

Fall 2016 Exam

PART I

This first section of the exam contains two essay questions.

Question 1 (worth 45% of final exam grade)

James Ainsworth, was run over and killed by a forklift while he was working at Wayne Poultry Farms in Overt, Mississippi. On September 29, 2010, his wife, Mary Ainsworth, filed in the Southern District of Mississippi a wrongful death action against Cargotec USA, Inc. and Moffett Engineering, Ltd.

The forklift was designed and manufactured by Moffett, an Irish corporation with its principal place of business in Ireland. Pursuant to an exclusive sales and distribution agreement between Moffett and Cargotec, it was sold to Wayne Farms by Cargotec. Cargotec is a Delaware corporation with its principal place of business in Ohio. Moffett and Cargotec are separate companies that do not share any common officers or directors

Pursuant to the sales and distribution agreement, Cargotec is the exclusive marketer and distributor of Moffett's forklifts throughout the United States. Cargotec is Moffett's only customer in the United States; Moffett does not sell forklifts directly to other customers in the United States. Cargotec marketed Moffett's forklifts throughout the entire United States.

Cargotec sells or markets Moffett products in all fifty states. From 2000 through September 2010, Moffett sold 13,073 forklifts to Cargotec, worth approximately \$254,000,000. Cargotec sold 203 of those forklifts, worth approximately \$3,950,000, to customers in Mississippi. Those Mississippi sales accounted for approximately 1.55% of all of Moffett's United States sales during that same period.

Moffett sells many different types of forklifts. The forklift that Wayne Farms purchased was a forklift that Moffett had specifically designed for poultry-related uses. Mississippi is the fourth largest poultry-producing state in the United States.

Moffett filed a motion to dismiss for lack of personal jurisdiction. How should the court rule?

Question 2 (worth 35% of final exam grade)

Jacqueline Marren worked for Alamo Travel from 2009 through June 4, 2014. Alamo Travel classified her as an “employee” from 2009 through June 8, 2012; thereafter, coinciding with her relocation from San Antonio to Las Vegas, Alamo Travel reclassified her as an “independent contractor.” Marren performed the same duties in Las Vegas as she had in San Antonio but, as a result of her reclassification, was denied previous benefits she enjoyed, such as being able to contribute to the company’s 401(k) retirement plan, and paid vacation leave.

Worried that she was violating the law by paying federal income taxes as an independent contractor rather than an employee, on May 5, 2014 Marren filed with the IRS what is known as an “SS-Determination— Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.” Approximately one month later, on June 4, 2014, Alamo Travel fired Marren. On November 11, 2015, in connection with the SS-Determination filed by Marren, the IRS concluded that between June 2012 and June 4, 2014, Marren had in fact been an employee of Alamo Travel and that additional taxes were due from her and from Alamo Travel. Alamo Travel has separately appealed the IRS’s determination. That administrative appeal remains pending.

On June 1, 2016, Marren filed suit in the 438th Judicial District Court of Bexar County, Texas, against Alamo Travel. Her sole claim was a state law claim for wrongful discharge under what is known as the *Sabine Pilot* doctrine. The *Sabine Pilot* doctrine prohibits employers from firing employees based solely on their refusal to perform an illegal act. *Sabine Pilot* requires a plaintiff to prove that: (1) she was required to commit an illegal act that carries criminal penalties; (2) she refused to engage in the illegality; (3) she was discharged; and (4) the sole reason for her discharge was her refusal to commit the unlawful act. Marren alleged that as a result of her wrongful termination, she was damaged by loss of the health and welfare benefits, past wages, and future wages and mental anguish.

On June 26, 2016, Alamo Travel timely removed the case pursuant to 28 U.S.C. § 1441(b), arguing that the federal district court has federal question jurisdiction because “the gravamen of Plaintiff’s claims is that Defendant failed to abide by its statutory duty under the Federal Insurance Contributions Act, 26 U.S.C. §§ 3101-3128 to classify plaintiff as an employee.”

Marren filed a motion to remand. How should the court rule?