

Civil Procedure/ADR Final Exam
Professor Sternlight
May 13, 2004
9:00 AM - Noon

Exam # _____

INSTRUCTIONS

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

Please check this exam for completeness at this time. It should be seven pages long. Please write your Exam number on this exam and make sure the Exam number also appears on any blue book or typed materials you turn in. Please also number the blue books. If you are typing, be sure the pages are numbered.

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. That is, tell me why you came to the conclusions you did. If you consider but ultimately reject certain options or arguments, explain why. If you find a particular question to be ambiguous, or if you believe that I have omitted essential information, then explain any such ambiguity or 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 or your typed answer. 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 three hours to complete the exam. I have indicated the point value for each question and you should allocate your time accordingly. Given my scoring system you will be sharply penalized for failing to thoroughly address any portion of the essay questions.

END OF INSTRUCTIONS

Question 1 True false questions (48 points total; 3 points each)

With respect to each of the following propositions, state whether the proposition is true or false. Then, explain in one or two sentences why you believe the proposition is either true or false. You will receive no credit at all unless you provide an explanation for why the statement is true or false. You will also receive no credit unless you come to a conclusion as to whether the statement is true or false. Finally, I will not read any material in excess of two sentences. You will also do yourself a disservice by writing extremely long "sentences" because these questions are only worth 3 points each.

A. The term "BATNA," as used by negotiation teachers, stands for "Beat All The Nasty Adversaries," and means that one should always extract the most pain possible from one's negotiation counterpart/adversary.

B. Potential Defendant Robert Bigshot (citizen of Texas) borrowed a car belonging to Professor Jean Sternlight (citizen of Nevada) and rear-ended a Porsche driven by Potential Plaintiff Donald Trump (citizen of New York) while driving on Las Vegas Boulevard in front of the Luxor in Las Vegas, Nevada. Mr. Trump escaped unscathed, except that his wig was dislodged. Trump's car (worth more than \$75,000) was totaled. Trump contemplates filing suit against Bigshot for common law negligence (state law) either in Nevada or in Texas, and Trump contemplates filing in either federal or state court. No matter in which of the courts Trump files suit, the same substantive law will apply.

C. Plaintiff Belle Labonita is a well-known singer and dancer who performs on stage. She has brought suit in federal court claiming that the Las Vegas Review Journal ("RJ") defamed her by publishing an article claiming that she has undergone substantial plastic surgery. Defendant RJ has filed an answer responding that (1) the story was true and thus not defamatory; and (2) even if the story was not true it was not defamatory because Labonita is a "public figure" and Defendant did not engage in reckless or deliberate disregard of the truth. Labonita is outraged at the assertion (again) that the allegations were truthful and has asked you, her lawyer, what can be done. It would be appropriate for you to use summary judgment to defeat Defendant's assertion that the original claims were truthful, and if you prevail on this motion, Labonita would prevail in the case.

D. The Seventh Amendment of the U.S. Constitution affords a jury trial right only with respect to certain civil claims brought in federal court.

E. If Congress wanted to, it could amend 28 U.S.C. Section 1331 to add an amount in controversy requirement in federal question cases.

F. Plaintiff (citizen of Nevada) files an action against Defendant (citizen of California) in state court in California alleging breach of contract in violation of state common law. Plaintiff seeks relief in excess of \$100,000. Three weeks later Plaintiff files a second action, this time in federal

court, against the same Defendant. The second claim includes identical facts and causes of action as the first suit. Defendant is outraged at being sued twice over the same claims. Defendant's best recourse is to file a motion to dismiss the federal case on grounds of collateral estoppel.

G. Two former college roommates, Petra (citizen of New York) and Darla (citizen of Nevada), decided to take a vacation together in Las Vegas. According to Petra, the two agreed to pool their gambling money (\$500 each) and also agreed to share their winnings evenly. Darla won \$200,000 on a slot machine and now refuses to share with Petra. Petra sued Darla for breach of contract in state court in New York, accomplishing service of process by serving Darla when she came to New York for a business trip. Darla is outraged at having to defend herself in New York, when she is from Nevada and the events took place in Nevada. Darla's best course of action is to file a motion to transfer the case to Nevada per 28 U.S.C. Section 1404.

