

FINAL EXAMINATION
CIVIL PROCEDURE I
PROFESSOR NUSSBAUMER
DECEMBER 6, 2005

INSTRUCTIONS:

1. You have **two (2) hours** to complete this examination. It is recommended that you allocate one hour to Part I, multiple-choice questions, and one hour to Part II, the essay portion.
2. This is a **closed** book exam. No outside materials of any kind are allowed, nor may you consult or collaborate with other students.
3. The exam consists of two parts.
 - } **Part I** consists of 22 multiple-choice questions. Please mark your responses to the questions on the separate ParSCORE test form using pen or pencil and follow the instructions on that form. If you change your answer, place a clear **X** through the wrong answer and mark the correct one. A machine will score the exam and any ambiguities will be counted as a wrong answer. Read each question carefully and choose the **best** possible answer out of the four choices provided.
 - } **Part II** consists of one essay questions, each worth 1/3 of the total grade. You should budget your time to devote one hour and not more to each question. Please write your responses in the blue books provided. Write clearly and **legibly**. Write on every other line and every other page to permit instructor comments. If you are using exam software and typing your answers, be sure to frequently save to the diskette.
4. Write your exam number on your exam envelope. Put your correct class section and student exam number at the top of this page, each page of questions, each blue book, and the ParSCORE test form. **Do not** use your name, student ID number or Social Security number on any exam materials.
5. At the conclusion of the exam, return all test materials, including blue books, ParSCORE answer form, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

PART II

Essay Question

One Hour

Spitzer, a cable-television consumer and life-long resident of New York City, New York, has filed a lawsuit as an individual plaintiff in the U.S. District Court for the Southern District of New York (the district embracing New York City) against CableGiant New York, a corporation incorporated in Delaware and with its principal place of business in New York. CableGiant New York is the sole provider of cable television in the state of New York, and it supplies basic or premium cable services to at least 50% of all New York residents in every part of the state.

The form contract that each cable subscriber must sign with CableGiant New York specifically states that the corporation guarantees to the consumer that it will comply with 503 of the federal Television Audience Protection Act (the TVAPA). Section 503 of the TVAPA requires that any television service provider that lacks effective competition from other providers of its type in a particular region must offer uniform pricing rates to all consumers in the geographic area served by the provider. CableGiant New York's inclusion of this guarantee of compliance with federal 503 as an express term in its consumer contracts is very unusual. In fact, no other cable-television provider in the United States has provided such an express term in its consumer contracts. No state or federal court has yet interpreted or applied the terms of 503.

Spitzer has filed just one claim, a New York state breach-of-contract claim alleging that CableGiant New York is in violation of its contractual agreement with him to comply with 503's uniform pricing rule because the corporation charges much higher rates for cable-television service in New York City than it does for the same service in other parts of the state. (The corporation has a tripartite pricing structure that distinguishes among (1) suburbs and mid-size cities; (2) rural areas; and (3) New York City. Thus, for example, the basic cable package is \$25/month in the suburbs and mid-size cities, \$40/month in rural New York; and \$60/month in New York City.)

Spitzer and CableGiant New York have stipulated that the TVAPA does not provide a private right of action. Based on this stipulation, the court--for purposes of this lawsuit--will assume (without deciding) that there is no private right of action under the TVAPA. (The TVPAPA appears to be ambiguous on the point.)

In CableGiant New York's answer to Spitzer's complaint, the defendant raises two defenses: (a) lack of subject-matter jurisdiction, and (b) improper venue.

Before the court has had time to rule on CableGiant New York's defenses of lack of subject-matter jurisdiction and of improper venue, CableGiant New York goes ahead and files a motion for a transfer of venue under 28 U.S.C. 1404 (change of venue) to the federal district court in Delaware. The corporation argues that this transfer should be

made because residents of New York City may be biased towards Spitzer's side of the dispute.

You are a law clerk to Judge Cedarbaum the district court judge hearing this case. She has asked that you write a memorandum:

1. discussing whether or not she should dismiss Spitzer's claim for lack of subject-matter jurisdiction. She asks that you address both sides of the question, but that you clearly indicate how she should resolve it.
2. discussing whether venue is improper in the Southern District of New York and whether (if she does not first dismiss for lack of subject-matter jurisdiction) she should dismiss for improper venue;
3. discussing whether she can and should transfer this case to the federal court in Delaware (if she does not first dismiss for lack of subject-matter jurisdiction or for improper venue).

Judge Cedarbaum has asked that you go ahead and make recommendations about all three questions. However, she is only doing this because she knows she will be on a tight schedule tomorrow; she does not want the fact that she is already asking you about the secondary questions of venue and transfer to bias your answer to the prior subject-matter jurisdiction question one way or the other.

- END OF EXAM

Have a wonderful holiday!