

ADDICOTT
CIVIL PROCEDURE Section A
FALL 2000

PART I: SHORT ESSAY ANSWER

1. (20 points)

Mandy Gun was a resident and citizen of Washington, where she lived and worked for the past 56 years. Throughout that time, Gun worked for Union Federal Paper Voting Ballot Company, Inc. (UFPVBC) a Washington factory incorporated in Washington with its principal place of business in Washington. UFPVBC manufactures and supplies card sized paper voting ballots to every State in the United States except for Florida. Mandy never missed a day of work and received top rated evaluation reports. On July 4, 2000 a new manager by the name of Chad Roberts took office at UFPVBC. Rogers immediately fired Gun and replaced her with his sister, a younger person, Carol Roberts. Chad Roberts lives in Oregon and commutes to Federal Paper. Chad Roberts also holds a promissory note from Mandy Gun for a personal loan of \$553.00.

Later that month, Gun's five cats die in a fire and Gun moved to Virginia. She subsequently hired a local Virginia attorney to sue UFPVBC for firing her because, in her opinion, she was over 65 years old. The lawyer filed suit in the U.S. Federal District Court for the Eastern District of Virginia (Virginia is divided into two Federal Districts - Eastern and Western). The lawyer alleges violation of a Federal Age Discrimination statute. Gun also adds on a State law contract claim alledging that her early termination violated her employment contract with UFPVBC. Gun's lawyer names UFPVBC as the sole defendant and properly serves the corporation.

UFPVBC files a motion asking the Court to dismiss the State law claim for lack of subject matter jurisdiction. In addition, UFPVBC files a motion asserting that the U.S. Federal District Court for the Eastern District of Virginia lacks personal jurisdiction, alleging that the State of Virginia purchases only 1/10 of the paper ballots as compared to sales to all other States.

Virginia's long-arm statute provides:

A court of this State may exercise jurisdiction over a party on any basis not inconsistent with the U.S. Constitution.

2. (15 points)

On September 12, 1999 a BMW automobile operated by Lisa Parks, a resident of Virginia, was involved in a three-car accident with Bill Tucker, a citizen of South Carolina, and Mike Stripling, a citizen of Maryland. The accident occurred in Arlington, Virginia. Peter Kenton, who is a private dealer in antique weapons, is Tucker's employer. Tucker was driving Kenton's car at the time of the accident. Tucker was delivering a Revolutionary War rifle worth \$75,001.00 to a local museum. Tucker suffered no injuries to his person or vehicle. Parks suffered a minor injury to her arm, but had to pay \$67,000 to repair her fully loaded 5 series BMW. Jenny Jones (citizen of South Dakota), a passenger in Parks' car, suffered severe spinal trauma and several broken bones. Stripling lost an arm in the accident.

Parks files suit against Tucker in the U.S. Federal District Court for the Western District of Virginia. In her pleadings she claims damages in excess of \$80,000 to her property and person. After receiving the summons and complaint, Tucker promptly files an answer. In his answer he asks the court to dismiss under FRCP 12(b)(1) – lack of jurisdiction over the subject matter – claiming that Parks has failed to satisfy the “amount in controversy requirement” set out in 28 USC § 1332. In his responsive pleading Tucker also asserts a third party complaint against Stripling which the Court grants.

2 (a). (Five points). You are the attorney for Parks. Argue the 12(b)(1) issue to the Court. How will the Court rule?

2 (b). (Five points). You are the attorney for Parks. Now that Stripling is made a party to the suit by Tucker, can Parks amend her complaint to add Stripling as a defendant? What impact does 28 USC § 1367, Supplemental Jurisdiction, have on your answer?

2 (c). (Five points). You are the attorney for Jones. Prepare a brief memorandum of law for the senior partner of your law firm regarding a motion under FRCP 24(a), Intervention. Discuss “intervention of right” and associated items you would need to promote the motion.

3. (15 points)

Bill Hudson (Alabama) was suffering from fatigue. Hudson went to see Dr. Mudd, an Alabama doctor who lives and works in Montgomery, Alabama. Dr. Mudd examined Hudson and prescribed a drug called Mon-T. The prescription allowed unlimited refills. Shortly after Hudson began taking Mon-T he began having dizzy spells. Dr. Mudd examined Hudson again and advised him to continue taking the medication.

Later that year, Hudson moved to Georgia to live with his brother. When Hudson tried to have the Mon-T prescription refilled at a Georgia pharmacy, the pharmacist refused, explaining that he needed confirmation from Hudson's physician. At Hudson's request, Dr. Mudd mailed a copy of the original prescription to the pharmacist in Georgia. On that basis, the pharmacist filled the prescription.

