

FINAL EXAMINATION
CIVIL PROCEDURE – LAW 6212 – Section 1C – Siegel
Fall 2020

INSTRUCTIONS

1. This is an open book examination. You may consult written materials during the exam. “Written” materials include materials that are handwritten, typewritten, printed, published, and the electronic equivalents thereof, including materials posted on the Internet. The materials may be written by you or by anyone else. They may include commercial materials. The materials must have been written before the exam began.
2. It is forbidden to consult any other person about the exam, directly or indirectly, during the exam. It is forbidden during the exam to discuss the exam with any other person, even in a general way, regardless of whether or not the other person is a student in the class, regardless of whether or not you and/or the other person have seen the exam, and regardless of whether or not you and/or the other person have submitted answers. The phrase “during the exam” means the entire 24-hour period from 2 pm Eastern time on December 14, 2020 to 2 pm Eastern time on December 15, 2020.
3. **You have 3.5 hours (3 hours, 30 minutes) to complete the exam.** You may start the exam at any time from 2 pm Eastern time December 14, 2020 to 10:30 am Eastern time December 15, 2020. Once you start, you have 3.5 hours to complete your answers to both the essay and the multiple choice questions and to upload your essay answers via MyLaw. For further details, consult the instructions you received from the Dean’s Office.
4. There are **FOUR ESSAY QUESTIONS**, some of which have subparts. There are **TWELVE MULTIPLE CHOICE QUESTIONS**. All students must answer all questions. You may complete the questions in any order.
5. You will answer the essay questions using MyLaw. You will answer the multiple choice questions on Google Forms. To get to the multiple choice questions, copy and paste this link into your browser:

<https://tinyurl.com/y3d4a85d>

You must be logged in to your @law.gwu.edu email to access the multiple choice questions. The Google Form will record your email address, but Prof. Siegel will not see it, so the anonymity of the exam will be preserved.

6. **Include your GWid at the start of your answer to the first essay question.** Input your GWid wherever the software tells you to, but also type your GWid at the start of your answer to the first essay question. You will also enter your GWid into the Google Form via which you will take the multiple choice questions.

7. **Word Limit on Essay Answers:** Your answers to the four essay questions must be no more than 3000 words in total. You must conclude your answers to the essay questions with a certificate in the following form: “I certify that my answers to the four essay questions contain [number] words in total. [GWid].” Replace [number] with the number of words in your answer to all four essay questions in total, and replace [GWid] with your GWid, which constitutes your signature to the certificate. Do *not* put your name on the certificate.

8. The recommended time allocations for the questions are:

Essay Question One:	30 minutes
Essay Question Two:	40 minutes
Essay Question Three:	30 minutes
Essay Question Four:	30 minutes
Multiple Choice Questions:	50 minutes (total)

The weights of the questions are proportional to the recommended time allocations. The recommended times add up to 3 hours. The 30 extra minutes are designed to permit ample time to deal with the administrative aspects of the exam.

9. Do not put your name anywhere on your answers.

10. If you are writing any answers by hand, remember to *write legibly*.

11. If, with regard to any essay 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.

12. Using good judgment, address all the issues presented and assigned by the essay questions, even if your answers to some issues would, in real life, eliminate the need to address other issues.

13. Unless otherwise specified, assume all events occurred within the United States and answer all questions on the basis of current law.

14. Unless otherwise specified, assume that your reader wants all your answers to essay questions to be explained and justified, but doesn't have time to read unnecessary material.

15. Good luck.

ESSAY QUESTION ONE

The state of Maryland follows the rule of contributory negligence, i.e., a tort plaintiff whose negligence was a contributing cause of his or her own injuries recovers nothing. Maryland state legislators have attempted to change this rule, but insurance companies have always blocked these attempts. In January 2022, Maryland's legislature manages to pass the following statute: "In any tort action tried by jury within the state of Maryland involving a defense of contributory negligence, the court shall instruct the jury to return only a general verdict." A legislative report accompanying this statute states: "Some juries, if permitted to return a general verdict in a tort case, compromise and rule for a contributorily negligent plaintiff while reducing the damages. We still have the rule of contributory negligence, but this statute will permit juries to temper the stringency of the rule."

