
Spring 2004 Answer Key

Question 1 (48 points, 3 points each)

_____ A. False. “BATNA” stands for “best alternative to a negotiated agreement,” and means that any negotiator should consider what his or her best alternative is to reaching the deal in that negotiation (e.g., chance of success if case goes to court or obtaining product elsewhere). It certainly does not mean that one should extract pain from one’s counterpart, as that will not necessarily benefit one’s own interests.

_____ B. False. The Nevada federal and state courts will both apply Nevada choice of law principles to determine the substantive law, and the Texas federal and state courts will both apply Texas choice of law principles to determine the substantive law. Without knowing what these principles provide, one cannot be sure that Texas and Nevada choice of law principles will lead to the same substantive law, and one cannot even be sure that the federal and state courts in a given jurisdiction will apply the same substantive law, though they ought to.

_____ C. False. It would be proper to file a motion for partial summary judgment on behalf of Labonita requesting that the court reject the RJ’s defense of truth. However, assuming that Labonita prevails on this motion, the result would be that the RJ is limited to its second “public figure” defense, and rather than winning the case Labonita would go to trial seeking to defeat that defense.

_____ D. True. The Seventh Amendment has to date been interpreted only to apply in federal court, and it only preserves the jury trial with respect to claims brought “at common law” for more than \$20.

_____ E. True. Congress is not obliged to exercise the full scope of subject matter jurisdiction permitted by Article III. Thus, Congress could statutorily limit federal question jurisdiction to claims brought in excess of a certain amount, just as 28 U.S.C. Section 1332 already limits diversity jurisdiction to those claims brought for more than \$75,000.

_____ F. False. Neither collateral estoppel (issue preclusion) nor res judicata (claim preclusion) can be used until the first case has been decided, which this one has not yet been. Defendant’s best recourse is probably to ask the federal court to stay its proceeding pending the outcome in state court, and then to claim res judicata once the state court has issued a judgment.

_____ G. False. 28 U.S.C Section 1404 is only useful to transfer cases brought in federal court, and thus cannot immediately be used to transfer a case brought, as in this hypothetical, in state court. A better course of action would be for Darla to remove the case to federal court which she can, because diversity of citizenship exists and \$100,000 is at stake, and to then seek a transfer

per 28 U.S.C. Section 1404.

_____ H. True. Although FRCP 4(k)(1)(a) is interpreted to generally limit a federal court's personal jurisdiction to situations in which a state court in the same geographical area would possess personal jurisdiction, there are also exceptions to that general rule. So long as the fairness requirements of Due Process are met, it can be acceptable for a federal court to exercise personal jurisdiction on a nationwide basis as is permitted by several federal statutes, or to accept "bulge" jurisdiction as per FRCP 4(k)(1)(b) or per FRCP 4(k)(2) to hear claims against persons sued under federal law and who are not subject to the jurisdiction of the courts of any state.

_____ I. False. The district court has supplemental jurisdiction to hear the claim of Rowley against Saucedo (assuming it exercises its discretion to do so) because the claim arises out of the same t & o as the original claim, and original jurisdiction exists with respect to the claim Saucedo against Pindell (assuming more than \$ 75,000 is claimed). However, with respect to Sternlight's claims, while original jurisdiction exists to hear the claim against Saucedo (assuming more than \$75,000 is sought) Sternlight cannot sue Pindell as the claim is prohibited by 28 U.S.C. Section 1367(b).

_____ J. True. Removal can only be based on allegations contained in the claim itself, and not in the defense, as per Mottley. In this case, because the Board of Regents' basic claim is for common law defamation, and the federal defense of First Amendment free speech is raised only in the answer, the case is not removable.

_____ K. True. Under FRCP 16(c) a court may require that a party or its representative be present to consider possible settlement of a case, and R. 16(f) permits the court to sanction parties or attorneys who violate such scheduling orders. P2 would have a very difficult time appealing this order because the appeal would be interlocutory (usually proscribed) and because the determination would be reviewed on an abuse of discretion basis, and thus P2's best recourse is to seek reconsideration from the trial court.

_____ L. False. While it is true, per FRCP 50(b) that a party filing a motion for post-trial judgment as a matter of law must have previously filed a motion for judgment as a matter of law at the close of all the evidence, a party filing a motion for a new trial, per FRCP 59, need not have previously filed such a motion pre-trial. The Seventh Amendment has been regarded as requiring the motion for judgment as a matter of law be treated as a renewal of a pretrial motion, as the motion for judgment as a matter of law is more intrusive on the jury than is a motion for new trial, which at least allows the case to be heard by another jury.

