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CIVIL PROCEDURE I
Semester II, 2004

UNM School of Law
Final Examination

Professor Laura Gómez
Tuesday, May 4, 2004
1:30 p.m. to 4:30 p.m.

Instructions
(Three Hours)

1. Be sure to avoid making any remarks that will jeopardize your or anyone else's anonymity, either on the examination or in any other context, before grades are posted.
2. During the exam, you may consult **only** your copy of the Federal Rules of Civil Procedure and your own outline (e.g., an outline prepared by you).
3. References to the "Rules" in the exam are to the current version of the Federal Rules of Civil Procedure. Unless otherwise stated, assume the Federal Rules are in effect, in their entirety, in the jurisdictions involved in the exam questions.
4. This exam has three parts. Questions will be weighted in accordance with the suggested time allocations for each part.
5. If you use a word processor, double-space and paginate your answer. If you write, use ink, skip lines and use only one side of the page.
6. If you believe you need any additional information to answer a question, explain what information you need and why you need it. In your answer, clearly state any assumptions you feel are necessary to answer the question.

(Examination Begins on Page 2)

I.
Issue-spotting & Analysis
(75 Minutes)

Donna Doolittle is a second-year student at Stamford Law School in Stamford, Connecticut. In 2002, she first published, in weekly installments, a book in the National Legal Gossip Journal, the foremost gossip tabloid in the legal field. Entitled *Stamford Law*, the book recounts the trials and tribulations of a first-year student at the law school. Doolittle signed a contract with the Journal, pursuant to New York contract law

Shortly after Doolittle's final installment was published, Evan Monson sued Doolittle and the National Legal Gossip Journal Corporation for copyright infringement. Monson is the author of First Year, a best-selling book about a first-year student's experience in law school that was first published in the early 1980s. In his lawsuit, Monson claimed Doolittle's book impermissibly copied his published book. He filed suit in federal court in the Southern District of New York, seeking \$200,000 in damages.

The Corporation is incorporated in Delaware and publishes from New York City, where most of its reporters are based. Monson owns homes in Westchester County, New York and in Santa Fe, New Mexico, and he has cars registered in both states; he has a New York license. Doolittle was born in Boulder, Colorado and attended high school at the Albuquerque Academy in Albuquerque, New Mexico, where her parents live. She graduated from Williams College in Massachusetts and then immediately started law school at Stamford.

* * *

- (1) Both Doolittle's and the Corporation's attorneys have filed 12(b) motions challenging the court's jurisdiction. You are the clerk to the federal district judge. Write a memo for her, analyzing the personal jurisdiction and subject matter jurisdiction claims of both defendants.

* * *

Ultimately, the case remains in federal court for the Southern District of New York. You represent Doolittle and you have just filed an answer denying that she copied any part of *First Year*.

Defendant's answer was based on the following:

- Doolittle has never read Monson's book. However, a friend of hers, who read a draft of *Stamford Law*, remarked on the striking similarities between the books.

- As a result, Doolittle retained Carlos Counsel to advise her about copyright law before she published the first installment. Counsel sent Doolittle a memorandum, which begins: “Based on your friend’s comment that *Stamford Law* bears a striking resemblance’ to First Year, I have done some legal research. ...” The memo goes on to say that one does not infringe a copyrighted work unless one actually copied the work. It concludes that Donna should not read First Year. (You check and determine that this is an accurate account of copyright law.)
- Doolittle doesn’t have a copy of the memo in her possession; she recalled that she had lent it to a fellow student to assist him in preparing for a copyright exam. Rather than try to track down the student, who has since graduated and moved away, you obtained a copy of the memo directly from Counsel.
- Doolittle says that all the stories recounted in *Stamford Law* were based on her own experiences or those of law school classmates. There are four sets of documents relating to these experiences:
 - A diary, written during her first year of law school, that, in addition to recounting events at the school, contains much personal material, which she says would be terribly embarrassing to reveal to anyone. She has adamantly refused to let you see the diary, saying that her personal thoughts and revelations are so intertwined with descriptions of events at the school that they can’t be separated.
 - Some very rough notes, in an orange spiral notebook, of her conversations with classmates, upon which she drew to write the book.
 - After completing the book, but before the first installment was published, Doolittle started systematically re-interviewing her classmates to hear their stories again. Rough notes of the re-interviews are in a blue spiral notebook. When you asked her why she did the re-interviews, Doolittle said that she had the impression it was important to check out the stories “in case someone claimed they were untrue.”
 - Doolittle was still conducting the re-interviews as the installments were being published, but she stopped when Monson filed the lawsuit. You asked her to continue re-interviewing the remainder of her classmates to verify their stories. She has completed the project and now gives you a yellow spiral notebook with these interview notes.

