EXAMINATION
FEDERAL COURTS – LAW 6232-11
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 **THREE HOURS** to complete the exam.

3. The exam consists of this cover page and 8 exam pages numbered 1 through 8. Make sure you have all the pages.

4. There are **FIVE QUESTIONS**. All students must answer all questions. The questions should take about 35 minutes each. That adds up to 175 minutes, leaving 5 extra minutes.

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, state your assumption, 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, assume all events stated in the questions occurred in the United States and answer all questions on the basis of current law.

10. Good luck.

QUESTION ONE

The Constitution of the United States provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court." The Constitution provides no other guidance on Supreme Court appointments. The typical process for appointment of a Supreme Court Justice is that the President nominates a candidate, the Senate holds a hearing on the candidate and then votes on the candidate, and if the Senate votes favorably, the President appoints the candidate. However, some candidates who are nominated never come up for a vote. Some withdraw from the process, particularly if it seems that they are not likely to receive a favorable vote in the Senate.

In the November 2020 election, the Democratic candidate for President wins, but Republicans retain control of the Senate, and Republican Senator Mitch McConnell remains the Senate majority leader. On January 21, 2021, after the new President takes office, a Supreme Court Justice retires. The new President immediately nominates Pamela Harris, a judge on the U.S. Court of Appeals for the Fourth Circuit, to be the new Supreme Court Justice. Senator McConnell announces that as long as Republicans control the Senate, the Senate will not consent to the appointment of any Supreme Court Justice by a Democratic President. The Senate holds a hearing on Judge Harris and takes all steps short of bringing her up for a vote, but does not bring her up for a vote. In his capacity as majority leader, Senator McConnell could schedule a vote on Judge Harris at any time, but he does not. Months go by.

Meanwhile, Adam Appel, an employee of the U.S. Park Service, is fired for refusing to work on the Jewish "high holidays" of Yom Kippur and Rosh Hashana. He sues Raymond Vela, the head of the Park Service, in federal district court. He claims that his firing violated his constitutional right to freely exercise his religion. He seeks reinstatement with back pay. Appel wins in district court, but the U.S. Court of Appeals for the Fifth Circuit reverses and holds that the Park Service can require its employees to work on their neutrally determined duty days and has no obligation to accommodate their religious needs not to work. Because the U.S. Court of Appeals for the Fourth Circuit ruled the opposite way in the virtually identical case of *Baron v. Vela* (which concerned Bob Baron, a Park Service employee who was also fired for refusing to work on the Jewish high holidays), the Supreme Court grants certiorari.

In October 2021, the Supreme Court, operating with eight Justices because of the retirement, issues a one-sentence ruling in *Appel v. Vela* that says, "The judgment is affirmed by an equally divided Court." The effect of such a judgment is to affirm the judgment under review in the particular case, but not to set any precedent for future cases.

Appel then sues Senator McConnell in federal district court. He claims that the Senate is violating its constitutional duty to consider Judge Harris and vote on her. Appel seeks an order requiring Senator McConnell to bring Judge Harris's nomination before the Senate for an up-or-down vote. Appel notes that Harris was one of the Fourth Circuit judges who voted in favor of Bob Baron, the employee in the case of *Baron v. Vela*.

Appel is joined as plaintiff in the suit against McConnell by Chaya Cohen, yet another Park Service employee fired for refusing to report to work on the Jewish high holidays. Cohen had also brought a case against Vela, virtually identical to Appel's. Cohen had won in district court and then lost in the U.S. Court of Appeals for the Tenth Circuit. Her petition for certiorari in the U.S. Supreme Court is pending at the time she and Appel sue McConnell.

Senator McConnell moves to dismiss the suit based on such grounds, from among the possible grounds for dismissal that we studied in our Federal Courts class, as might be expected on the above facts. Both sides make all appropriate arguments.

How should the district court rule in Appel and Cohen's case against Senator McConnell? Explain.

[Note: The question is not how any court should rule in any of the cases against Vela. The question is how the district court should rule in Appel and Cohen's case against McConnell.]

QUESTION TWO

Dynamic Laboratories, Inc. (Dynamic), a corporate citizen of New Jersey, is developing a drug called Zuramax at a laboratory in New Jersey. Dynamic rents the laboratory from Precision Properties, Inc. (Precision), which is also a corporate citizen of New Jersey.