Thereafter, Peter, a citizen of Maryland, is walking across a street in Baltimore, Maryland while texting on his cell phone. He is hit by a car driven by Diane, a citizen of Delaware, who is texting while driving. Peter is seriously injured. Peter sues Diane in state court in Maryland for \$300,000. Diane removes the case to federal district court in Maryland on the basis of diversity. Peter claims that Diane negligently caused the accident. Diane claims that Peter was contributorily negligent. The parties agree that the case is governed by the substantive tort law of Maryland.

The case is tried by jury. At the close of the evidence, Diane asks the court to instruct the jury to return a general verdict with answers to questions and to submit this question to the jury: "Was the plaintiff's own negligence a contributing cause of his injuries?" Peter argues that under the new Maryland statute, the court must instruct the jury to return only a general verdict.

A. Is the court *required* to instruct the jury to return a general verdict only? Is the court *permitted* to instruct the jury to return a general verdict only? Explain. (Answer these questions before continuing to Part B. Put your Gwid at the start of your answer.)

Whatever you thought with regard to Question A, above, the district court decides to instruct the jury to return a general verdict with answers to questions. Peter objects on the basis of the Maryland statute, but the court overrules this objection. The court submits the question requested by the defendant to the jury. The jury answers "yes" to the question and returns a general verdict for the defendant. Judgment is entered on the general verdict on September 1, 2023. On October 16, 2023, Peter files a notice of appeal. Peter asks the court of appeals to order a new trial on the ground that the Maryland statute required the district court to call for a general verdict only. Both sides make all arguments in connection with the appeal that one would expect on the above facts.

You are a law clerk to a judge on the court of appeals, who says, "in my view, the question whether the district court had to follow the Maryland statute is very close, but ultimately the answer is yes. So I don't need advice on that question, but I do want your advice on the appeal otherwise."

B. Write the judge a memorandum discussing the issues raised by the appeal and making a recommendation as to how to rule on each issue.

ESSAY QUESTION TWO

Patricia, a citizen of Missouri, is a realtor who works at Desirable Realty, Inc. (“Desirable”), a national realty company. Desirable is a corporation incorporated in Delaware with its principal place of business in New York. Patricia works for Desirable at its office in Kansas City, Missouri.

Patricia is promoted to a position in which she supervises other realtors at Desirable’s Kansas City office. She is the first woman in the Kansas City office to achieve this level of responsibility. Thereafter, she is subjected to a barrage of anonymous messages that criticize her job skills and physical appearance and that suggest that women should not be in management. Patricia complains to the upper management of the company, but nothing is done. When the messages start to threaten Patricia’s physical safety, she quits.

Patricia brings suit against Desirable in federal district court in Missouri. She claims that Desirable violated Title VII of the federal Civil Rights Act of 1964, which prohibits employment discrimination on the basis of sex, by tolerating a work environment that was hostile to women. She seeks \$250,000 in damages on this claim. Patricia also claims that Desirable owes her \$5,000 in expenses. She claims that while working for Desirable, she traveled to several seminars on Desirable’s behalf and was never reimbursed for her travel expenses.

Desirable finally investigates the anonymous messages and determines that they came from Carl, another realtor in Desirable’s Kansas City office. Carl is a citizen of Missouri.

Three motions are made in the case: (1) Desirable moves to dismiss Patricia’s claim for \$5,000 in expenses for lack of subject matter jurisdiction and on the ground that it is not permitted by the joinder rules.

(2) Desirable moves to implead Carl as a third-party defendant. Desirable asserts that Carl breached his written employment agreement with Desirable, in which he promised not to cause Desirable to be in violation of any laws. Desirable asserts that Carl must therefore reimburse the company for any amount that it is made to pay Patricia on her Title VII claim.

(3) Patricia moves to add a claim against Carl. She asserts that Carl’s anonymous messages that caused her to leave Desirable constituted “tortious interference with contractual relations,” which is a tort under Missouri state law. She seeks \$250,000 in damages against Carl.

Carl opposes motions (2) and (3) on the grounds that they are not permitted by the joinder rules and that the court would lack subject matter jurisdiction over the joined claims.

