

## Oedel's Civil Lawsuits

### 1997 Final Exam

#### Three Hours

Welcome to the final exam in Civil Lawsuits. You may bring with you into this exam only your texts, handouts, and any notes that you have personally prepared. Therefore, commercial materials and outlines, including commercially digested versions of the rules, are not acceptable.

Please write your blind grading number on each page of the exam in the upper right-hand corner of each page. If you run out of space on any page, go on to the blank back. If necessary, you may use a blue book.

Each of the 21 questions on this exam will be given equal weight. If you spend 12 minutes reading over and preparing to respond, you should plan to spend no more than 8 minutes answering each question. The length of an answer is less important than its accuracy. Make an effort to answer every question.

The questions are based on the simulation used in class. Belzer, a talk show host, is injured when guest professional wrestler Hogan demonstrates a hold on Belzer at the suggestion of Belzer and Belzer's employer, Cable Productions. Hogan and Mr. T, both of whom appeared on Belzer's show, are both employed by Titan Sports, Inc. Vince and Linda McMann own and manage Titan Sports. Assume nothing about citizenship unless the particular question advises you accordingly, but you may assume if the problem does not otherwise indicate that the action is pending a federal court. Any additional or different facts will be noted in the specific question that you are answering. If you make any assumptions other than these general facts or any additional information provided in the specific question that you are answering, then please indicate what you are assuming. If there is any ambiguity in a question that bothers you, note the ambiguity and move on.

Of course, in exams as in litigation, preparation counts for more than luck. Still -- best of luck! And thanks for an enjoyable semester.

1. Assume that Hogan injured Belzer on January 15, 1995 in Georgia. Invoking diversity jurisdiction, Belzer sued Titan Sports on a theory of respondeat superior in a federal district court on January 14, 1997. Unbeknownst to Belzer, on January 3, 1995, Titan Sports had sold its wrestling business to Turner Properties, including the division that employed Hogan. In other words, at the time of the incident, Hogan was a Turner employee, not a Titan employee. Belzer sought waiver of service from Titan, but Titan did not respond, and instead forwarded the materials to Turner. Thereafter Belzer formally served Titan. Twenty days later, Titan filed an answer raising a 12(b)(6) objection based on the fact that it did not employ Hogan on the relevant date. Assuming Belzer now moves swiftly to amend its complaint to name Turner instead of Titan, will Belzer's amendment be effective as against Turner?

2. Belzer sued T for inciting Hogan. Assume that the incident occurred in Georgia, and that the action has been brought in a federal district court. Belzer alleged that T whispered to Hogan, "Kill that jerk for me, will you? I really mean it." May T join Hogan?

3. In action 1, Hogan settled with Belzer for \$50,000. Part of the settlement agreement required that the parties keep the terms of the settlement confidential. The court in action 1 signed a consent decree dismissing the matter, and including the confidentiality requirement. In a separate federal lawsuit by Belzer against T arising out of the same incident, T wishes to seek discovery of the terms of the settlement in action 1. Belzer resists. Will the disclosure be required?

4. In a federal suit filed by Belzer against Hogan, Hogan in writing offered \$50,000 to settle the matter, and filed the offer with the court. Belzer declined the offer. Belzer proceeded to win a judgment at trial for \$10,000 in special damages and \$25,000 in general damages. Does Hogan now owe Belzer \$35,000, or some other adjusted number?

5. In federal court, Belzer, from New York, sues Hogan, from New York, for federal antitrust violations in connection with Belzer's attempt to establish the SLG (Sassy Little Guys) Wrestling Federation. Under what circumstances could Hogan join Titan, also from New York, on state-law grounds? If Titan were properly joined, could Belzer then join a transactionally unrelated claim against Titan for negligent supervision of Hogan?

6. In federal court, Belzer, from New York, sued Hogan, from Florida, for negligence. Assume that Hogan then joined Titan Sports, from New York, pursuant to Hogan's employment contract with Titan. In the same action, Titan then sued Belzer for failing to pay Titan an agreed-upon appearance fee in association with Hogan's appearance on Belzer's show, during which Belzer suffered the injury. What is Belzer's best argument for now in the same action raising a claim that Titan negligently supervised Hogan?

7. In a Georgia state court, Belzer sued Hogan for negligence, but voluntarily dismissed the suit immediately after drawing an apparently hostile jury. Belzer then filed in a federal court on an intentional tort theory (battery), but voluntarily dismissed immediately after filing the complaint (and before receiving any answer or pre-answer motion) after being assigned a hostile judge. Will Belzer now be permitted to file a complaint against Hogan for negligence in a federal court? You may assume that all the cases arose from the same factual situation.

8. Mrs. Belzer sued Titan on the theory that Titan was discriminating against women like herself who seek to become wrestlers. She sought a declaratory judgment that Titan's employment practices were unlawful, as well as damages and injunctive relief. The trial court ruled against Titan's Rule 56 motion, issued an order declaring that Titan's employment practices were unlawful, and in its order directed that final judgment be entered on Mrs. Belzer's claims for declaratory relief. Titan immediately appealed. Discuss Titan's chances on this appeal.

9. Belzer sued Hogan for the intentional tort of battery, but lost a general verdict. Previously, you may assume that Hogan in another case settled a claim that Hogan committed an intentional tort against a sports commentator who was interviewing Hogan (Hogan broke the sportscaster's nose). Now Belzer sues Titan for negligent supervision. Assume that two of the elements of the tort of negligent supervision are whether the employer was on notice that the employee had a tendency to commit intentional torts within the scope of his employment, and whether the employee proceeded to commit an intentional tort in the instant case. (A) Will Titan be precluded from relitigating whether it was on notice of Hogan's tendencies? (B) Will Belzer be precluded from relitigating whether Hogan committed an intentional tort against Belzer in the instant case?

