

UNIVERSITY OF HOUSTON LAW CENTER

**Final Examination - Procedure I
Professor Lonny Hoffman
Fall Semester 2010**

Friday, December 17, 2010

Time: 9:00 a.m. - 1:00 p.m.

Instructions

This examination is open book, provided that the materials you bring into the exam with you are your own. You may not use anyone else's notes. You may not use any commercial outlines, hornbooks, treatises, articles, or anything else that you did not produce yourself. Of course, you are free to bring in your course materials, your federal rules book, and any other materials I handed out to you during the semester.

The examination is worth a total of one hundred points. It contains three essay questions, each worth the same (33.3 points each). You must limit your answers, as follows:

Question No. 1: no more than 1700 words

Question No. 2: no more than 1500 words

Question No. 3: no more than 1500 words

I stop reading after a question's word limit is reached so it does not do you any good to exceed these limits.

If you have any questions during the exam, you can contact Derrick Gabriel (TUII 40).

Finally, I require that in the space below you write your exam number and place the mark A/s/@ next to it to acknowledge that you attended at least 80% of the scheduled classes this semester for this course. **DO NOT WRITE OR SIGN YOUR NAME IN THIS SPACE.**

Essay Question #1 [total – 33 1/3 points] [limit 1700 words]

In 2000, Ben Stamples, owner of the California-based Golden State Corrugated Manufacturing, Inc., attended a trade convention in Las Vegas, Nevada sponsored by the Institute of Corrugated Suppliers. While there, he visited the booth of International Box Machines America, Ltd. (you can abbreviate as “IBMA”) and first saw the six-ton box machine that is the subject of this litigation. The six-ton machine was manufactured by International Box Machines (you can abbreviate as “IBM”), a Canadian company. Soon thereafter, Golden State bought the machine from IBMA at a cost of \$30,000. The machine was shipped from IBMA’s headquarters in Ohio to California. The invoice instructed that the check be made payable to “International Box Machines America, Ltd.” Affixed to the machine was a label with the following information: “International Box Machines Machinery,” IBM’s Canadian address and telephone number, and the model and serial number of the machine. An instruction manual that accompanied the machine referenced both United States and Canadian safety regulations.

IBM’s principal place of business is in Canada, and is also where it designs and manufactures all of the machines and equipment it makes. It holds American, Canadian and European patents. The president of IBM attended the convention held in Las Vegas in 2000. Additionally, for the last decade, IBM employees attended trade conventions, exhibitions, and conferences throughout the United States in such cities as Chicago, Las Vegas, New Orleans, Orlando, San Diego, and San Francisco. As the exclusive distributor for IBM’s products in the United States, IBMA fielded any requests for information about those products at conventions and trade shows in the United States.

IBM and IBMA are distinct corporate entities, independently operated and controlled, without any common ownership. However, there is evidence that IBMA structured its advertising and sales efforts in accordance with IBM’s direction and guidance, and that IBM sold some of its machines on consignment to IBMA.

On October 1, 2010, Robert Plant, an employee of Golden State Corrugated Manufacturing Inc. was injured when the six ton box machine burst into flames. In December 2010, Plant brought suit in a California state court, naming IBM and IBMA as defendants. IBMA filed an answer but Defendant IBM challenged the exercise of personal jurisdiction over it by the California court. How should the court rule? Write a draft opinion fully analyzing whether the court can properly exercise personal jurisdiction over IBM. Be sure to consider all of the relevant U.S. Supreme Court precedents.

Essay Question #2 [total – 33 1/3 points] [limit 1500 words]

Plaintiff Quiller Barnes, on behalf of himself and all others similarly situated, brings suit in U.S. District Court for the Northern District of California, alleging that that Defendant AT&T Pension Benefit Plan wrongfully denied him pension benefits to which he was entitled. Barnes' amended complaint asserts causes of action under the Employee Retirement and Income Security Act ("ERISA"), a federal statute.

In addition to denying Plaintiff's allegations, Defendant in its answer asserts twenty-four affirmative defenses to Plaintiff's claims. It pleads it will rely on these affirmative defenses to show that Plaintiff's claims are either completely or partially barred from recovery. Plaintiff asserts these affirmative defenses are "boilerplate" because they do not provide any detail but are just summarily asserted. *See, e.g.*, Affirmative Defense No. 6, in which Defendant pleads: "As a sixth separate and affirmative defense, defendant asserts that the Complaint and/or each claim for relief contained therein, is barred in whole or in part by any and all applicable statutes of limitation." *See also* Affirmative Defense No. 8: "As an eighth separate and affirmative defense, defendant asserts that the Complaint and/or each claim for relief contained therein, is barred in whole or in part by the doctrine of laches." Pursuant to Federal Rule of Civil Procedure 12(f), Plaintiff moves the district court to strike the twenty-four affirmative defenses asserted by Defendant, arguing that they are insufficient allegations under *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*.

How should the court rule on Plaintiff's motion to strike?

Essay Question #3 [total – 33 1/3 points] [limit 1500 words].

Paul, Diane and Ted are in a three-car accident. After the accident, Paul and Ted get into a verbal argument that ends when Ted punches Paul in the nose after Paul accuses Ted of being a terrible driver.

Paul, a Texas citizen, brings suit in federal court asserting state law claims only against Diane, a New York citizen. Diane then impleads Ted, a Texas citizen, asserting a claim that Ted was negligent in his driving and so is liable both for Diane's injuries as well as for any damages Diane might ultimately be found to owe to Paul. A Rule 14 impleader is permissible in this case because under the relevant state law there is a contribution statute by which Diane may recover from Ted as a joint tortfeasor if she can prove that Ted was also negligent. Ted then asserts a claim against Paul, claiming that Paul's negligent driving injured Ted in the accident. If Paul then seeks to assert a claim against Ted for the damage he sustained as a result of the punch Ted threw, may this claim be heard in the same action? Assume that the amount in controversy for each and every claim is for more than \$75,000.

END OF EXAM