How should the court rule on the pending motions? Explain.

ESSAY QUESTION THREE

The federal Copyright Act prohibits making or distributing copies of a copyrighted work without permission of the copyright owner. Copyright infringement includes making or distributing a work that is substantially similar to the copyrighted work even if it is not an exact copy. However, copyright infringement occurs only when someone actually *copies* from a copyrighted work. If a second creator *independently* creates a work that happens to be similar to an existing copyrighted work, there is no infringement.

Peng, a schoolteacher who publishes poetry from time to time, opens her copy of the *New Yorker* magazine and is dismayed to see that a poem therein is very similar to a poem she previously published in the *Upsilon Poetry Review*, a poetry magazine of small circulation. The poem in the *New Yorker* is by David, who has been a famous poet for many years. Peng received \$25 for her poem. David received \$500 for his. Peng sues David in federal district court in Virginia for copyright infringement. Among other things, her complaint alleges: “The defendant read the plaintiff’s poem in the *Upsilon Poetry Review* and copied from it.” She seeks \$500 in damages.

A statute of the state of Virginia provides that “in any civil action, process may be served on the defendant by folding the summons and complaint into a paper airplane and throwing it off the top of the state capitol building.” Peng’s process server folds the summons and complaint in her case into a paper airplane and throws it off the top of the state capitol building in Richmond, Virginia. By coincidence, David is walking by at that moment. The paper airplane lands right in his hands, and he unfolds it and learns that Peng is suing him.

A. David moves to dismiss the case for failure to state a claim upon which relief can be granted. In his motion, David states, “I never saw the plaintiff’s poem before publishing my own. Any similarity between my poem and her poem is a coincidence. Therefore, I cannot have violated her copyright.” You are a law clerk for the judge considering the case. Discuss the issues raised by David’s motion and advise the judge as to how to rule.

B. Whatever you thought of the above motion, the judge denies it. Thereafter, David moves to dismiss the case for insufficient service of process. Both sides make such arguments as might be expected on the above facts. You are still a law clerk for the judge considering the case. Discuss the issues raised by David’s motion and advise the judge as to how to rule.

C. Once again, whatever you thought of the above motion, it is denied and the case proceeds. During discovery, Peng serves the following discovery request on David: “Produce all drafts of all poems you have ever published and all unpublished poetry that you have written that is still in draft form.” David objects to this discovery request on such grounds as you might expect. The parties attempt to work out their discovery dispute but cannot do so. Peng moves to compel discovery and David moves for a protective order. You are still a law clerk for the judge considering the case. Discuss the issues raised by the pending motions and advise the judge as to how to rule.

ESSAY QUESTION FOUR

Andrej, a respected financier at a prominent Wall Street financial firm, is originally from Europe. His employer receives an anonymous letter providing a detailed accusation that before immigrating to the United States, Andrej committed war crimes in his home country. Andrej is fired.

Andrej sues Branko in state court in New York for the tort of libel for \$10 million. Andrej accuses Branko of being the author of the anonymous letter. Branko (1) denies being the author of, or contributing in any way to, the letter and (2) also asserts that the statements in the letter are true. Either of these points, if established, would, by itself, be a complete defense to Andrej's claim.

The case is tried by jury. The parties vigorously litigate all the issues. The jury returns a general verdict with answers to questions. The general verdict is for Branko. In response to the questions, the jury determines (1) that Branko was not the author of, and did not contribute in any way to, the anonymous letter, and (2) that the statements in the letter are true. Judgment is entered on the verdict. Andrej does not appeal.

Subsequently, Andrej sues Cvetko in state court in New York for libel for \$10 million. Andrej now accuses Cvetko of being the author of the anonymous letter. Cvetko (1) denies being the author of, or contributing in any way to, the letter and (2) also asserts that the statements in the letter are true.

Cvetko moves for summary judgment on the basis of the preclusive effect of the case of Andrej v. Branko. On all issues of preclusion law, New York follows the modern, majority rules.

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

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- **End of the essay questions.**
 - **Per the instructions, conclude your answers with a certificate in this form:**

“I certify that my answers to the four essay questions contain [number] words in total. [GWid].”
 - **Then go online and do the multiple choice questions.**