

Fall 2012 Exam

Question 1 (worth 40% of grade). Your answer should not exceed 1500 words.

Grupo Pantalones (GP) is incorporated and has its principal place of business in Mexico City, Mexico. It manufactures various kinds of pants and sells them in Mexico. It does not sell any pants in the U.S. One of its employees, a Mexican citizen, brings suit against it in federal court in Texas alleging that in 2008 the company tortured him in Mexico to try to intimidate him from organizing a labor union for employees at the company's Mexico City factory. For purposes of this question, assume that the plaintiff's claim is a recognized cause of action under a federal statute, the Torture Victims Protection Act. Assume also that subject matter is not an issue in this case as it comes within the scope of the court's federal question jurisdiction.

GP also owns a great deal of commercial real estate in Texas (nearly \$100 million dollars), mostly in Houston and Dallas. The real estate business is entirely separate from its pants manufacturing business in Mexico. To support its real estate business, it employs many people in Texas, has extensive dealings with local law firms, real estate agents and title companies, and does a great deal of advertising throughout Texas. Over the years, senior officials from the company have made frequent and regular trips to Texas to manage and oversee its real estate holdings and transactions. They continue to do so.

Assume Texas has a long arm statute that reads as follows:

(A) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's:

- (1) Transacting any business in this state;
- (2) Contracting to supply services or goods in this state; or
- (3) Causing tortious injury by an act or omission in this state.

(B) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him.

Company moves to dismiss the complaint against it on the ground that it is not subject to personal jurisdiction in Texas. How do you evaluate the strength of any arguments, statutory or constitutional, that it may make in favor of its Rule 12(b)(2) dismissal motion?

Question 2 (worth 40% of grade). Your answer should not exceed 1500 words.

Plaintiff brings a complaint in federal district court. She alleges the following:

1. On June 8 2010, Plaintiff was severely and permanently injured when she fell at Dollar General Store at 171 Ambriar Plaza in Amherst County, Virginia. The store was operated by Defendant Dollar General.
2. Plaintiff fell due to the negligence of Defendant and its employees who failed to remove the liquid from the floor and had negligently failed to place warning signs to alert and warn Plaintiff of the wet floor. Defendant, through its employees, breached its duty to warn Plaintiff of the dangerous wet floor.
3. As a direct result of Defendant's employee's negligence, acting in the scope of their employment, Plaintiff was severely and permanently injured. She has incurred medical and hospital bills and suffered great pain. Also, her ability to earn an income has been hindered.
4. Plaintiff seeks a judgment in the amount of \$300,000 against Defendant Dollar General.

Defendant moves to dismiss the complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6). In its motion, Defendant argues that the complaint lacks any allegation of how the liquid came to be on the floor and that it does not allege that Defendant knew or should have known about the liquid in advance of the plaintiff's alleged fall.

Under Virginia law, store owners owe their customers the duty to exercise ordinary care as their invitees upon their premises. Ordinary care is not met as to an owner who knew or should have known of a dangerous condition on the premises and failed to exercise due care to warn others of the dangerous condition or remove it within a reasonable time. However, a landowner is under no duty to a person reasonably expected to be on the premises to warn against an open and obvious condition on the premises.

How should the court rule?

Question 3 (worth 20% of grade)

On September 1, 2012, P sues D in United States District Court for the Southern District of Texas for breach of contract regarding a piece of real property worth \$100,000. D is served with process that same day. P alleges he is a citizen of Texas and that D is a citizen of New York. P further alleges that the property that is the subject of the action is situated in Houston. Assume that P was in sole possession of the property and that D is without knowledge to confirm or deny P's allegation about the property's location in Houston.

On September 14 D files and serves her answer.

On October 1 P files an amended complaint. The only difference between the original complaint and the amended complaint is an allegation that the property that is the subject of the action is actually situated in Dallas, not Houston.

D wants to challenge venue as improper in the Southern District of Texas. Assume D does not want to see a transfer of venue, only a dismissal of the case on the ground that it has been filed in an improper venue, as is her right. Notwithstanding her previous failure to file a Rule 12(b)(3) motion, there are at least two arguments she can make that she may still raise the venue objection. Discuss those two arguments.