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**552 FEDERAL JURISDICTION**

Semester II, 1999-2000

UNM School of Law  
Final Examination  
Three Credit Hours

Professor Ruth Kovnat  
Thursday, May 4, 2000  
Friday, May 12, 2000  
9:00 a.m. until 12:30 p.m.

INSTRUCTIONS

1. This examination consists of two questions. The time indicated for each question reflects the relative weight of the question in the grade. You should be able to answer the questions in **three hours**. The extra half-hour is allotted to encourage clarity and lucidity in your answers.
2. This is an open book examination. You may bring the casebook, supplement, class notes, and any outline that you have prepared either alone or together with other students in the class. You may not bring into the examination any nutshells, hornbooks, commercial outlines, or other commercial materials.
3. *Good luck and have an enjoyable summer.*

[END OF INSTRUCTIONS, EXAMINATION BEGINS ON PAGE 2]

**Question I (Two hours)**

Patterson worked as a licensed practical nurse (LPN) in the intensive care unit of Vermillion County Hospital in Nebraska. Although he may have been a competent nurse, he had one problem: an incredibly high number of elderly patients died under his watch. After rumors that Patterson was euthanizing patients started to circulate, Monroe, the president and chief executive officer of the hospital suspended Patterson from work on July 1, 1999. The suspension was without pay. Monroe refused to give Patterson a reason for the suspension, but immediately thereafter, he went to the police and asked them to investigate Patterson.

The hospital tried to keep a lid on the rumors, but suspicions about “what was going on at the hospital” started to leak, and soon the Nebraska Attorney-General began an investigation at the hospital. After deciding that there was evidence of Patterson’s misconduct, the Attorney-General asked the Nebraska State Board of Nursing to suspend Patterson’s license. At the time, Nebraska’s summary license suspension law allowed the board to suspend any health practitioner’s license for 90 days, without notifying the practitioner, if his continued practice posed “a clear and immediate danger to the public health and safety.” The law permitted renewal of suspension for additional 90 day periods, but only after notice and hearing.

Under this law, on November 1, 1999, the board held a hearing on the status of Patterson’s license without giving Patterson notice. At the hearing, the board reviewed data collected by the hospital and its members voted to suspend Patterson’s license for 90 days. Under Nebraska law, emergency suspensions are not judicially reviewable. Immediately after receiving notice of the board’s emergency action, Monroe terminated Patterson’s hospital employment. Meanwhile, the Attorney-General filed a complaint with the board seeking permanent revocation of Patterson’s license. Nebraska law does require notice and hearing for license revocation. Patterson was notified and hearing was set for June 15, 2000. State law authorizes judicial review of license revocations. State law also waives sovereign and governmental immunity as to all actions against governmental entities and their employees although liability is limited to \$100,000 and no jury trials are permitted in these actions.

On November 15, 1999, Patterson filed a federal lawsuit under 42 USC section 1983 in the U.S. District Court in Nebraska. His first count alleged that Nebraska, through its Attorney-General and the Board had conspired to deprive him of his license without due process of law. He sought to enjoin the Attorney-General and Board from proceeding with the November 15 revocation hearing. He also sought to recover damages from Nebraska, the Attorney-General in her personal capacity and the individual members of the Board in their personal capacities. His second count alleged that Monroe had terminated his employment without affording him procedural due process. He sought damages from Monroe in his official and personal capacity and also from Vermillion County. Patterson’s third count alleged that Monroe had wrongfully terminated his employment in violation of Nebraska law. He sought damages from Monroe and from Vermillion County, Monroe’s employer.

- A. All defendants move to dismiss Counts I and II on the grounds that Patterson has failed to state a claim under section 1983 because of the availability of state law remedies. Rule on the motion giving reasons for your ruling.
- B. In addition, Nebraska and the Attorney-General have moved to dismiss the first count on two alternative grounds: first, the Eleventh Amendment; and second, Younger abstention. As for the action against the Attorney-General for damages in her personal capacity, she moves to dismiss on the basis of absolute immunity. The individual members of the Board also move to dismiss on the basis of absolute immunity. Rule on these motions, giving reasons for your rulings.
- C. Monroe's motion to dismiss Count II is also grounded in the doctrine of qualified immunity. Vermillion County seeks dismissal of Count II on the grounds that the County Human Resources Policy does not permit county supervisors to terminate an employee without giving the employee reasons for termination and affording an opportunity to respond. Rule on these motions, giving reasons for your rulings.

Your research reveals that there is scant case law on the procedures that are constitutionally required when a person is terminated from a public job. A federal district court for the district of Nebraska ruled on February 1, 1999 that at a minimum the U.S. Constitution requires that a statement of reasons accompany any termination of public employment. The U.S. Court of Appeals for the Ninth Circuit ruled however in October, 1999, that termination of public employment need not be accompanied by any procedure in an emergency and where necessary to protect public health and safety. Nebraska is not in the Ninth Circuit.

- D. Finally, Monroe and Vermillion County move to dismiss Count III on the ground that the federal district court lacks subject matter jurisdiction over this claim. Rule on this motion, giving reasons for your ruling.

## Question II (One Hour)

A. Nick of North Carolina died from lung cancer, allegedly from smoking cigarettes manufactured by Reynolds Company, a North Carolina corporation with its principal place of business in North Carolina. Lawyers for Nick's estate started to negotiate with Reynolds' lawyers. In the course of the negotiations, they learned that Reynolds would defend on the basis that it had always complied with the federal law mandating warnings on cigarette packages and that compliance with federal law preempts and thus establishes a total defense to a state law claim. Reynolds' lawyers are considering filing a suit seeking a declaratory judgment of non-liability against Nick's estate instead of waiting to be sued by Nick's estate.

Is a federal forum available to Reynolds for its declaratory judgment action? Why or why not?

B. Suppose that Congress, after many years of hearings, concluded that state courts were too favorable to plaintiffs in the application of products liability law to the detriment of large manufacturers doing business throughout the United States. Based on those findings, Congress adopted and the President signed a law that is codified at 28 USC 1352:

The federal courts shall have original jurisdiction over all cases in which a manufacturer doing business in interstate commerce is sued in an action seeking damages for harm allegedly caused by any deficiency in the product or the process by which it was designed or manufactured.

Would a federal forum be available to Reynolds now for its action. If so, why? If not, why not?

C. Congress has enacted a law requiring all interstate trucks to be fitted with special seat belts. The law also requires that all interstate truckers wear these special seat belts while operating their vehicles. The legislative purposes are two-fold: first, to protect interstate truck drivers from enhanced injuries based upon the Congressional finding that conventional seat belts afford too little protection; second, to protect the public by increasing the likelihood that the driver will be better able to control his vehicle. The law authorizes the Secretary of Transportation to seek civil and criminal penalties against non-complying interstate trucking companies and to prohibit use of trucks not fitted with seat belts as required by law.

Diana, an interstate truck driver subject to the law failed to wear her seat belt, lost control of her vehicle, apparently while using a cell phone, and injured Peter. Both Diana and Peter are citizens of New Mexico. Peter sued Diana in New Mexico State court alleging that Diana failed to use reasonable care under New Mexico tort law. In a separate count, Peter alleged that under New Mexico law, violation of federal safety regulations is negligence per se, so that violation of federal law proves negligence under New Mexico law.

Diana wishes to remove the action to federal court. What is the likelihood of success and why or why not?

[END OF EXAMINATION]