Zuramax has shown considerable promise as a cure for leukemia, a deadly form of cancer. However, the federal Drug Enforcement Administration (DEA) warns Dynamic that Zuramax gets healthy people high, that it is too similar to cocaine, and that the DEA is investigating whether Zuramax is an illegal drug that violates the Controlled Substances Act (CSA), a federal statute. Dynamic denies that Zuramax violates the CSA. After some months of discussion, the DEA raids the laboratory at which Dynamic is developing Zuramax and carries off supplies, equipment, and plans. Much damage is done to the laboratory building during the raid. Precision demands that Dynamic pay for the damage to the building. Dynamic disclaims responsibility for damage caused by the DEA.

Precision sues Dynamic in federal district court in New Jersey and seeks $50,000 for the damage to the building. Precision asserts that Dynamic is in breach of a clause in the lease that provides that "the tenant shall reimburse the landlord for any damage resulting from the tenant's violation of any federal law." Precision asserts no other theory upon which Dynamic could be liable to it.

Dynamic denies that it has violated any federal law. Dynamic also relies on the Cancer Treatment Promotion Act (CTPA), a federal statute, which provides that "no party attempting to develop a cancer cure shall be liable for any injuries caused by its efforts to develop the cure." Precision argues that the CTPA could only shield Dynamic from liability for injuries suffered by patients taking Zuramax for experimental purposes and that the CTPA has no application to the case because damages to Precision's building are not the kind of "injuries" contemplated by the CTPA.

You are the law clerk to the federal district judge considering the case. Your judge says to you, "The parties don't seem to have thought about this carefully, but is this case within the federal subject matter jurisdiction?"

Answer the judge's question. Explain.

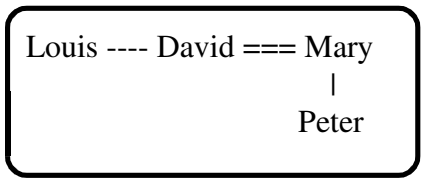
QUESTION THREE

The Servicemen's Group Life Insurance Act (SGLIA), a federal statute, provides that the U.S. military shall offer its members, as a job benefit, the opportunity to purchase life insurance. The Act directs each military service (Army, Navy, etc.) to enter into a contract with a private insurance company pursuant to which the service purchases a "master" policy from the company and then permits service members to buy life insurance pursuant to the master policy.

The SGLIA provides:

> **Upon the death of an insured service member, the proceeds of the life insurance policy shall be paid to the beneficiary or beneficiaries the member designated in writing prior to death, if any. If there is no such designated beneficiary, the proceeds shall be paid to the first person or people on the following list who survive the service member:**
>
> **(1) the member's widow or widower;**
> **(2) the member's children and other descendants;**
> **(3) the member's parents; or**
> **(4) the member's siblings.**

David Green is a member of the Army. He is a domiciliary of the state of Illinois, but he moves frequently as he is transferred by the Army among various posts. In 2020, while he is stationed in Afghanistan, he purchases $250,000 worth of life insurance under the SGLIA. David is married to Mary Green. He has no children, but Mary has one son, Peter, by a prior marriage. David has not adopted Peter. David's only living relative is his brother, Louis. (See diagram at left.) Using a government-provided form, David designates Mary as the primary beneficiary of the life insurance policy, and designates Peter as the contingent beneficiary should Mary predecease David.



In 2021, while David is stationed in the state of Georgia, Mary, who is having an affair with another man, murders David. Mary is prosecuted and convicted for the murder and sentenced to life in prison. Peter played no role in the crime. The possibility that an insured service member might be murdered by the designated beneficiary of his life insurance policy is not mentioned in the SGLIA.

State courts have long followed the rule of the classic New York state case, *Riggs v. Palmer* (NY 1889), which held as a matter of common law that a murderer may not inherit property from his victim, even though no such restriction is contained in the state inheritance statute. States have long applied a similar common law rule to bar murderers from collecting life insurance because of

the victim's death, regardless of whether such a rule is contained in state life insurance statutes.

States differ, however, on the issue of exactly what should happen to the proceeds of the victim's estate or life insurance policy. The majority of states apply the rule that the proceeds should be distributed as though the murderer predeceased the victim, which could lead to the proceeds passing to relatives of the murderer. A minority of states, however, provide that the murderer's relatives are also barred from receiving anything (except that the murderer's children may receive the proceeds *if* they were also the victim's children). Georgia follows the majority rule; Illinois follows the minority rule.

Almost all states' conflict of laws principles provide for issues relating to life insurance policies to be resolved according to the law of the state where the insured person was domiciled at death. The SGLIA contains no choice of law provision.

Mary, Peter, and Louis each claim the insurance money. A proper action is filed in a federal district court in Georgia in which the three are parties. The parties make all appropriate arguments.