Several months later, Hudson suffered a disabling stroke. Hudson believes that Mon-T caused the stroke, and research by his attorney in consultation with several experts suggests he may be right. Consequently, Hudson filed a tort action in the U.S. Federal District Court for the Southern District of Georgia against Dr. Mudd, Medicine Makers, Inc. (the manufacturer of Mon-T), and Grant Drug, Inc. (the nationwide distributor of Mon-T). Grant Drug, is incorporated in Delaware and has its principal place of business in New York. Medicine Maker is a foreign company based out of Bangkok, Thailand and receives about 25 million dollars (US) in revenues from sales in the United States. Hudson's complaint alleges medical malpractice by Dr. Mudd for allowing unlimited refills, for improperly diagnosing the source of his dizzy spells, and for continuing to prescribe Mon-T. The complaint also states products liability claims against Medicine Makers and Grant Drug, alleging that Mon-T was defective and dangerous.

3 (a). (Five points). Dr. Mudd files a motion under FRCP 12(b)(6) – failure to state a claim upon which relief can be granted. The Judge rejects the motion. Dr. Mudd wants to appeal that decision immediately to the appropriate Federal Circuit Court. What result?

3 (b). (Five points). Medicine Makers files a motion challenging personal jurisdiction. How should the Court rule? (Medicine Maker lawyers rely heavily in their brief on the *Asahi* case.)

3 (c). (Five points). Pursuant to FRCP Rule 26(b)(3), the law firm representing Grant Drug requests that Hudson's lawyers produce "all mental impressions, conclusions, opinions, or legal theories" that they have which are related to the case citing that the Defendant has a substantial need of these materials in the preparation of the case and that Grant Drug is "unable without undue hardship to obtain the substantial equivalent of the materials by other means." Must Hudson comply with this Discovery request? If Hudson objects what should he do?

PART II: SHORT ANSWER

(50 points – 5 points each) Respond to each question in the space provided.

1. Plaintiff sues Defendant in battery for hitting him with his open hand. After some research, Defendant's lawyer concludes that he could base his client's defense on either (i) an argument that his client's conduct did not constitute battery, or (ii) an argument that his client's conduct, though battery, was justified as self defense. However, the lawyer is unsure which theory will prove strongest. Must Defendant's attorney resolve that uncertainty before drafting the answer? Briefly explain.

2. A lawyer signs and files a complaint. If the opposing counsel believes that the complaint is being presented for an improper purpose can she immediately make a motion to the court for sanctions under FRCP 11? Briefly explain your answer.

3. Hypothetical Federal Rule of Civil Procedure (FRCP) 48.12(a) provides that the judge shall give the jury their instructions in writing before they withdraw to deliberate, but the practice in State X is to instruct the jury orally. What will the Federal Judge in State X do? Why?

4. Assume that the Defendant in a civil action filed a FRCP 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted and the motion was denied. Explain why that denial does *not* mean that the Plaintiff will win at trial.

5. What are the prerequisites to a Class Action under FRCP 23(a)?

6. Tompkins (North Carolina) sues Erie Trucking Inc. (incorporated in New York and principal place of business in Pennsylvania) in Federal Court for injuries suffered when he was hit by an Erie truck while walking along the road. After the statute of limitations period for the claim has passed, but while Discovery is still ongoing in the case, Tompkins discovers that it was a Milton truck (Milton Trucking Inc. is incorporated in Tennessee and has its principal place of business in Arkansas) that hit him, rather than an Erie truck. Tompkins moves to amend his complaint to make Milton Trucking a defendant in the action. Tompkins correctly notes that under North Carolina State law, an amendment to add a new defendant always relates back to the filing of the initial complaint. Will the Court allow the amendment? Why?

7. Lescallett brings a negligence action against Moon for property damages arising from a fire in his toy soldier factory, allegedly caused by a plastic molding machine that Moon had supplied. Lescallett loses at trial. Subsequently, Lescallett sues Moon and ToyCo, the maker of the machine, for his fire losses on a strict products liability theory claiming that the machine Moon had sold him was defective and caused his fire losses. You are the lawyer for Moon. What is your response to the second lawsuit? Discuss whether ToyCo can invoke non-mutual collateral estoppel?

8. Why might a Judge not grant a motion for a Directed Verdict (FRCP 50(a)) made at the close of all the evidence in a particular case? Briefly explain.

9. Bowra (Alabama) sues two drivers, Toney and Carson (both from New York), for injuries in an auto accident. Toney cross-claims against Carson for his injuries in the accident and then adds on a second cross-claim for an unrelated delinquent promissory note that Carson owes Toney. Carson objects to both cross-claims. What result?

