

CIVIL PROCEDURE I

Final Examination
Fall 1998

Mr. Czarnetzky

INSTRUCTIONS

1. Put your EXAM NUMBER on your blue books. DO NOT put your name, ID number, Social Security Number or any other form of identification on your blue books. It would be most helpful if you would number your blue books consecutively.
2. When you finish the exam, place the examination inside your first blue book and hand in your blue books at the front of the room.
3. Make your answers complete. I expect a thorough discussion of all reasonable possibilities. I am interested in your knowledge of the relevant legal principles and how they apply in each situation presented by the problem.
4. Problem IV consists of several short answer questions. Please answer these questions as succinctly as possible.
5. Please note that your submission of answers to this examination constitutes assent to the following pledge which you should read well and appreciate:

HONOR PLEDGE

BY THE ACT OF SUBMITTING MY EXAMINATION PAPER AND/OR BLUE BOOKS FOR EVALUATION, I DO PLEDGE ON MY HONOR THAT I HAVE NEITHER GIVEN NOR RECEIVED ANY IMPROPER ASSISTANCE AND THAT I WILL REPORT ANY IMPROPER ASSISTANCE GIVEN OR RECEIVED BY OTHERS OF WHICH I BECOME AWARE.

6. This is a CLOSED BOOK exam. No materials, sources, or information of any sort, in any form, may be consulted during this exam. It is a breach of the above Honor Pledge to violate this instruction. Violation of the above pledge will lead to a FAILING grade on this examination.
7. You have 3 hours to complete this examination.

I have enjoyed your class very much, and I wish you the best of luck with the remainder of your first year and in the future. I hope you will do well.

QUESTION I
(32 points)

Rychlak portrays the mascot, "Old Man River," for the Memphis Steamboats semiprofessional basketball team. The Steamboats play all of their home games at the Pyramid in downtown Memphis, Tennessee. Rychlak lives in a shotgun shack in North Memphis, with his favorite hound, Elvis, for company. Eudora, a resident of Olive Branch, Mississippi, went to a Steamboats' game several months ago. At halftime, Rychlak spotted Eudora, grabbed her out of her seat, and hauled her to the middle of the basketball court, where he danced around her, and otherwise taunted Eudora.

Eudora did not suffer any physical injuries in this incident, but she has trouble sleeping, fears large crowds, has nightmares, and feels that "everyone is watching" her whenever she goes to Memphis, which she does frequently for a number of reasons.

Eudora brought a lawsuit against Rychlak in the United States District Court for the Northern District of Mississippi, alleging damages for her psychological harm in the amount of \$80,000 against Rychlak and of \$35,000 against Memphis Steamboats, Inc. ("MSI"), a Tennessee corporation which owns the Memphis Steamboats, for their negligence in hiring Rychlak. Process was served on MSI's President and Chief Executive Officer at the corporate headquarters in Hernando, Mississippi. Neither Eudora's trial counsel nor the defendants' respective counsel filed any pretrial motions. Rather, she answered the complaint, and did extensive discovery, written and oral. After the discovery deadline was past, the defendants moved for summary judgment.

After reviewing the evidence and legal briefs submitted by the parties, the judge entered summary judgment in favor of Rychlak and MSI. The judge did not enter a written order, but he stated in court, on the record, that he was entering summary judgment because of the Tennessee legislature's recently enacted statute which calls for summary judgment in favor of the defendant in tort cases "unless the evidence presented the court through affidavits, depositions, written discovery, and the pleadings, would be sufficient for a reasonable jury to possibly return a verdict for the plaintiff." Among the legislature's concerns is that any other rule might foster litigation against professional sports franchises at a time when legislators are working hard to attract such businesses to Memphis and Nashville. (Knoxville already has professional teams at the University of Tennessee).

You represent Eudora on her appeal. (Eudora fired her trial counsel because Eudora was mad about the summary judgment and, besides, you are the expert appellate attorney in Olive Branch). A couple of questions are nagging you. (1) Is there a potential issue or issues for appeal stemming from the judge's actions in granting summary judgment? (2) Moreover, did the judge have the power to enter summary judgment on these claims? Analyze these questions, anticipating the response from the defendants, and listing any fact or point of law that would require further research. Advise Eudora whether an appeal would be worthwhile, and explain any close issues upon which the appeal may hinge.

QUESTION II
(22 points)

Blue Suede Shoes, Corp. ("Blue Suede") is a Mississippi shoe manufacturing corporation whose principal place of business and manufacturing facilities are all in Oxford, Mississippi. Henly-Hillbrandt, Inc. ("HHI"), is a Michigan corporation with its principal place of business in New Mexico. HHI's sole business is the licensing and enforcement of rights under two patents, one of which is patent no. 4,999,999 (the "Shoe Patent").