* * *

(2) You are Doolittle’s lawyer. Answer the following questions:

(a) What information would you have to disclose under Rule 26(a)(1)?

- (b) Monson's counsel sends 25 interrogatories to Doolittle. The 25th interrogatory reads as follows: "Does Defendant have any documents pertaining to production of the book *Stamford Law*, including but not limited to correspondence, notes, interviews, drafts, and other documents? If so, attach hereto copies of such documents." How will you instruct Doolittle to answer interrogatory #25? What documents will you tell your client to turnover with her answer? In your answer, be sure to discuss any objections you may have to the discovery request.
- (3) Now, switch hats and assume you are representing the plaintiff, Monson, and, in that capacity, discuss your response to Doolittle's objections discussed in question 2(b) above.

(Examination continues on page 5)

II.
Reflective Essay
(30 Minutes)

Professors Gene Shreve and Peter Raven-Hansen wrote the following in 2002:
“Today a movant who would not have the burden of persuasion at trial may be able to move for summary judgment on little more than a bare motion, placing almost the entire cost of summary judgment on the plaintiff. This possibility invites abuse of the motion as a tool for discovery, or worse, harassment.”

Agree or disagree with this statement and justify your position (by drawing on caselaw, the Federal Rules, empirical observation, and/or public policy arguments, for example).

(Examination continues on page 6)

III.
Short Answer Questions
(75 Minutes)

For each of the following assertions (in which “P” refers to plaintiff and “D” refers to defendant), do the following: (1) state whether the assertion is true or false (worth one-third for each question), and (2) provide a one or two sentence explanation for your answer (worth two-thirds for each question). There is no in-between: if the assertion is not true in every instance, then it is false; a statement that is true but that “doesn’t tell the whole story” is nevertheless true. Your explanation may include reference to a rule, statute, or case; it may include an example or counter-example; or a simple statement of why you believe the assertion is true or false – whatever best explains your answer. (Keep in mind that the explanation “because Prof. Gómez told us so” is not an adequate explanation.)

1. The fact that corporations are deemed to be citizens of both their state of incorporation and their principal place of business has the effect, overall, of expanding federal jurisdiction over cases involving corporations from what it would be if corporations had only one state of citizenship.
2. If D files a pre-answer motion that omits one of the “waivable” F.R.C.P. 12(b) defenses, and likewise omits that defense from the answer, she may still raise that defense if she includes it in an amendment to the answer of the type that is permitted “as a matter of course.”
3. If Pennoyer v. Neff arose today, it would be decided the same way for the same reasons.
 1. “Nail and mail” service (in which the summons and complaint are mailed to the D’s last known address and a copy is left at that residence, without necessarily being handed to an occupant) is not a valid form of service of process under the Federal Rules.
5. Discovery orders can only be appealed when the trial judge certifies them as an interlocutory decision that is appealable under U.S.C.A. Sec. 1292.
6. When an appellate court is reviewing a trial court’s grant of summary judgment for D, it must assume that the facts alleged in P’s complaint are true.
7. Prior to litigation and during normal contractual relations, a party may contractually consent to personal jurisdiction and subject matter jurisdiction, effectively waiving the right to challenge a lawsuit on these grounds.

(Examination continues on page 7)

8. When a question arises about whether to apply state or federal law in a federal diversity case, the key question is whether applying federal law would determine the outcome of the case.
9. The 1938 Federal Rules of Civil Procedure were innovative because they introduced the idea that one of the primary purposes of the pleadings stage should be to give notice to the parties.
10. The purpose of F.R.C.P. 11(c)(1)(A) is to give P more time to consider whether to challenge the reasonableness of D's denials of factual contentions.
11. In a civil rights claim under Section 1983, P is required to file a reply to contest D's answer when D raises a defense of good faith immunity.
12. During an especially aggressive deposition by P's lawyer, you, as the lawyer representing D, advise D not to answer the question posed to her, invoking F.R.C.P. 30(d)(4). P can seek sanctions under F.R.C.P. 37.
13. The purpose of the 1983 amendments to Rule 4 was to make the litigation process more efficient and cost-effective.
14. A plaintiff seeking to amend a complaint can never do so if the statute of limitations on the cause of action already has tolled.
15. In the two cases we read on punitive damages, Honda and BMW, the Supreme Court reversed jury awards on the grounds that the defendants' substantive due process rights had been violated.

(END OF EXAMINATION)