University of California  
Hastings College of the Law  

Fall 2012  
PRACTICE MIDTERM EXAMINATION CIVIL PROCEDURE  
(Section 3)  

PROFESSOR DAVID I. LEVINE (course #10518)  
and  
PROFESSOR MORRIS RATNER (course #10513)  

Exam Date: Friday, October 5, 2012  

TIME: ONE HOUR  

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MATERIALS ALLOWED IN THE EXAM ROOM  

Internet research is NEVER allowed during an in-class exam per UC Hastings exam regulations.  

Students ARE NOT allowed to use a simple (non-PDA) calculator for this exam.  

This is a Limited Open Book exam. The following materials are allowed in the exam room:  

Only Levine, Civil Procedure in California (2012 ed.) [hereinafter “rulebook”] may be consulted during the examination. Notes written directly on pages of the rulebook are permissible; tabs are also acceptable. You may bring one additional page of notes. NO OTHER MATERIALS MAY BE USED.  

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This Exam consists of One Part.  

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GENERAL EXAM INSTRUCTIONS FOR STUDENTS  

If you are using bluebooks, please write on one side only of each page and double-space your responses. Please write legibly. If your response cannot be deciphered, it cannot be given full credit. Number your bluebooks.  

If you are using SofTest on a computer, your exam will be formatted automatically to double-space.  

If the exam calls for a scantron, use score sheet side & #2 pencil. For ID# use your 4-digit EXAM#. flush left, no 0s. Test form: A. Exam#: 1. For Name: print your professor’s name. Subject: course name. Leave date blank. Erase incorrect answers completely.  

ALL exam materials including scratch paper must be turned in to the proctor at the end of the exam.  

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ADDITIONAL INSTRUCTIONS TO STUDENTS
(Time: One Hour)

This is an ungraded practice midterm. You are required to take the exam. However, the exam will not affect your grade in the course. You have one hour to complete the exam. The suggested time for each question is: (1) 30 minutes; and (2) 20 minutes. You have 10 additional minutes to plan your answers. Please budget your time accordingly.

Good luck.

FACT PATTERN

Plaintiff Paula Panning ("Panning" or Plaintiff") was a passenger aboard the Carnival Valor ("Vessel"), owned by Carnival Cruise Corp. ("CCC" or "Defendant"). After an evening relaxing and drinking by the Vessel’s pool, Panning slipped and fell while walking down a stairway on the Vessel, fracturing her left ankle.

Panning filed a complaint in federal court containing two counts, which reads in relevant part (bold text below):

Facts

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1. Panning was a passenger on the Vessel, which was owned by CCC.

Court I: Negligent Failure to Maintain Stairway

2. On May 5, 2012, Plaintiff slipped and fell on a stairway on the Vessel that CCC negligently failed to maintain in a safe working condition.

3. As a result, Plaintiff suffered personal injuries, and suffered physical and mental pain, and incurred medical expenses totaling in excess of $75,000.

Count II: Negligent “Over-Service” of Alcohol to Passenger

4. On May 5, 2012, Plaintiff slipped and fell on a stairway on the Vessel because CCC negligently over-served her alcohol, even after seeing that she was already intoxicated.

5. As a result, Plaintiff suffered personal injuries, and suffered physical and mental pain, and incurred medical expenses totaling in excess of $75,000.

You are a summer associate working for the partner in your firm. The firm represents CCC.

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QUESTION 1
(30 minutes)

The partner for whom you work has asked for a memorandum regarding whether, and, if so, under which provisions of the Federal Rules of Civil Procedure she should file a motion challenging the allegations of the complaint. She would also like to know whether the motion is likely to be granted. Explain your analysis.

QUESTION 2
(20 minutes)

CCC informs the partner for whom you work that it does not believe that Panning was a passenger on its Vessel on May 5, 2012. Therefore, CCC wants to file a “general denial” of all the allegations if pre-answer motions are denied. The partner would like you to provide an opinion regarding the propriety of filing a general denial under the circumstances, and of any risks associated with doing so. Explain your analysis.

* * * * * * * (END OF EXAMINATION) * * * * * * *