You are the federal district judge presiding over the action. Write a thoughtful opinion deciding who should get the insurance money.

QUESTION FOUR

The U.S. Supreme Court has long held that the Constitution's Due Process Clause may require suppression of testimony about an eyewitness's identification of an accused criminal that comes about through "unnecessary and suggestive" police procedures that create a substantial likelihood of misidentification, such as showing the witness only the suspect instead of having the witness pick the suspect out of a lineup. However, under the Supreme Court's cases, suppression is not automatic. In cases involving improper police suggestion, a court must evaluate the totality of the circumstances and determine whether the witness can make a reliable identification despite the police suggestion. Relevant factors include how much time the witness had to view the criminal during the crime and the certainty of the witness's identification.

Connecticut state law takes a stricter approach to the same situation. Under Connecticut law, eyewitness identification evidence must automatically be excluded if it came about through unnecessary and suggestive police procedures that create a substantial likelihood of misidentification, without regard to whether the circumstances of a case suggest that the witness can make a reliable identification.

In 2020, an unknown assailant rapes Anne Alden in Hartford, Connecticut. Alden goes to Hartford Hospital, where doctors use a "rape kit" to collect potential physical evidence of the rapist's identity. However, after processing the rape kit, the hospital reports that the kit did not produce any useful evidence.

Based on Alden's description of the rapist, whom she had ample time to view during the crime, police arrest Bill Brown and take him to the police station. Brown denies any involvement in the crime. Police bring Alden to the police station where Brown is being held and have her look at him. She identifies Brown as the rapist and says that she is quite certain he is the one.

Brown is tried for rape in state court in Connecticut. At the trial, Alden testifies about how she identified Brown as the rapist at the police station. Brown's counsel makes no objection. There is little other evidence implicating Brown. Brown is convicted and sentenced to ten years' imprisonment.

On appeal to Connecticut's highest state court, Brown's counsel asserts that Alden's testimony about identifying Brown should not have been allowed, since the police used the unnecessary and suggestive procedure of having her look at Brown alone, instead of having her pick him out of a lineup. He cites both the federal Constitution and Connecticut state law in support of this argument. The state appellate court rejects the argument on the ground that Connecticut state law requires all objections to evidence to be made at the time the evidence is introduced.

Brown's conviction is therefore upheld. Brown does not seek certiorari from the U.S. Supreme Court. On June 1, 2021, the time for Brown to seek certiorari expires.

On July 1, 2021, Hartford Hospital informs the state prosecutor and Brown's defense counsel that the rape kit used in the Alden case was inadvertently mixed up with a rape kit from a different case. The true rape kit from the Alden case, the hospital reports, did contain useful evidence of the rapist's identity. Based on that evidence, the hospital reports that Brown is 100% excluded from being the rapist.

On August 1, 2021, Brown's counsel seeks habeas corpus relief in federal district court. He asserts that (1) the new evidence shows Brown to be innocent, (2) the U.S. Constitution required suppression of Alden's eyewitness testimony, and (3) Connecticut law required suppression of Alden's eyewitness testimony. The state opposes habeas and makes all appropriate arguments.

You are the law clerk to the federal trial judge considering Brown's habeas petition. Your judge says to you, "The police procedure was clearly unnecessary and suggestive. The police should have had Alden pick Brown out of a lineup. But given that Alden had ample time to view the rapist during the crime and that she was quite certain of her identification, I think her testimony was sufficiently reliable that its admission did not violate the U.S. Constitution's Due Process Clause. However, the testimony would have had to be suppressed under Connecticut state law, if Brown had raised the objection at the time the evidence was introduced. Also, I agree with Brown that the new evidence conclusively shows him to be innocent."

Your judge says, "Accepting all that, should I grant habeas relief? Please give me your advice."

Write a memorandum addressing the issues raised by the case and advising your judge how to rule on each issue. Conclude your memorandum by stating whether habeas should ultimately be granted or denied.

QUESTION FIVE

You are the Legislative Director for U.S. Senator Gus Goodman. Another Senator introduces a bill called the "Younger Abstention Abolition Act." The bill provides:

> **A federal district court may issue an injunction to prevent a state court from proceeding in a criminal case wherein a conviction would violate the federal constitutional rights of the defendant in the state court criminal case.**

Senator Goodman asks you to write him a memorandum evaluating this bill. Your memorandum should explain what the likely effects of adopting the bill would be, discuss whether the bill is constitutional, 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 Goodman could offer to it, you should mention those, or you may recommend that he support it as is or that he just oppose the whole thing. The Senator is not an expert on federal courts 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.

END OF EXAM