

Civil Procedure Final Exam
Professor Sternlight
May 14, 2001
1:00 P.M. - 4:30 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.

Please check this exam for completeness at this time. It should be four pages long. Please write or paste your Exam number on this exam and make sure the Exam number also appears 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. That is, tell me why you came to the conclusions you did. 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 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. 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 and one half 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 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.

Question 1 True false questions (31.5 points total; 3.5 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 questions these are each only worth 3.5 points each.

- A. Although a federal court judge may not order a party to settle a case, it is permissible for a federal court judge to order the party or its attorney to participate in a settlement conference.
- B. P (Mo.) brought suit against D (Mo.) on a federal claim in state court in Missouri. P served D with the complaint on January 5, 2001. On March 2, 2001 D filed a notice of removal to the Federal District Court for the Eastern District of Missouri, and the federal court ordered the removal on March 9, 2001. D has a valid ground for requesting that the matter be remanded to state court.
- C. Service by publication is impermissible under both the Federal Rules of Civil Procedure and the U.S. Constitution.
- D. The common law doctrine of forum non conveniens is applicable in both state and federal court, but serves a more limited purpose in federal than in state court.
- E. Plaintiffs rarely file motions for summary judgment because the party which carries the burden of proof on a particular issue cannot prevail on a motion for summary judgment on that issue.
- F. The fact that a federal court, sitting in diversity, must generally apply the choice of law rules of the state in which the federal court is situated, is an example of the Erie doctrine.
- G. Plaintiff brought a lawsuit against Defendant for breach of contract. Pursuant to a settlement reached between the parties, Defendant made partial payment on the claim. Plaintiff has now refiled the same claim against Defendant in another court. Although Defendant may have a valid defense to the claim, Defendant cannot expect to prevail by arguing either claim preclusion or issue preclusion based on the prior settlement.
- H. Plaintiff brought suit against Defendant in federal court under the federal Fair Housing Act. Although Plaintiff did not demand a jury trial in its complaint, Defendant has demanded a jury trial in its answer, citing the Seventh Amendment. The court should deny Defendant’s motion

because the Seventh Amendment does not afford a constitutional right to a jury trial in cases based on modern statutes, but only in those cases based on common law claims that existed in England in the eighteenth century.

I. Plaintiff Freda Fakir filed a claim in federal court against Defendant Assits Inc., alleging that Fakir suffered serious back injuries when the desk chair designed and sold by Assits suddenly sank to the floor. Plaintiff put on a compelling case, including expert and personal testimony regarding the scope of her injuries. A jury found for Fakir and awarded her \$320,000 in compensatory and punitive damages. Assits Inc. opted not to appeal, and sent Fakir's attorney the check for \$320,000. Eighteen months after entry of judgment, Freda Fakir's ex-boyfriend, Honest Abe, informed plaintiff's attorney that Freda lied to the jury, greatly exaggerating her supposed back injuries. Given that it is now eighteen months after the entry of judgment there is no way for Assits Inc. to get its money back.

Question 2 (47.5 points)

Lucy Lawstudent grew up in Las Vegas, Nevada. Following graduation from the University of Nevada-Las Vegas, Lucy enrolled in law school at the University of Missouri-Columbia, where she is now completing her first year. Although Lucy plans to become a Missouri resident, in order to take advantage of the in-state tuition rates, to date she has retained her Nevada driver's licence and continued to declare Nevada as her residence for tax purposes. The last time she voted, 1999, she voted in Nevada. Over spring break, April 2001, Lucy went to Las Vegas with some friends. She spent most of her time at a casino called the Golden Gleam, but she did not have a very good time. First, an incompetent croupier dumped a bunch of chips all over the floor and Lucy slipped on the chips and broke her ankle. Second, Lucy believes that the Gleam violated a federal statute, the Truth in Lending Act ("TILA"), by failing properly to disclose all of the terms of the line of credit it advanced to Lucy.

Now safely back in Missouri, Lucy has brought a lawsuit for violation of TILA and for negligence in federal court in the Western District of Missouri against Casinos Inc., the company which owns and operates the Golden Gleam. Casinos Inc. also runs a second casino, the Riverboat, located in Kansas City Mo., which Lucy has frequented on occasion. Casinos Inc. is incorporated in Delaware and has its principal place of business in Las Vegas. Both the Golden Gleam and the Riverboat are large profitable operations. The Gleam runs a profit of approximately \$12 million per year, and the Riverboat runs a profit of approximately \$ 3 million per year. (The profits are net of the casinos' substantial costs including real estate, salaries, computers, entertainment, etc.). Casinos Inc. advertises each casino separately, using newspapers, magazines, flyers, contacts with travel agents and companies, and the web. Lucy Lawstudent served Casinos Inc. by mail, in Las Vegas, using the waiver provisions of FRCP 4(d). Defendant accepted service in this manner.

Casinos Inc. has filed a motion to dismiss the complaint in its entirety for lack of personal jurisdiction, has also filed a motion to dismiss the negligence claim for lack of subject matter jurisdiction, and has asked in the alternative for transfer of venue pursuant to 28 U.S.C. §

1404. You are a law clerk to the federal judge assigned to hear the case. She has asked you to write a memo advising her (a) whether she has personal jurisdiction to hear this case (25.5 points); (b) whether she has subject matter jurisdiction to hear the negligence claim (15 points); (c) whether, given your answers above, she may or should transfer the matter to a federal court in Nevada (7 points). The judge has already read the briefs submitted by the parties, and told you that she has concluded that both the negligence and TILA causes of action arose in Nevada.

For your convenience, the relevant portions of the Missouri long arm statute are set out below:

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; ...

...

3. Only causes of action arising from acts enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

Question 3 (21 points)

A bill has been introduced in the U.S. Congress to repeal 28 U.S.C. § 1332, providing for diversity jurisdiction. You are an attorney working for the House Judiciary Committee. Write a brief memo discussing (a) whether you see any Constitutional problem with repealing the statute; and (b) what policy arguments you expect will be raised by the groups favoring and opposing repeal.