

Instructions

This Civil Procedure Midterm Exam consists of an on-going fact pattern with four (4) questions. Please read the entire exam and the questions before you begin to outline your answers. I have suggested time limitations for each question to help guide you on priorities for your answers. I have allocated the first twenty (20) minutes to read the exam and questions. I would strongly urge that you take time to outline your answers before answering the questions.

Although I expect your answers to be in complete sentences, I will review any outlines or notes submitted with the examination for partial credit should you not have time to answer fully.

GOOD LUCK.

FACT PATTERN AND QUESTIONS

The tragic car accident which took the life of Diana, Princess of Wales, also took the lives of her companion, Dodi Fayed, and the driver, Henri Paul. If we change the location of the accident to Delaware and some of the facts, litigation brought by the estate of Dodi Fayed against the estate of Henri Paul in the United States District Court for the District of Delaware might proceed as follows:

On August 20, 1999, two weeks before the two year statute of limitations would preclude a lawsuit for negligence regarding the accident, the estate of Dodi Fayed filed suit against the estate of Henri Paul in the United States District Court for the District of Delaware. The complaint claimed damages from Paul's estate because of Paul's negligent driving while drunk which caused the accident which resulted in the death of Fayed. Fayed's lawyer properly served the estate of Paul with the summons and complaint on September 1, 1999.

Paul's counsel believes that Paul can defend the lawsuit by (a) denying allegations of negligence and (b) asserting that even if Paul was negligent as alleged in the complaint, Fayed would be barred from recovering any damages because Fayed was contributorily negligent for failing to use a seat belt while riding in a moving vehicle.

**Question 1.** (20 minutes) When and how may counsel for Paul raise these defenses to the complaint in Estate of Fayed v. Estate of

Paul? Explain your answer.

Assume the pleadings were completed when counsel for Paul discovered that Paul has a valid challenge to the jurisdiction by the United States District Court for the District of Delaware over the estate of Paul.

**Question 2.** (20 minutes) When and how may counsel for Paul raise that defense? Explain your answer.

Counsel for Fayed wants the following information: (a) the official autopsy report on Paul routinely prepared by the Delaware Coroner pursuant to law in cases of death by car accident, including any test results indicating the alcohol content of Paul's blood, (b) the name of any eyewitnesses to the accident, and (c) the interview notes and/or transcripts from interviews prepared by counsel for Paul, or his representatives, with any eyewitnesses to the accident.

**Question 3.** (30 minutes) From whom and by what means may counsel for Fayed try to compel production of the information he wants? Will counsel for Fayed get the information? Explain your answer.

Several months after the suit Estate of Fayed v. Estate of Paul was filed, counsel for Fayed now wants to claim damages from Paul's estate because of Paul's negligent driving at a speed in excess of 90 miles per hour in a zone marked 55 miles per hour

which caused the accident which resulted in the death of Fayed.

**Question 4.** (30 minutes) Can counsel for Fayed bring this additional claim of negligent driving against the estate of Paul as part of this lawsuit? How? Explain your answer.

END OF EXAMINATION