H. In general, a federal district court possesses personal jurisdiction over a particular defendant only to the extent that a court in the state would possess personal jurisdiction over that defendant. However, Congress has the power to provide for a broader exercise of personal jurisdiction by federal courts.

I. A terrible accident took place on Maryland Parkway in Las Vegas. Defendant Rowley (citizen of Texas) drove his car through a red light hitting pedestrian Sternlight (citizen of Nevada). Sternlight's damages exceed \$100,000, and she filed suit against Rowley in federal district court in Nevada. Rowley impleaded third party defendant Saucedo (citizen of Texas), who installed the brakes in his car that Rowley now alleges were defective. Saucedo, once impleaded, herself impleaded defendant Pindell Brakes (citizen of Nevada). Pindell is the company that manufactured the brakes that were alleged to be defective. Sternlight has now filed third party claims against both Saucedo and Pindell Brakes. Assuming that all these impleader and third party claims arise out of the same transaction and occurrence as the original claim, the district court may exercise its discretion to hear all of the claims described above.

J. A Boyd law student, Fred Freak (citizen of Nevada), created a web site that purports to represent the law school, but instead contains numerous derogatory claims about the school, its professors, and even its students. As Fred is extremely wealthy, and as this site allegedly caused a great deal of harm to the law school's reputation, the Board of Regents sued Fred Freak, in Nevada state court, alleging defamation. Fred has raised a First Amendment defense under the U.S. Constitution and seeks to remove the case to federal court on this ground. The federal court should deny the petition for removal.

K. Judge Rodriguez, a federal court judge, was handling a case involving claims by three plaintiffs (P1, P2, & P3) against D. Each P is represented by a different attorney, A1, A2 & A3, respectively. The judge ordered all three plaintiffs as well as their attorneys as well as D and its attorney to attend a settlement conference. Everyone complied except for P2, whose attorney said she was on a cruise that had been planned for many months. Judge Rodriguez got very mad

and sanctioned P2 by requiring her to pay all the other parties' and attorneys' costs for attending the conference. P2 thinks this sanction is terribly unfair. A2's best recourse, on behalf of P2, is to petition for Judge Rodriguez to reconsider her ruling.

L. A motion for new trial may only be granted in federal court if the party filing the motion previously filed a motion for judgment as a matter of law prior to when the jury began its deliberations.

M. A judge's denial of a motion for summary judgment in federal court can be appealed immediately and is reviewed under an abuse of discretion standard.

N. U.S. courts will typically enforce parties' contractual agreement to resolve future disputes using particular substantive law in a particular forum.

O. The use of preclusion doctrines may result in a party being deprived of a jury trial right they otherwise would have possessed.

P. According to the Erie doctrine, federal courts must always apply the Federal Rules of Civil Procedure, no matter if state substantive or procedural law might lead to a contrary conclusion.

Question 2 (32 points)

Dan Driver is 26 years old. Dan grew up in Henderson, NV. Although Dan had dreamed of becoming an astronaut, when he graduated from Green Valley High School at age 18 he instead became a long distance trucker. Dan signed on with a trucking company, We Haul, that is based in Kansas City, Missouri. Dan has been employed by We Haul for the last eight years. As a trucker for We Haul Dan drives approximately 100,000 miles per year. He typically drives through more than 40 states each year, and spends approximately ten nights each year in Nevada.

Although Dan spends most of his days and nights on the road, he ends up spending approximately three weeks a year at his base in Kansas City, Missouri. Dan does not own or rent a home in Kansas City, but rather stays either at his favorite hotel, The Riverboat, or with his friend Fred. Dan has never voted. He has a Nevada driver's license and declares Nevada as his residence for tax purposes so that he won't have to pay a state income tax. He keeps most of his prize possessions (football trophies, etc.) in his friend Fred's basement, in Kansas City. These possessions were at Dan's mother's house until about a year ago, when she made him get his "stuff" out of her house, in Henderson. Dan keeps some personal possessions, particularly clothes, in his truck. Dan receives his mail at a post office box in Henderson, and picks up his mail every three weeks or so as he drives through the Las Vegas area. Sometimes he gets his mother to check his box for him, to make sure no important checks or bills have arrived. Dan has a cell phone, with an area code based in Kansas City.

