hand, remember to *write legibly*.
7. If, with regard to any part of the 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 question, 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

West Yellowstone is a town in Montana just outside Yellowstone National Park. Yellowstone National Park is a national park most of which is in Wyoming, but a small percentage of which is in Montana and Idaho. All campgrounds in the park are in Wyoming, and camping other than at a campground is prohibited within the park.

A store in West Yellowstone called “The Outdoorsman” sells hiking and camping equipment. Arthur, a citizen and resident of New York, arrives in West Yellowstone for a vacation in Yellowstone National Park. He goes to The Outdoorsman and buys their “Complete Yellowstone National Park Camping Kit,” the label of which states, “Contains Everything You Need for Your Camping Trip In Yellowstone National Park!” The kit contains a tent, cooking equipment, a map of Yellowstone National Park and its campgrounds, and numerous other items including bear spray. Yellowstone National Park is home to many black bears and grizzly bears, which pose a danger to campers. Bear spray deters bears from attacking.

Arthur enters Yellowstone National Park, enjoys himself for the day, and goes to a campground within the park to spend the night. During the night, a grizzly bear enters the campground and threatens Arthur. Arthur takes out his can of bear spray from the kit he bought at The Outdoorsman and attempts to spray the bear with it, but the can is defective and no spray comes out of it. The bear attacks and mauls Arthur. Arthur survives but is seriously injured.

The Outdoorsman is owned by Outdoorsman, Inc., a corporation incorporated in Montana and having as its only place of business the store in West Yellowstone, Montana at which Arthur bought his camping kit. Arthur brings suit against Outdoorsman, Inc. in the United States District Court for the District of Wyoming. The court is located in Casper, Wyoming, which is about 350 miles from West Yellowstone, Montana. Arthur claims that sale of the defective bear spray was a tort and he seeks \$250,000 in damages.

The federal judicial district of Wyoming includes the state of Wyoming plus those portions of Yellowstone National Park that are within Montana and Idaho, but not any other part of Montana or Idaho. Outdoorsman, Inc., moves to dismiss the case for lack of personal jurisdiction. Both sides make all appropriate arguments.

A statute of the state of Wyoming provides that “the courts of this state shall have jurisdiction over any person who commits a tort within this state.”

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

QUESTION TWO

In 2020, a series of cases arise in which state courts hold gun manufacturers liable for injuries caused by guns. For example, in a case in which a robber shot a victim with a gun, a state court holds that the gun's manufacturer is liable to the robbery victim.

In 2022, Congress passes the Federal Firearm Immunity Act ("FFIA" or "Act"). The Act states, "No manufacturer of any firearm, any part of which has moved in interstate commerce, shall be liable for any injury caused by the normal functioning of the firearm."

In 2023, Patty is a senior in college at the University of Connecticut. Patty was born and raised in Connecticut and has lived there all her life. Patty has always dreamed of living in Chicago, Illinois, and in January 2023, she gets a job offer from a company in Chicago. She accepts the offer with a start date of September 15, 2023, signs a lease on a Chicago apartment to begin September 1, 2023, and makes other plans to move permanently to Chicago.

Patty is also a gun enthusiast, and in March 2023 Patty takes her Colt gun to a firing range in Connecticut. She is injured when the gun goes off unexpectedly and hits her in the leg. The gun fired even though Patty had the gun's safety on. (A "safety" is a switch on a gun that is supposed to prevent the gun from going off accidentally.)

In April 2023, Patty, who has not yet graduated from college, sues Colt, the company that manufactured her gun, in a Connecticut state court of general jurisdiction and claims that the gun's safety was defective. She seeks \$30,000 in medical expenses and \$50,000 in pain and suffering damages. Colt is a corporation incorporated in Delaware and having its principal place of business in Connecticut.

Claiming immunity under the FFIA, Colt removes the case to federal district court. Patty argues that the FFIA does not apply to cases where injury was caused by defects in a gun because such injuries are not caused by the gun's "normal functioning." She also asserts that if the FFIA does apply to her case, then it is unconstitutional because it is outside Congress's powers under the U.S. Constitution.

Patty moves to remand the case to state court on the ground that it is not within the federal court's jurisdiction. Both sides make all appropriate arguments.

How should the court rule on Patty's remand motion? Explain.

END OF EXAM