_____ M. False. A denial of a motion for summary judgment is interlocutory, rather than a final judgment, and thus cannot be immediately appealed absent unusual circumstances such as that the district and appellate courts agree that the interlocutory appeal is desirable per 28 USC Section 1292(b). Were a denial of summary judgment appealed it would be reviewed under an error of law standard, not abuse of discretion, as the question would be whether the court erred as

a matter of law in failing to find summary judgment was warranted.

_____ N. True. While, in the past, U.S. courts were reluctant to allow private parties to contract with respect to choice of law or choice of forum, today such agreements are common. Per Carnival Cruise forum selection agreements are generally enforceable so long as they are reasonable, and parties similarly have the power to contract for the use of particular substantive law, again within the broad constraints of the Due Process clause.

_____ O. True. In Parklane Hosiery the Supreme Court held that collateral estoppel could be applied in such a way that the defendant lost the opportunity it would have had to present its defense to a jury, given that the defendant had previously lost on that issue to another plaintiff in a bench trial. However, in Lytle the Court also held that it would be inappropriate to use preclusion doctrines to deprive a party of a jury trial right where both the jury and non-jury claims were presented in the same case at the same time.

_____ P. False. Although the material contained in the Federal Rules would typically be considered procedural, and thus applicable in all cases brought in federal court, the Hanna case makes clear that a rule deemed “procedural” by those who placed it in the Rules might nonetheless be found substantive. If the rule were found to be substantive, such that applying it to a case brought under state law in federal court would violate the Rules Enabling Act or Article III, it would be inappropriate to apply that federal rule to the case brought under state law in federal court.

Question 2 (32 total points)

A. Dan’s arguments (16 points)

_____ (1) Intro: For PJ need statute and Const. Here no PJ per Const. based on consent, citizenship, presence plus service, or minimum contacts . That is, the statute, as applied, is unconstitutional.

_____ (1) Does appear that the statutory requirement is met. As Dan and Penelope did have unprotected sex (and assuming is Dan not sterile) can’t argue child could not have been conceived based on their act.

But, no PJ per Const.

_____ (1) No service in state (was served by mail in Henderson)

_____ (3) Not a citizen of Missouri -- legal test is domicile (place that is true, fixed, permanent home and to which he has intention of returning whenever he is absent -- Mas). Not a domiciliary of Missouri. Only lives there approx. 3 weeks a year, and neither owns a house nor rents. Home is in Nevada, where receives mail and where has declared tax residence. Grew up in Nevada, has always been domicile. No sufficient evidence of

intent to change. Although keeps some personal items at Fred's and in storage, in Kansas City, that is far from enough to show intent to make permanent home in Missouri. Compare to facts in Mas.

_____ (2) No consent. Dan cannot be said to have consented to PJ merely by having sexual intercourse in state that had this far-reaching statute. This is not like Carnival Cruise where the consent was at least explicit in the cruise tickets. Nor should Hess (implied consent by driving car into state) apply. No reasonable person would assume that PJ would be taken merely based on engaging in single sexual act in the state.

_____ (1) Conclusion: No specific jurisdiction based on minimum contacts because contacts are insufficient and because of fairness factors. Can concede contact gave rise to potential liability.

_____ (4) No sufficient contacts based on combination sexual intercourse and spending three weeks or so in Missouri plus leaving things there in storage. No purposeful availment. Dan did not deliberately engage in any act that should subject him to Missouri jurisdiction -- will be chaotic if all states can claim jurisdiction based on supposed sexual intercourse. Forseeability is not enough (Woodson) and here it is not reasonably foreseeable that mere act of intercourse, just on one night, would subject one to court's PJ. (Even less forseeability than defendants in Woodson and Asahi - why.) No substantial benefits merely by spending a few nights per year in state -- no financial benefits. Burnham was a mere plurality opinion on Brennan point of saying there were minimum contacts as to father who was in California just briefly, plus he at least had child there.

_____ (3) It would be unfair to establish PJ in Missouri. Although Defendant is a trucker and travels a lot, he could not easily appear to defend himself -- can't work busy trucking schedule around litigation. Although Penelope would no doubt prefer to sue at home, her interest is no stronger than those of injured party in Carnival Cruise or Woodson. Forum state may have an interest in protecting its resident but Nevada has an equal interest in protecting its resident.

_____ Other

B. Penelope's arguments (16 points)

_____ (1) Intro: For PJ need statute and Const. Here clearly PJ based on statute, and PJ is also appropriate per Const. based on citizenship, minimum contacts and consent. That is, the statute, as applied, is constitutional.

_____ (2) The statutory requirement is definitely met. As Dan and Penelope did have unprotected sex one month before Penelope found out she was one month pregnant, it is quite possible that Dan is the father of the child. This statute will not ensure that Dan

pays child support, but only that he must defend himself against the paternity suit in Missouri.