Approximately one year ago Dan met a woman, Penelope, at a truck stop in St. Louis,

Missouri. Dan and Penelope spent the night together at a motel and they had sexual intercourse without using any birth control. The relationship was consensual and no money changed hands. One month after Dan and Penelope had spent the night together, Penelope found out she was approximately one month pregnant. Although Dan was not the only man Penelope had slept with in the preceding weeks, he is the only man with whom she had intercourse without using a condom. Dan and Penelope had no further correspondence or contact after the one night they spent together, but Penelope had made a note of Dan's name and address, per her usual practice.

Penelope has now sued Dan for child support in state court in Missouri. She properly served him, according to the Missouri Rules of Civil Procedure, by sending a copy of the summons and complaint by certified mail to his post office box in Henderson, NV. Dan has filed a special appearance in the Missouri state court, arguing that the child support action should be dismissed for lack of personal jurisdiction.

The Missouri long arm statute provides in chapter 506.100 that all persons who are citizens of Missouri are subject to the personal jurisdiction of Missouri courts. In addition, Chapter 506.500 provides as follows with respect to non-Missouri citizens:

506.500. Actions in which outstate service is authorized--jurisdiction of Missouri courts applicable, when

1. Any person or firm, whether or not a citizen or resident of this state, or any corporation, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, firm, or corporation, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of such acts:

(1) The transaction of any business within this state;

(2) The making of any contract within this state;

(3) The commission of a tortious act within this state;

(4) The ownership, use, or possession of any real estate situated in this state;

(5) The contracting to insure any person, property or risk located within this state at the time of contracting;

(6) Engaging in an act of sexual intercourse within this state with the mother of a child on or near the probable period of conception of that child.

Here are the questions for you:

(a) As the attorney representing Dan, what arguments would you make to support his motion to dismiss for lack of personal jurisdiction?

(b) As the attorney representing Penelope, what arguments would you make in opposition to Dan's motion to dismiss for lack of personal jurisdiction?

Question 3 (20 points) A new law was recently adopted by Congress that provides, in relevant part, as follows:

Multiparty, Multiforum Jurisdiction

(a) In general.--The district courts shall have original jurisdiction of any civil action involving minimal diversity between adverse parties that arises from a single accident, where at least 75 natural persons have died in the accident at a discrete location, if--

(1) a defendant resides in a State and a substantial part of the accident took place in another State or other location, regardless of whether that defendant is also a resident of the State where a substantial part of the accident took place;

(2) any two defendants reside in different States, regardless of whether such defendants are also residents of the same State or States; or

(3) substantial parts of the accident took place in different States.

(b) Limitation of jurisdiction of district courts.--The district court shall abstain from hearing any civil action described in subsection (a) in which--

(1) the substantial majority of all plaintiffs are citizens of a single State of which the primary defendants are also citizens; and

(2) the claims asserted will be governed primarily by the laws of that State.

(c) Special rules and definitions.--For purposes of this section--

(1) minimal diversity exists between adverse parties if any party is a citizen of a State and any adverse party is a citizen of another State, a citizen or subject of a foreign state, or a foreign state as defined in section 1603(a) of this title;

(2) a corporation is deemed to be a citizen of any State, and a citizen or subject of any foreign state, in which it is incorporated or has its principal place of business, and is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business;

(3) the term "injury" means--

(A) physical harm to a natural person; and

(B) physical damage to or destruction of tangible property, but only if physical harm described in subparagraph (A) exists;

(4) the term "accident" means a sudden accident, or a natural event culminating in an accident,

that results in death incurred at a discrete location by at least 75 natural persons; and (5) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Imagine that you were legal counsel to the Senate Judiciary Committee at the time this legislation was considered. Please write a memorandum to the committee discussing (a) what this bill would accomplish (but do not spend time just quoting from or reiterating what the bill says) (b) whether you believe this proposed bill is Constitutional; and (c) whether or not (and why) you believe this proposed bill is desirable as a matter of public policy. (Analyze the bill from a legal and policy perspective, not from the standpoint of whether or not it would be desirable to particular Democratic or Republican goals).