In October 1996, HHI sent a letter to Blue Suede at its Mississippi office, in which HHI suggested that several of Blue Suede's products infringed the Shoe Patent. HHI's letter also offered Blue Suede a nonexclusive license to manufacture shoes under the Shoe Patent, and indicated that a number of large manufacturers such as Adidas, Nike, L.A. Gear, etc., were in the process of negotiating such licenses with HHI. Blue Suede responded by letter in December 1996, enclosing their product catalogs, and requesting additional time to consider HHI's letter.

HHI responded with a letter in which HHI granted Blue Suede an extension of time, but also the letter also asserted that additional items in Blue Suede's catalog infringed the Shoe Patent. In March 1997, Blue Suede responded to HHI's allegations of infringement by letter which analyzed each of the products in question, and concluded that none of Blue Suede's products infringed the Shoe Patent. Blue Suede included samples of its products with the letter.

HHI responded a month later with a rebuttal of Blue Suede's analysis. HHI repeated its allegations of infringement, and repeated its offer of a nonexclusive license. In August, 1997, Blue Suede responded by letter stating that it had no interest in any "license negotiations with HHI, whatsoever." One week later, on August 23, 1997, Blue Suede filed a declaratory judgment action against HHI in the United States District Court for the Northern District of Mississippi, alleging noninfringement of the Shoe Patent. HHI immediately filed a motion to dismiss the lawsuit based upon lack of personal jurisdiction.

You are the United States District Judge assigned to decide HHI's motion. (Assume that the Mississippi long-arm statute is coextensive with the requirements of the due process clause of the fourteenth amendment.). Write your opinion, weighing both sides, and reaching a conclusion.

QUESTION III
(10 points)

Justice Scalia's view of what constitutes due process clearly differs from that of most recent supreme court justices, including those on the court today. As nearly as you can tell from the cases you read this past semester, what is Justice Scalia's view? What is the dominant view amongst the other justices? Give your opinion about which side is correct and why.

QUESTION IV
(12 points)

True or False and Why?

- A. P, a citizen of New Jersey, sues D, a citizen of New York, in the Supreme Court of New York, New York County Division, alleging infringement of a copyright. The case cannot be removed to federal court.
- B. Cross claims brought by impleaded defendants are not within a federal court's supplemental jurisdiction if the cross-claim plaintiff and the cross-claim defendant are citizens of the same state.
- C. Several claims brought by a plaintiff against the same defendant may be aggregated to reach the jurisdictional amount under the diversity statute, even though none of them individually meets the statutory amount.
- D. A claim brought under the diversity jurisdiction of federal courts must appear to meet the jurisdictional amount on the face of the complaint, or else it must be dismissed.
- E. Forum non conveniens motions are only possible when the forum, which is allegedly more convenient, is a foreign country.
- F. Section 1367 of title 28 of the United States Code was enacted to overrule legislatively the Supreme Court's decision in the *Gibbs* case.

QUESTION V
(14 points)

On June 1, 1998, John Jones was arrested for suspected narcotics offenses in the Memphis, Tennessee train station. During the arrest, agents of the United States Drug Enforcement Administration ("DEA") took \$3,000 in cash from Jones. Shortly thereafter, the DEA initiated so-called administrative forfeiture proceedings.

Administrative forfeiture is a procedural device set up by federal statute that permits the United States to determine whether property in its custody is unclaimed, and, if it is, to take ownership without the trouble and expense of court proceedings. The government uses administrative forfeiture most often to seize drugs and property associated with drug trafficking. Under the statutory procedures, the first step is to send written notice to "each party who appears to have an interest in the seized article," and to publish notice of the intended forfeiture for three successive weeks. Possible claimants then have twenty days in which to file a claim and post a bond. If no claims are filed, the property is forfeited, and may be sold at auction or otherwise disposed of; if there are claimants, the United States may either give them the property, or, if it wishes to contest their claim, it may initiate civil forfeiture proceedings in court.

In the case of Jones, the DEA published a notice of the forfeiture in *USA Today*, and sent notices by certified mail to the two addresses it had for him — Jones's previous home address, and his address at the Shelby County Jail, where he was being held pending trial. Somebody (it is unclear who) signed for the letter sent to Jones's previous home address, but apparently failed to forward the letter to Jones. The exact trajectory of the letter sent to the Shelby County Jail is uncertain. The letter was mailed on July 3, 1998, and the receipt for the letter was signed by somebody other than Jones, presumably a member of the Shelby County Jail staff, on July 11, 1998. For reasons that remain unclear, however, the letter was then returned to the DEA, stamped "RETURN TO SENDER." It appears that the letter was initially accepted at the Shelby County Jail, but later refused, so that the DEA received back first a signed receipt, and then, later, a returned letter; the date on which the DEA received the returned letter is unknown. The DEA made no further attempts to contact Jones. Instead, it went ahead and completed the administrative forfeiture process, on August 1, 1998.

Some time after the United States wrapped up its forfeiture proceedings, Jones was tried and convicted in on the narcotics charges. (He is now an inmate at a federal prison in Arkansas). Jones wishes to get his money back from the DEA, and you have agreed to accept the case on a pro bono basis. You decide to bring a civil action against the government for the return of the money. What is the basis for such a suit, and will you be successful?