10. What is the primary difference between the old English common law pleading system and the modern pleading regime under the Federal Rules of Civil Procedure? What U.S. Supreme Court case that most frequently comes to mind in regard to our modern system of pleading and what does it hold?

PART II: MULTIPLE CHOICE & SHORTER ANSWERS

6. (5 points) An Air Spain jetliner crashed in Spain injuring numerous Spanish passengers. Air Spain and many of the injured passengers contend that the crash was caused by the negligent operation of a TT Inc. (Timmy Toy) aircraft, which strayed from its course to Madrid, Spain, into the flight path of the Air Spain jetliner. Air Spain and a number of the injured Spanish passengers thus filed a civil action against TT in the United States Federal District Court for the Southern District of Georgia. Each plaintiff's claim exceeds \$75,000. TT is a Georgia corporation based in Georgia. Which of the following might be an appropriate action for the district court to take?

- a. Dismiss the action because of the court's lack of personal jurisdiction over the Spanish plaintiffs.
- b. Dismiss the action under the common law doctrine of forum nonconveniens.
- c. Transfer the case to an appropriate Spanish court under 28 U.S.C. § 1404.
- d. Dismiss the action for lack of subject matter jurisdiction.
- e. Dismiss the action because of the court's lack of personal jurisdiction over Timmy Toy, Inc.

7. (5 points) A lawyer signs and files a complaint. If the opposing counsel believes that the complaint is being presented for an improper purpose, such as to "harass or to cause unnecessary delay," can she immediately make a motion to the court for sanctions under FRCP 11? Second, if the judge denies her Rule 11 motion can she immediately appeal to the appropriate appellate court? Briefly explain your answers.

11. (5 points) Which of the following create possible violations of the Seventh Amendment?

- a. Congress passes a statute creating a private cause of action for sexual harassment which authorizes both injunctive relief and damages. The statute provides that all issues of fact shall be tried by a jury, regardless of the remedies sought.
- b. Congress passes the same statute authorizing both injunctive relief and damages; but it provides that all issues of fact will be tried by a judge, regardless of the remedies sought.
- c. Congress passes the same statute but it authorizes injunctive relief only (no damages) and it provides that all issues of fact will be tried by a judge.
- d. Both a and b.
- e. Both b and c.

12. (Five points) Ford and Lincoln are running for a local elective office in San Antonio, Texas. On television, Ford says that Lincoln has a loathsome disease. Lincoln sues Ford for defamation in a federal district court, and the case is tried to a jury. Which of the following is not accurate.

- a. After Lincoln presents her case to the jury, Ford moves for a directed verdict. The verdict may be granted by the judge if, viewing the evidence in the light most favorable to Lincoln, a reasonable jury could not find in Lincoln's favor.
- b. Even if Ford moves for a directed verdict at the close of Lincoln's evidence and again at the close of all the evidence, Ford still can move for a judgment notwithstanding the verdict (jnov) if the jury returns a verdict in Lincoln's favor.
- c. If at the close of all the evidence, the judge believes that Ford should prevail, the judge may then direct a verdict in favor of Ford.
- d. If the jury returns a verdict in Lincoln's favor and if the judge denies Ford's motions for a jnov, the judge still can order a new trial if he finds that a significant error in law occurred during the trial.

13. (Five points) A and B were in an automobile accident in a State that has no compulsory counterclaim rule. A sued B for negligence in State court alleging injuries to his person. B defended the action by denying negligence and contending that A was contributorily negligent. The jury returned a general verdict in favor of B, and the court entered judgment on the verdict. Two months later A again sues B for damages to his car sustained in the same accident. What preclusive effect, if any, does the first case (instituted by A) have on the second case (instituted by A).

- a. There is no preclusive effect because of the doctrine of mutuality of preclusion.
- b. Although B might be able to use res judicata to stop A from relitigating the case in other circumstances, B cannot use res judicata in this case because it can only be asserted by the plaintiff.
- c. B cannot use res judicata in the second suit because it is unclear what issue was decided in the first case.

- d. Under the doctrine of stare decisis, the court in the second action would be reluctant to disturb the first court's conclusion that A was contributorily negligent.
- e. The doctrine of claim preclusion or res judicata bars A from asserting his claim in the second case.

14. (Five points) Paul Plaintiff is a citizen and resident of Pensacola, Florida (which is in the Northern District of Florida). Paul intends to sue the Mobile News Corporation and its owner/publisher, Mike Defendant, in federal court. Paul's claims are based on State libel law, and the cause of action arose in the Southern District of Alabama. Mobile News Corporation is incorporated in Delaware, and its principal place of business is in Mobile, Alabama. It does business, solicits subscriptions and advertisements, and distributes its newspapers only in the Mobile area, which covers part of the Southern District of Alabama, part of the Northern District of Florida, and part of the Southern District of Mississippi. Mike Defendant lives in Birmingham, Alabama (which is in the Northern District of Alabama). In which of the following districts is venue proper?

