

MID-TERM EXAMINATION
CIVIL PROCEDURE I -- LAW 6212
Section 13A – Siegel
Fall 2023

INSTRUCTIONS

1. This is an open book examination. You may use any written materials that you have brought with you to the exam. “Written” materials include materials that are handwritten, typewritten, printed, or published. It also includes the electronic equivalents thereof, provided the materials are stored on your computer prior to the exam. You may copy text from such materials into your exam answer. However, during the exam, it is forbidden to access the Internet, to consult any other person directly or indirectly, or to make use of an artificial intelligence program.
2. You have ONE HOUR to complete the exam. The exam consists of this instructions page and two pages of questions. There are TWO QUESTIONS. All students must answer both questions.
3. Do not put your name anywhere on your answers. If you are writing your answers by hand, remember to *write legibly*.
4. Answers prepared using the Exam4 software must contain no more than a total of 1750 words. (That’s 1750 words total for the whole exam, *not* 1750 words per question.) The software will report the number of words in your exam answers. Answers that contain more than 1750 total words will be penalized.
5. 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.
6. 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.
7. Unless otherwise specified, assume all events described in the questions occurred in the United States and answer all questions on the basis of current law.
8. Good luck.

QUESTION ONE

Daredevil Dave's is an amusement park in Pennsylvania. Daredevil Dave's is owned by DD, Inc. ("DD"), a corporation incorporated in Pennsylvania. DD's principal (and indeed only) place of business is the amusement park in Pennsylvania. The park has many thrilling rides in which people are zoomed around rapidly.

DD runs television advertisements that encourage people to come to the park. The ads are run locally on television stations within driving distance of the park, including television stations in Virginia. DD has no other contacts with Virginia.

Paul, a citizen and resident of Virginia, sees one of DD's ads on television in Virginia and decides to go visit Daredevil Dave's in Pennsylvania. While Paul is at Daredevil Dave's getting ready to ride on one of the rides, his position in his seat is checked by a park employee. However, the employee fails to ensure that Paul is safely secured in his seat. While the ride is moving, Paul is thrown off the ride and is seriously injured.

Paul sues DD in federal district court in Virginia. (Paul does *not* sue DD's individual employee.) Paul's complaint alleges that DD's employee was negligent, that this negligence caused his injury, and that DD is liable for its employee's negligence. He seeks \$250,000 in damages. Process is properly served on DD in Pennsylvania. DD moves under Federal Rule of Civil Procedure 12(b)(2) to dismiss Paul's suit for lack of personal jurisdiction. Paul opposes the motion. Both sides make all appropriate arguments.

Virginia has an enumerated long-arm statute. The only potentially applicable provision of this statute provides that "Virginia state courts shall have personal jurisdiction over any person who commits a tort within this state."

You are a law clerk to the federal district judge hearing the case. The judge asks you to write a memorandum discussing the issues raised by DD's motion to dismiss and making a recommendation as to how to rule on each issue. The judge says, "please conclude your memorandum by making a clear recommendation as to whether the motion to dismiss should ultimately be *granted* or *denied*."

Write the memorandum.

QUESTION TWO

The Public Readiness and Emergency Preparedness Act (“PREP Act”), a federal statute, provides that manufacturers and distributors of COVID-19 vaccines and health care personnel who administer such vaccines are immune from liability for injuries caused by such vaccines.

Pamela is a citizen and resident of Connecticut who works in Manhattan, which is in New York City, New York. While she is on her lunch break one day, she goes to Dependable Pharmacy in Manhattan for a COVID-19 vaccine. The vaccine is administered by Eunice, a health care technician who is employed by the pharmacy. Before administering the vaccine, Eunice has Pamela fill out a questionnaire about her allergies. Pamela’s answers to the questionnaire indicate that it is not safe for her to receive the vaccine, but Eunice fails to notice the answers and administers the vaccine anyway. Shortly after receiving the vaccine, Pamela has a bad reaction to it and has to be rushed to a nearby hospital in Manhattan. She recovers rapidly and is released from the hospital the next day, but she incurs \$100,000 in medical bills.

Eunice is a citizen of New York. She lives permanently on Long Island, New York and commutes into Manhattan for work. Dependable Pharmacy is owned by DP, Inc. (“DP”), a corporation incorporated in Connecticut with its principal place of business in New York.

New York state is divided into four federal judicial districts. Manhattan is in the Southern District of New York. Long Island is in the Eastern District of New York. Connecticut is a single federal judicial district.

Pamela brings suit against DP and Eunice in the United States District Court for the District of Connecticut. Her complaint alleges the above facts and asserts that immunity under the federal PREP Act does not apply when a COVID-19 vaccine is wrongly administered to a person who has provided information indicating that the person may not safely receive the vaccine. She seeks \$100,000 in damages against the defendants.

The defendants move to dismiss for lack of subject matter jurisdiction and improper venue. Pamela opposes the motion. Both sides make all appropriate arguments.

How should the court rule on the defendants’ motion? Explain, and be sure to say whether the motion should ultimately be *granted* or *denied* on each of the stated grounds.