

Essay Question

Paul Peterson, a citizen of Pennsylvania, and David Dobbs, a citizen of Delaware, were involved in a fight in a bar in Philadelphia on October 15, 1999. On October 10, 2001 Paul Peterson filed a lawsuit in federal district court in Pennsylvania against Doug Dobbs, seeking \$100,000 for personal injuries. The complaint and summons were delivered to the federal marshal in Delaware on October 13, 2001. Doug Dobbs was served on November 1, 2001. Doug was totally mystified by the complaint.

When his twin brother David returned home from vacation in the Carribean a month later, Doug asked him, "Do you know a Paul Peterson?" After some discussion, David realized that he was the intended defendant.

Your law firm represents Paul Peterson and your investigator discovered the mistake on December 10, 2001. You have filed a motion with the federal district court to amend the complaint and substitute David for Doug.

The statute of limitations for assault and battery in Pennsylvania is two (2) years. Pennsylvania has a narrow and restrictive amendment provision. In addition, the Pennsylvania courts have consistently held that amendments to pleadings are not an effective means of avoiding the legislative policy embodied in statutes of limitations.

The defendant has argued: the amendment is not permitted by Federal Rule 15. In addition, the Erie doctrine [as expressed in York, Walker, and Gasparini] requires the court to apply Pennsylvania law, which would not permit an amendment.

You are to make the best argument you can for the plaintiff. Be organized, be thorough, be logical, be creative. You are standing in front of the federal judge. It is not necessary to repeat the basic facts. (Before going to the courthouse, your senior partner reminds you that, no matter how good one argument may appear, don't neglect other solid arguments.)