- (I) the Northern District of Florida
- (II) the Southern District of Alabama
- (III) the Southern District of Mississippi
- (IV) the Northern District of Alabama
- (V) the District of Delaware

- a. (I) only.
- b. (II) only.
- c. both (I) and (II).
- d. (I), (II), (IV) and (V).
- e. (I), (II), (III), (IV) and (V).

15. (Five points) Eric Employee, a citizen of South Carolina, drives a truck for his employer, Southeastern Haulers, Inc. (SEI). SEI is a Delaware corporation, but its principal place of business is in Atlanta, Georgia. While delivering a shipment in Tennessee for SEI, Eric negligently backed his truck into a building owned by Leech & Rigdon Inc., causing \$77,000 of damage. Leech & Rigdon is incorporated in Delaware, but its principal place of business is in Tennessee. Leech & Rigdon filed a negligence action in the United States Federal District Court for the Northern District of Georgia against both Eric and SEI. Eric and SEI file a motion to dismiss the action for lack of subject matter jurisdiction. The motion should be:

- a. denied because the parties are citizens of different States.
- b. granted with respect to Eric because he lacks sufficient contacts with Georgia.
- c. granted because SEI is a citizen of the forum State.
- d. granted because Leech & Rigdon's claim does not arise from the Constitution, laws, or treaties of the United States.
- e. granted because diversity is not complete per *Strawbridge*.

16. (Five points) Each of the following are examples of federal subject matter jurisdiction, Except:

- a. diversity of citizenship jurisdiction.
- b. federal question jurisdiction.
- c. removal jurisdiction.
- d. supplemental jurisdiction (pendant jurisdiction and ancillary jurisdiction).
- e. stream of commerce jurisdiction.

17. (Five points) Acme Corporation filed a \$156,000 contract claim against Omega Corporation in the United States Federal District Court for the District of South Carolina. Acme is a Georgia corporation, and its principal place of business is in Alabama. It does business exclusively in Alabama, Georgia and South Carolina. Omega is a Delaware corporation, and its principal place of business is in Georgia. Omega does substantial business and maintains offices in all 50 States. Omega filed a motion to dismiss the action for lack of subject matter jurisdiction. Does the United States Federal District Court for the District of South Carolina have subject matter jurisdiction?

- a. Yes, a corporation is a citizen of the State in which it is incorporated, and these corporations were incorporated in different States; the court thus has jurisdiction on the basis of diversity of citizenship.
- b. Yes, since Omega does business in every State, it is subject to jurisdiction in every State.
- c. Yes, any federal district court is proper since Omega is a citizen of every State.
- d. No, Acme's claim does not arise under federal law, and the two corporations are citizens of the same State.
- e. Since neither Acme nor Omega is a citizen of South Carolina, the court has subject matter jurisdiction only if the cause of action arose in South Carolina.

18. (Five points) Jill and John are involved in an automobile collision. Jill sues John for damages. John tells his attorney that he intentionally hit Jill's car and even has a video tape (John had set up the video camera in his car) which captures the entire incident on film. Pursuant to FRCP 26, Jill seeks discovery of the statement by John to his attorney as well as the video tape citing "undue hardship to obtain the substantial equivalent" and the fact that such information is extremely "relevant" to her claim. John refuses to comply with the request and Jill seeks enforcement from the judge. What result?

PART III: TRUE OR FALSE (Three points each). Please CIRCLE the correct response.

20. True or False: The United States Constitution requires complete diversity of citizenship.
21. True or False: The FRCP mandate that affirmative defenses be set out in the pleadings.
22. True or False: Removal is available to the Plaintiff as well as the Defendant.
23. True or False: Under *Klaxon Co. v. Stentor*, the Supreme Court applied *Erie* principles to conflicts rules and decided that a federal court sitting in diversity must apply the conflicts principles of the forum State.
24. True or False: Under *Helicopteros Nacionales de Colombia v. Hall*, the Supreme Court held that extensive, continuous and systematic contacts may subject a non-resident defendant to general in personam jurisdiction.
25. True or False: The federal court sitting in diversity jurisdiction need not apply the State long arm statute of the forum State.
26. True or False: A defendant, as a third party plaintiff, may not implead a person not a party to the action unless the third party plaintiff asserts that the third party defendant is liable to the third party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff.
27. True or False: The requirement that the defendant be given "notice" is a statutory requirement that is not subject to waiver.