

Civil Procedure Final Exam
Professor Sternlight
December 8, 2001
8:30 A.M. - 12:30 P.M.

Exam # _____

INSTRUCTIONS

This is an open book exam. You may consult any notes, commercial or personal outlines, hornbooks, etc. However, you may not share your materials with any other person during the exam. Nor may you use a computer during the exam.

Please check this exam for completeness at this time. It should be five pages long. Please make sure your Exam number appears on this exam and on any blue book you turn in. Please also number the blue books if you use more than one.

Read (don't skim) each of the questions carefully before drafting your answers. Also, be sure to provide me with the reasoning underlying your answers. If you consider but ultimately reject certain options or arguments, please explain why. In general you should not add or make up any facts. However, if you find a particular question is ambiguous, or if you believe that I have omitted essential information, then explain any such problem and supply any additional information or assumptions you believe to be necessary to permit you to answer the question.

Put all of your answers in a blue book. I will not give credit for information written on the exam itself. Also, I ask that you write only on one side of the page. You may use abbreviations so long as they are obvious or you define them. I will look at outlines if you ask me to. However, it is difficult to thoroughly set forth reasoning in an outline.

Please use only your Exam number to identify yourself. Do not attempt to identify yourself by, for example, referring to personal characteristics or to remarks made in class. Also, please refrain from including any personal notes in your exam.

You have four hours to complete the exam. I hope the exam will not take all of you that long, but I wanted to give you adequate time to think about your answers. I have estimated the number of minutes you should spend on each question, but left you 40 extra minutes to read instructions, and think about/revise your answers. Given my scoring system you will be sharply penalized for failing to thoroughly address any portion of the essay questions.

Question 1 True false questions (3.5 points each; 42 points total; 84 minutes)

State whether each statement is True or False, and provide at most two sentences of explanation for why the statement is true or false.

A. Plaintiff (Mo.) claims that Newspaper (NY) has libeled her in violation of state tort law in the amount of \$50,000. Newspaper's defense rests on a body of law that the courts have elaborated from the First Amendment of the U.S. Constitution. Specifically, it relies on the theory that media defendants in libel cases may prevail — even if they have published false and injurious information -- so long as they have not been negligent in, for example, checking their sources. Newspaper concedes the inaccuracy of its article, but nevertheless contends that it has such a First Amendment defense. A federal district court in Illinois would not have jurisdiction to hear the claim.

B. Plaintiffs Anne Anderson et al, (all citizens of Massachusetts), brought suit in federal court under diversity jurisdiction against defendant Beatrice (citizen of NY) and Grace (citizen of Delaware). Several months into the case plaintiffs filed a motion to add a new plaintiff, Charles Anderson. Defendants argued Anderson could not be added because he was a United States citizen who resided in Canada, and therefore was not a citizen of any U.S. state nor of Canada. Under current law, it is unclear whether a federal court would permit Anderson to be added.

C. Plaintiff Pesky filed a shareholder derivative suit in federal court accusing Defendant Decent, Chief Executive Officer of Prestige Corp., of all sorts of scandalous acts that had allegedly led to a diminution in the value of Prestige's stock. The Complaint included, inter alia, attachments purporting to show Decent involved in indecent acts. Decent's first concern was to remove the scandalous accusations and attachments from the public domain, so she filed a motion pursuant to Fed. R. Civ. P. 12(f) to strike multiple paragraphs of the complaint. Several days later, Decent also filed a motion, pursuant to Fed. R. Civ. P. 12, seeking to dismiss the complaint under Fed. R. Civ. P. 12(b)(6). Regardless of whether the court sees fit to grant the 12(f) motion it should deny Decent's motion to dismiss under 12(b)(6).

D. Although Article III of the Constitution draws no distinction between the subject matter jurisdiction of trial and appellate courts, in fact federal appellate courts may hear cases that federal trial courts may not.

E. According to the Erie doctrine, federal courts must always apply the Federal Rules of Civil Procedure, even when they are hearing cases involving issues of state law.

F. Suppose A, a jogger, is injured when B's car swerves off the road and hits A. A sues B in federal court. The complaint alleges that B has not had his car serviced for the past two years. Although this allegation is true, B knows that it will be impossible for A to prove the allegation. The Federal Rules require B to admit the allegation.

G. You represent defendant in an action filed in federal court. You determine that the complaint, if true, does state a valid and timely cause of action. However, you also determine that the complaint is based on numerous clear misstatements of fact. Your best course of action is to file a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6).

H. Plaintiff, a citizen of Mo., filed an action in Missouri state court against Defendant, a citizen of Utah. The complaint alleges a violation of a brand new Missouri law that has not yet been interpreted by any Missouri court. It states a claim for \$100,000. Defendant filed a timely motion removing the matter to federal court. Even if the federal judge determines that the matter would more suitably be heard in state court, the federal judge may not remand the matter to state court on that ground.