And, PJ ok per Const.

_____ (3) Dan is a citizen of Missouri -- legal test is domicile (place that is true, fixed, permanent home and to which he has intention of returning whenever he is absent -- Mas). Dan is a domiciliary of Kansas City. Dan lives in Kansas City more than he lives anywhere else, his work is based in Kansas City, and he keeps his prize personal possessions there. Although he chose to maintain Nevada as his residence for tax purposes to save money, and although he kept his Nevada driver's license, presumably also to support his supposed Nevada residency for tax purposes, these acts do not undercut reality which is that his home is more in Kansas City than anywhere else.

_____ (2) Consent. Dan consented to PJ by having sexual intercourse in state that had this far-reaching statute. Ignorance of the law is no defense. As in Hess (implied consent by driving car into state) consent should be implied. A person who has unprotected sex should reasonably foresee they might father a child and be sued for child support. The Supreme Court in Carnival Cruise recently reaffirmed that consents should be enforced as a means of allowing for more clarity and less fighting among parties.

_____ (1) Specific jurisdiction is appropriate based on minimum contacts because contacts are sufficient and because Dan cannot show fairness factors are in his favor.

_____ (4) Yes sufficient contacts based not only on sexual intercourse but also on spending 21 days or so per year in Missouri plus leaving things in storage in Missouri. Yes purposely availed himself of the forum. It was reasonably foreseeable that act of intercourse would subject one to court's PJ, particularly where sexual act took place in state where person still keeps possessions and where spends 21 nights a year. And, defendant has received numerous benefits from state -- not only pleasure of the company of its residents but also police and fire protection etc. for 21 days and nights per year, plus protection of his most prize possessions year round. Here defendant has far more contacts than defendant in Burger King, who had never even set foot in the state. In Burnham five justices (including Stevens concurring) found PJ appropriate based on far less contacts -- a day or two visit. Woodson and Asahi are easily distinguished, as here the defendant deliberately comes into the state for 10 nights a year. This is not a case where a product was brought in by a unilateral act by a third party, but rather where defendant himself repeatedly enters the state.

_____ (3) Once minimum contacts are established it is defendant's burden to show that the fairness factors still make PJ inappropriate. (Burger King). Here, Dan certainly cannot show it would be unfair. Plaintiff has a strong interest in being able to sue for child support in her home state. Dan can without great difficulty or expense get to Missouri.

He drives 100,000 miles per year and he already spends 21 nights in Kansas City. No showing of prejudice. Strong forum state interest in being able to secure PJ over potential child support debtors. Otherwise, state must pay welfare, potentially. No interstate forum interest opposes PJ in Missouri.

_____ Other

Question 3 (20 points)

_____ (4) The purpose of the bill is to significantly expand federal courts' diversity jurisdiction with respect to claims in which at least 75 persons have died in a single location, where some inter-state involvement exists, but where diversity jurisdiction would not be available under 28 U.S.C. Section 1332. The bill would allow for jurisdiction based on "minimal" diversity, such that at least one defendant is from a different state than at least one plaintiff. Apparently there is no amount in controversy requirement at all. Thus, plaintiffs from a variety of jurisdictions could choose to sue in federal court, even though some defendant from same jurisdiction. E.g. Hyatt Hotel disaster or R.I. nightclub.

_____ (1) By adding to original jurisdiction of federal courts this bill would also allow defendants to remove actions that would otherwise be non-removable.

_____ (1) Unclear how this bill will relate to venue provisions; venue may be sharply limited, though federal jurisdiction would exist

_____ (3) The Constitutionality of this bill turns on whether this expanded diversity jurisdiction would be permitted under Article III. Here, it would seem that the statute is Constitutional. The Supreme Court has long held that the scope of Article III is broader than the scope of our various jurisdiction statutes. In particular, while holding in Strawbridge v. Curtis that complete diversity is required by the diversity statute, Court also made clear that from an Article III standpoint, only "minimal" diversity is needed.

_____ (5) Arguments why statute is desirable from a public policy standpoint: it allows cases to be brought in federal court, rather than state, & thus arguably allows for more efficiency (why); avoids home town bias (explain); provides for "better" decision maker

_____ (5) Arguments why statute is undesirable from a public policy standpoint: potential flood of federal courts; intrusion on state prerogatives (explain); no reason to believe feds more efficient; no reason to believe federal courts are "better"; disputes over proper interpretation of statute may lead to lots of expense and extra litigation (what is a "discrete location"; what is residency; what is sudden accident; when must court abstain, etc.)

_____ (1) Conclusion: Statute is Const. and is/is not desirable as a matter of public policy.