10. Belzer sues Hogan for "professional malpractice" in a federal court on diversity jurisdiction for Hogan's alleged lack of professionalism in demonstrating a wrestling hold on Belzer. The incident occurred in Georgia. Must Belzer accompany his complaint with any special affidavit certifying or verifying any aspects of the complaint?

11. In federal court on diversity, Belzer sues Hogan and T under Georgia law for intentional torts, and seeks \$5 million in punitive damages. (A) On Belzer's behalf, draft an instruction or instructions to the jury on the question of punitive damages that would not be obviously deficient. (B) If the jury did award \$5 million in punitive damages to Belzer and Hogan appealed the award as unconstitutional, what constitutional safeguards could Belzer cite in defense of the award?

12. In litigation with Belzer, Hogan sought to stop Belzer's repeated use on Belzer's later television shows of videosegments showing Hogan apparently taunting and dropping Belzer. What is Hogan technically asking for, what will Hogan have to prove to get relief, and what are the biggest likely obstacles to securing such relief?

13. Belzer filed suit against Hogan in a federal court in a district that has not opted out of Rule 26(a). Along with his answer, Hogan filed a counterclaim for defamation, alleging (erroneously but with a subjective belief in the truth of the factual aspects of the counterclaim) that Belzer made defamatory and untrue remarks about Hogan to a newspaper reporter Newt. In fact Newt never met Hogan or Belzer and learned about the whole incident just through watching television, but Hogan's lawyer had not yet gotten around to calling Newt. In his initial disclosures under Rule 26(a), Hogan listed Newt as a witness to Belzer's allegedly defamatory statements made in private to Newt. Belzer immediately moved for sanctions against Hogan, Hogan's lawyer, and Hogan's law firm, and accompanied an affidavit from Newt stating that Newt had never spoken with either Belzer or Hogan. Will sanctions of any sort be awarded on these facts? Why or why not?

14. Assume that Hogan dropped Belzer in Georgia, that Georgia law has unusually liberal provisions with respect to service of process, and that the relevant Georgia state tort law is very friendly to plaintiffs. To what extent should these particular factors be counted in the decision on Belzer's behalf about whether to file in a Georgia state court as opposed to a Georgia federal court? Assuming that personal jurisdiction, subject matter jurisdiction and venue would be proper in either court, what other factor might you consider, either in addition to or instead of the listed factors?

15. The day of a Titan Sports wrestling exhibition at a large indoor arena, a state wrestling inspector notified Titan Sports for the first time that it had not paid a new wrestling licensing fee to the state, and that the doors to the arena would not be allowed to open. Sheriff's deputies were posted at the doors, thousands of patrons were turned away, and Titan Sports lost many thousands of dollars in revenue. Titan Sports comes to you for information about any relevant law and Titan's options. Where do you start?

16. At a deposition of a Titan Sports manager in a federal lawsuit between Belzer and Hogan, Belzer's lawyer inquired about whether the manager was aware of any illegal steroid use by Hogan. You may assume that Hogan's use of steroids might be admissible in any trial of Belzer's tort claims against Hogan only if an expert were to opine that excessive steroid use made the user especially testy. However, Belzer's lawyer admitted that he had secured no such expert. May Titan's lawyer instruct Titan's manager not to answer? Why or why not?

17. For this question, assume that Belzer's lawyer has sifted through thirty experts on steroids before finding one who would testify that steroid use significantly increases the likelihood that the user would act violently. (A) Armed with the expert's affidavit to that effect, may Belzer test Hogan for steroid use, and (B) take the deposition of Hogan's regular sports doctor?

18. After the incident between Belzer and Hogan, Belzer and Cable Properties used footage of the incident in an ad campaign touting Belzer's television show. In the ads, Titan's trademark and Hogan's image were repeatedly used without their permission. Titan and Hogan sued Belzer and Cable Properties for temporary and permanent injunctions against the use of their intellectual property rights, as well as for an accounting to determine the value of the defendants' use of those rights. The defendants seek a jury trial pursuant to Rule 38. What are their chances of securing the jury trial?

19. Belzer complained that Hogan's negligence in dropping Belzer on the studio floor caused a cut requiring nine stitches, and severe psychological trauma. At trial, Belzer produced substantial evidence suggesting that Hogan was negligent, but only some evidence that the resulting injury caused severe psychological trauma. After putting on substantial evidence that Hogan was not negligent, and substantial evidence that Belzer's psychological problems were caused by an entirely different agent, will Hogan's motion for directed verdict be granted in whole or in part? Why or why not?

20. Titan advertised its nationally advertised and broadcast pay-per-view wrestling extravaganza as including many well known stars such as Hogan and T. In fact, Hogan and T, who were ill, did not appear, and the wrestling exhibition was much shorter than anticipated. Despite howls from the fans, Titan refused to refund any money. What are the chances that the disgruntled fans will be permitted to join together against Titan in a federal lawsuit – and why?

21. Belzer sues Hogan for negligence in a federal district court in Georgia. Hogan files a motion complaining that he is not subject to personal jurisdiction in Georgia. (A) Is Hogan's motion a responsive pleading? (B) When must Hogan answer? (C) Would your answer to (B) be any different if Belzer had sued Hogan in a Georgia state court?