

UNIVERSITY OF HOUSTON LAW CENTER

Final Examination - Procedure I
Professor Lonny Hoffman
Fall Semester 2009

Monday, December 14, 2009

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 answer to no more than 2000 words for each question.

If you have any questions during the exam, you can contact Derrick Gabriel (TU11 40).

Finally, I require that in the space below you write your exam number and place the mark "/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.**

PROCEDURE I

Essay Question #1 (total – 33 1/3 points)

Adel Guirguis brought suit in federal district court against his former employer, Movers Specialty Services, Inc. (“Movers”), alleging violations of Title VII of the Civil Rights Act of 1964. Guirguis, who is of Arab descent and a native of Egypt, contends that Movers terminated his employment on the basis of his national origin.

Paragraphs 7 through 9 of the complaint, which read as follows, contain the entirety of Guirguis’s factual averments:

7. Plaintiff began working for the defendant in 2000 in the accounting department. Plaintiff was employed by the defendant from that day until February 14, 2006, when he was terminated by the defendant in violation of his civil rights.
8. Plaintiff is foreign born, is an Arab, having been born in Egypt on June 20, 1947.
9. On February 14, 2006, plaintiff was terminated by the defendant in violation of his rights due to his national origin, having been born in Egypt.

Movers sought dismissal, charging that his complaint failed to state a claim upon which relief could be granted. How should the trial court rule?

Essay Question #2 (total – 33 1/3 points)

Hill Country Cellars, a small winery located in Cedar Park, Texas, ordered a winepress from KLR Machines, Incorporated, an independent distributor of equipment used in the wine and juice industries. KLR, in turn, ordered the winepress for Hill Country Cellars from CMMC, a French manufacturer, instructing CMMC to wire the press for electrical use in the United States. KLR quoted the price to Hill Country Cellars in euros, although it would accept payment in U.S. dollars at the current exchange rate. KLR instructed CMMC to arrange with A. Germaine, a freight forwarder paid by KLR, to transport the press from CMMC's factory in Chalonnnes, France, to the ship on which it would travel to the United States, and to arrange for the press to be shipped to the port of Houston. CMMC complied with these instructions. Hill Country Cellars took title to the winepress in Houston and paid for transportation to its winery. Shortly after it began to use the press, Hill Country Cellars made a warranty claim to KLR. KLR satisfied the claim by having an electrical motor rewound for proper use in the United States, for which it paid \$529.57. KLR in turn presented the claim to CMMC, which agreed to credit KLR.

CMMC, a French corporation owned since 1986 by a German manufacturer, sells wine production equipment primarily in Europe. It does not directly market or advertise its equipment in the United States, other than by providing promotional materials to KLR. A buyer may acquire products from CMMC directly or through KLR. CMMC and KLR have no contractual arrangement and share no employees. KLR advertises CMMC products, but CMMC does not specifically authorize or approve the ads. CMMC has sold equipment in the United States, including a direct sale to another winery in Texas. CMMC has never had a place of business, distributor, or representative in Texas, or any other contacts with Texas. Hill Country Cellars never had any direct contact with CMMC.

KLR, a New York corporation with offices in Sebastopol, California, and Bath, New York, has never had offices or employees in Texas. In the ten years preceding this case it made only three or four equipment sales in Texas. It has never had any other contacts with Texas. KLR sells the equipment of numerous manufacturers, only one of which is CMMC. KLR directs its marketing efforts primarily toward California but also advertises in nationally circulated wine industry magazines. KLR advertisements have never pictured the particular press Hill Country Cellars purchased, although it was a KLR ad that led to the sale to Hill Country Cellars.

Ambrocio Salinas, a Hill Country Cellars employee, injured his arm while cleaning the press and filed this lawsuit in Texas state court for damages against CMMC, asserting strict product liability and negligence claims. The district court sustained CMMC's special appearance and dismissed the case for want of personal jurisdiction. The plaintiff appeals. How should the appellate court rule? [You should assume the state long arm statute has been interpreted to reach to the full extent of due process and confine your answer to whether it would be constitutional to exercise jurisdiction over CMMC in this case].

Essay Question #3 (total -- 33 1/3 points)

Using the basic facts from the Carpenter v. Dee case file in our casebook, assume Nancy Carpenter (New Hampshire citizen) brings suit against Randall Dee (Massachusetts citizen) and Ultimate Auto (Massachusetts citizen) in federal district court in Massachusetts. As noted in the case materials, her claims against Ultimate Auto basically stem from their sale of the lift suspension kit and oversized tires to Randall Dee and their concomitant failure to give any adequate warning to him as to the proper and legal use of those products. Assume Ultimate Auto then seeks to implead McGill's Garage (Massachusetts citizen) and its owner, Dale McGill (New Hampshire citizen) on the ground that the garage's approval of the inspection sticker on Randall Dee's truck makes them joint tortfeasors under state law. They seek damages for more than \$75,000 from each. You should assume for purposes of this question, whether you think it correct as a matter of rule interpretation, that the impleader claim by Ultimate Auto would satisfy Rule 14 of the FRCP (at the least, assume no one challenges the claims against McGill Garage and Dale McGill for being insufficient under Rule 14].

Assume Nancy Carpenter amends her complaint to add claims (again for more than \$75,000, per defendant) for negligence against both McGill's Garage and against Dale McGill for their approval of the inspection sticker on Randall Dee's truck. If McGill's Garage and Dale McGill move to dismiss her claims under Rule 12(b)(1), how should the Court rule?

END OF EXAM