

**CHICAGO-KENT COLLEGE OF LAW
FINAL EXAMINATION IN CIVIL PROCEDURE**

INSTRUCTIONS

1. This examination consists of 5 pages. Please check to make certain you have the complete examination, including the appendix.
2. Read these instructions carefully, read each question, and read the appendix carefully. As you answer each question, make use of any materials in the appendix that are pertinent. Think each problem through before you write and treat every appropriate issue in each question. Be direct and concise.
3. Answers will be graded upon the reasons given as well as the conclusions drawn. If more than one reason is pertinent to an answer, state every reason.
4. While you have been permitted to bring materials into the examination room, answering the questions appropriately will put time pressure on you. You should not do extensive research during the examination. Credit will be weighted according to the time allocations shown. Manage your time accordingly.
5. You may decide, in answering one or more questions, that a complete answer would require legal research. If this is so, you should identify the specific issue that you would research. If you have a mastery of the basic concepts, you will be able to frame research issues very narrowly and precisely.
6. It also may be that more factual information is required to answer a question. If this is the case, you should say what factual information is required and why you need it. A mastery of the underlying concepts will permit you to frame any factual inquiries very narrowly and link them precisely to the legal issue involved.
7. Organization and clarity are very important. A shorter answer that is well organized and evidences a clear understanding of basic concepts and their interrelationships is better than a long answer with disconnected fragments of information.
8. Do not write outside the margins of your bluebook pages, but write clearly. If it's not legible, it will not get credit.
9. Write your examination number on your bluebook(s) and on each page of this examination. Do not use your name.
10. When you have finished the examination place it inside your bluebook(s) and deposit them in the appropriate box in the examination room.

MATERIALS WHICH MAY BE TAKEN INTO THE EXAMINATION ROOM

Any material including any outlines whether commercially prepared or not, whether accessible by computer or not. No communication by e-mail, cell phone, voice-over-IP, or any form of instant- or text-messaging is permitted during the exam.

GOOD LUCK!

QUESTION I

Susan Mishap was vacationing at Ponte Aligatore resort in Cedar Key, Florida and let her bishon puppy loose to explore the area near a fish pond. She was horrified when a large alligator emerged from the pond and ate the dog. Grieving, she has returned to her home in Kenilworth, Cook County, Illinois.

She learned about Ponte Aligatore from a 10-second radio ad she heard on a Chicago radio station, which said, “Come to Ponte Aligatore in Cedar Key. Rustic vacations in the wilds of Florida, but with complete safety and security for all guests. Pets welcome.” She did a Google search on the name and found a Ponte Aligatore website that allowed her to register for her preferred dates online by giving her name and address and credit card information.

Ponte Aligatore is incorporated in Florida, and has its principal place of business there.

She consults you, admitted to practice law, about suing Ponte Aligatore for negligent infliction of emotional distress and wire fraud. She tells you that she is sick of Florida and wants nothing further to do with it. She also is preoccupied with shopping for another dog—a large one that is known for being able to fight successfully with alligators. She insists on suing only in federal court in Illinois courts, which she thinks will have more “muscle, clout, and force.” “I want to be in federal court,” she insists.

- A. (20 minutes) After conducting an investigation that confirms the essential facts she reported to you, you file a complaint in the United States District Court for the Northern District of Illinois asserting the two claims she suggested and you now are ready to serve Ponte Aligatore. A Florida statute allows “service of original process against any person who maintains a website by sending an email attaching the summons and complaint to any email address shown on the website, or by filling out any form provided on the website which permits attaching the summons and complaint and attaching the same.” The website gives an email address, info@pontealigatore.com, and you send an email with the subject header, “You have been sued.” You leave the body of the message blank, but attach a .pdf file of the federal court summons and complaint. What challenges should you anticipate to this method of service and how would you respond. Evaluate your prospects for success.
- B. (20 minutes) Ponte Aligatore moves to dismiss for lack of personal jurisdiction. What is your response? What opposing arguments would you expect from Ponte Aligatore. Assess the relative strengths of your arguments.
- C. (25 minutes) Assume the judge has found that personal jurisdiction exists. Your client asks you to amend your complaint to name the CEO of Ponte Aligatore, a citizen of Cicero, IL, as a co-defendant. Summarize your advice to your client as to whether this is or is not a good idea, explaining its impact on your ability to continue to litigate her claims in federal court. Set forth your legal reasoning. Be sure to address each of the two claims.

