

Final Examination

Civil Procedure I

Professor Nussbaumer

Fall 2006

1. You have **two (2) hours** to complete this exam (comprised of **twenty-one multiple-choice questions and one essay question**). The recommended time allocation is one hour for the multiple-choice questions and one hour for the essay.
2. This is a **closed** book exam.
3. This exam consists of two parts.

Part I consists of twenty-one (21) multiple-choice questions. You are advised to read each of the answer choices (time permitting) and to choose the **best possible answer** out of the four choices provided. Please mark your responses to the multiple-choice questions on the separate ParSCORE TEST FORM using pen or pencil and following the instructions on that form. If you change your answer, place a clear **X** through the wrong answer, and mark the correct answer. A machine will score the exam, and any ambiguities will be counted as wrong answers.

Part II consists of one (1) essay question. Please write your essay in the blue books provided. Write clearly. Leave every other line and every other page blank to permit instructor comments.

4. Write your exam number on your exam envelope. Put your correct class section and student exam # 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 sheet, 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.

GOOD LUCK

PART II (essay question)

On August 7, 1998, a devastating truck bomb exploded outside the American embassy in Nairobi, Kenya. The blast killed more than 200 people, including 12 Americans, and it wounded more than 4,000 others. Most of the casualties were Kenyan.

It is now a few years later. You are an attorney who has been retained by a group of victims, relatives of victims, and businesses harmed in the attack. They are an ethnically-diverse group, comprised of both Muslims and Christians, citizens of Kenya and citizens of a few other East African nations. None, however, is a U.S. citizen or resident.

Your new clients wish to bring a civil tort claim in the United States District Court for the District of Columbia (Washington, D.C.) against Osama bin Laden and other members of Al Qaeda who are believed to be culpable for the attack. Authority for such a suit is provided by a U.S. federal statute, the Alien Tort Claims Act (ATCA)¹. The location of the potential defendants is not entirely certain, but each is believed to be residing in an east African country or in Afghanistan. No defendant is now in the U.S., and none has ever been a U.S. citizen or resident in the past.

Your clients have asked you to advise them as to whether you foresee any obstacles to bringing the suit in this forum. You have already done some preliminary research into the law and the facts and you have learned the following:

Bin Laden still has an open bank account with Riggs Bank in Washington containing about \$2,000 in assets. There have been no withdrawals, deposits, or other activity on this account for the last five years. The only other contacts you think you will be able to document between any of the defendants and the District of Columbia is that Bin Laden and his associates faxed a letter several hours after the embassy bombing to the State Department in Washington, claiming credit for this attack and calling it a wake-up call for the U.S. to protect itself from future attacks by removing all Americans from Saudi Arabia.

Several days before the attack, Bin Laden personally published a *fatwa* in three Arab-language East African newspapers (including *Al-Quds Al-Arabi*). This fatwa was Bin Laden's declaration that the killing of Americans and any persons working for American embassies is legitimate. Additionally, you have discovered that each of the defendants contributed to the production of a video while in Kenya that was mailed the day of the attack to the New York offices of ABC, NBC and CBS with a message to the American public, threatening more attacks on American interests around the world. All three of these news stations, however, decided against broadcasting the video. In condemning American foreign policy, the video contained frequent references to news stories as reported in the *International Herald Tribune*. (The *Tribune* is an English-language

¹ The ATCA imposes no statute of limitations and provides that "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

newspaper distributed in many places around the world, including major cities in East Africa and the Middle East.)

The District of Columbia has a statute authorizing notice and constructive service by publication for suits against overseas defendants who are not U.S. citizens or residents. For personal jurisdiction, the District has only one long-arm provision that applies to tort actions. It provides that:

a District of Columbia court may exercise personal jurisdiction over a person ... as to a claim for relief arising from the person's--... causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia.

You have also discovered that the District of Columbia has a traditional *in-rem* and *quasi-in-rem* statute that authorizes jurisdiction based on property to the full extent consistent with the Due Process Clause. Finally, you have learned that there is a special federal provision that confers personal jurisdiction over defendants in any federal district court for ATCA claims to the full extent consistent with the Due Process Clause. However, this is a fall-back provision that only applies *if* personal jurisdiction over the defendants is not otherwise available under other personal-jurisdiction statutes of the state embracing the federal district court. (The District of Columbia is treated the same as a state of the U.S. for purposes of both personal jurisdiction and venue analysis.)

You are now writing a memo to your clients, analyzing the legal issues (notice, jurisdiction and venue) and making a recommendation whether or not you think your clients ATCA claim may properly be filed in this court.

(Please be careful to work with the facts as provided here and avoid unintentionally importing outside information.)

END OF EXAM

Thank you, and have a wonderful holiday!!!