I. According to both the Federal Rules of Civil Procedure and Mullane, all defendants in federal court must be served personally either by a sheriff or by a private process server.

J. Because of the requirement of the “21 day safe harbor” imposed by the 1993 amendments to Fed. R. Civ. P. 11, it is no longer permissible for a court to impose Rule 11 sanctions sua sponte, i.e. on its own rather than by motion of one of the parties.

K. When federal appellate courts hear interlocutory appeals they must use a “de novo” standard of review.

L. P (Ill.) filed suit against D (Mo.) in state court in Illinois. Personal jurisdiction exists, under both the Illinois longarm statute and the Constitution, because Defendant was personally served while eating dinner at a fast food restaurant in Illinois. However, the traffic accident that gave rise to the cause of action took place in Missouri, the witnesses (except Plaintiff) are all located in Missouri, and the police records of the accident are located in Missouri. Defendant has filed a motion for transfer of venue to Missouri pursuant to 28 U.S.C. § 1404, or, in the alternative, for dismissal pursuant to the doctrine of forum non conveniens. The Illinois court should deny the motion for transfer of venue, but more information is needed before determining how the court should handle the motion for dismissal pursuant to forum non conveniens.

Question 2 (43 points total; 86 minutes)

Sally Dazzle is a first year law student at the University of Missouri-Columbia. She grew up in Rolla, Mo., where her parents still reside. Sally has never traveled outside the state of Missouri. She has never voted or paid taxes. She has a Missouri driver’s license.

Stressed out by school, as well as by the events of Sept. 11 and its aftermath, Sally decided to spend the summer following the first year of law school at a yoga meditation retreat in Hawaii. Sally learned about the particular retreat, Swami Stress Reduction, while surfing the internet. She sent an e-mail to the Swami site and was provided with additional information describing the two week Hawaii program. In order to book her seat, Sally made a down payment

of \$500 on October 5 by providing her credit card information over the internet. The total cost of the program was advertised to be \$10,000, and Sally agreed to pay the remaining \$9,500 one month prior to the start date of the program, June 1, 2002.

Some time after making her initial payment, (November 15, 2001), again while cruising the internet, Sally learned that several consumer-oriented web sites were not impressed with the Swami Stress Reduction program. In fact, one site labeled it “a poor corporate attempt to provide yuppies with what they think non-yuppies want.” Another site announced that “Swami is just a guy from Brooklyn who likes to wander around with a washcloth on his head.” So, Sally notified Swami that she would not be enrolling and demanded a return of her \$500.

Unbeknownst to Sally (until the commencement of litigation) it turns out that the Swami Stress Reduction Program is a division of the Vidabuena Corp. Vidabuena is incorporated in Delaware and has its principal place of business in New York. Vidabuena operates a number of different retreats and all-inclusive vacation spots throughout the world.

When Sally sent in her down payment of \$500 she also assented to a series of contractual clauses. By repeatedly hitting “enter” on her computer she confirmed that her total payment would be \$10,000, that if any dispute arose it would be governed by New York law, and that if any dispute arose both Sally and Swami Stress Reduction agreed that any lawsuit arising out of such dispute would be resolved in a court of competent jurisdiction in New York.

When Sally notified Swami that she would not be attending the summer program, Vidabuena Corp. brought suit against Sally in state court in New York. Sally, horrified at the prospect of having to pay \$9,500 she does not have, and also outraged by the unseemly business practices of the Swami et al, has retained you to provide her with legal advice. Please answer the following questions:

(a) (36 points; 72 minutes) Does the New York court have personal jurisdiction to hear the claim? For purposes of this question assume that the New York long arm statute provides “courts of this state have personal jurisdiction to the full extent provided by the U.S. Constitution.” Explain your conclusions in detail, and provide your reasoning.

(b) (7 points; 14 minutes) What steps might you take to try to extricate Sally from this case quickly? Specifically, what course or courses of action do you suggest and what do you think is the likelihood that you might extricate Sally from this case quickly?

Question 3 (15 points total; 30 minutes)

(a) (5 points; 10 minutes) P (Alaska) sues D (New York) on a state law cause of action in the federal district court for the district of Alaska. D files neither a pre-answer motion nor an answer within the requisite time period, and therefore a default judgment is issued against D in the amount of \$30,000. P seeks to enforce the judgment in New York in order to obtain money in the bank account D keeps there. Has D waived any defense he would have had to lack of personal jurisdiction?

(b) (10 points; 20 minutes) Compare and contrast the way in which defenses of lack of personal jurisdiction and lack of subject matter jurisdiction may be waived. Do the distinctions make sense? Why or why not? Be sure to consider counterarguments.