- D. (25 minutes) The part of your complaint dealing with the federal wire-fraud statute reads as follows:

COUNT 2 WIRE FRAUD

Defendant made representations to plaintiff that her beloved dog would be safe if she went to Defendant's resort. Her dog was killed. Thus the federal statute was violated and she is entitled to damages.

What objections, if any, should you anticipate to the form of this count in the complaint? How would you respond? What are your prospects for success if you leave it as it is, and if you respond as you suggest?

- E. (10 minutes) Is venue proper in the Northern District of Illinois? Why or why not?

QUESTION II

Muffin Moondheim is a famous playwright who has written a musical about law students struggling to understand *Pennoyer v. Neff*. Fascinated by the subject matter and confused herself about the case, she decides to produce and direct the play. One of the principal characters in the musical is Alice Bennaza, a 1L, who, distracted by various personal disputes with the police and a lawsuit in which she is the plaintiff, is completely baffled by the *Pennoyer* case in her class in Civil Procedure. Moondheim posts a casting notice on www.earnyourrole.com, a website that permits theater producers and actors to link up for auditions. Auditions are the process through which actors are considered for roles in live theater or film productions. Typically, candidates audition for particular roles by performing a short scene. For musicals, they audition by singing parts of one or more songs.

In the casting notice, she announces an audition for the part of Alice Bennaza. The notice says, "candidates will be selected based entirely on their audition performances."

Brenda Pitt has a beautiful voice, has bachelors and masters degrees from the Indiana University musical theater program, and has played several lead roles in musical productions in Chicagoland. She won several prizes for her acting and singing. She sees the notice on the earnyourrole website, and responds through the form on the website. She is scheduled for an audition and performs at the appointed time and place. She, and her friend who accompanies her, Guilliame Winit, were very pleased with her performance. She sang beautifully, and her performance was so moving that several of the evaluators cried.

She was therefore astounded a few days later when Annie Schoenberg was cast in the role. Steaming, Brenda attended the opening of the production several months later. Although the musical featured accessible melodies, which Brenda knew included the Bennaza roles,

Schoenberg sang everything off pitch, with random rhythm not matching the music. She stood on the stage woodenly and was actually booed by the audience.

Brenda retains you to represent her in a breach-of-contract lawsuit that she wants to file in federal court in Chicago. Moondheim is a citizen of New York, so subject matter jurisdiction should not be a problem. You file the action, and Moondheim answers, denying essentially all of your allegations. You have your Rule 26(f) conference with Moondheim's lawyer, which results in a discovery plan that leaves you very broad latitude to take discovery as you want. The judge approves the discovery plan.

- A. (20 minutes) You are at the deposition of the defendant, Moondheim, which you convened. You ask, "Did the notice on the website include all the terms and conditions for the audition, or were there aspects of the deal that were not included?" The deponent starts to answer but her lawyer interrupts and says, "Objection! Irrelevant." The deponent then refuses to answer your question. Frustrated by your opponent's obstruction, you tell him you are "suspending discovery." What are the risks of this approach? Be specific about the procedural options available to you and your opponent, and the up-side and down-side of such an approach. What other options do you have besides "suspending discovery? Evaluate each option in terms of its legal permissibility, its likelihood of success, and its economic cost.
- B. (20 minutes) You send the defendant a set of interrogatories that include the question, "Do you claim that Brenda Pitt did not give the best audition performance; if so, why?" The defendant's response leaves the space under this question blank. How should you treat this interrogatory and the blank response in your motion for summary judgment? Explain your reasons and evaluate counterarguments.
- C. (20 minutes) You retain an expert, Oscar Flystein, who reviews the facts and listens to Pitt. To your surprise, Flystein says to you that Pitt is not a very good singer and he would not cast her. He expresses this over more than a few beers at Dunheim's a bar not far from where you went to law school. Later, after discovery is resumed, your opponent's lawyer asks deposition questions and interrogatory questions about "all the experts you ever retained." Is there any way you can resist disclosing the opinion of Flystein? Be specific about your legal theory and the steps you would take to assert it. Evaluate your prospects for success.
- D. (20 minutes) You want to subject Schoenberg to your own singing and acting test, with your expert (not Flystein) present to see how well she can sing and act. You have asked her if she is willing to do that. She refused. What options are available to compel her to do this? Evaluate probable objections and your likelihood of success.

APPENDIX

Assume that the federal wire fraud statute reads as follows:

Fraud by wire, radio, or television

(a) Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

(b) Any person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief. Damages for a violation are limited to economic damages.

Assume that the definition of negligent infliction of emotion distress is:

If the actor unintentionally causes emotional distress to another, he is subject to liability if the actor should have realized that his conduct involved an unreasonable risk of causing the distress