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BLIND GRADING NO.

JURISDICTION AND JUDGMENTS
Professor Baldwin
May 9, 2007
2 – 5 p.m.

This is a three hour, closed book examination of 16 pages. Please check to be sure that:

1. Your exam has 16 pages.
2. You have received a copy of:
   a. Selected Articles and Amendments from the U.S. Constitution,
   b. Selected sections of the United States Code Chapter 28,
   c. Selected Rules from the Federal Rules of Civil Procedure, and
   d. Selected sections of state law from:
      i. California/Nevada (For purposes of the exam, the procedural statutes for the two states are the **same**.)
      ii. Georgia

There are 10 multiple-choice and true/false questions in Part 1. Each of the 10 questions in Part I count 65 points. If you are writing the exam, you have a blank space next to the question number for you to indicate your choice, and a lined area on the same page for you to write your explanation. There is ample space for each explanation in Part I. If you must exceed the allocated lined area for your explanation, continue on the back of the page. **In Part I**, **<u>a complete answer to each question MUST consist of your choice AND your explanation</u>**.

There are five essay questions in Part II. Each essay is worth 70 points. If you are writing your exam, use blue books to write all answers in Part II. **If you are writing your answer in a blue book or if you are using your laptop for the entire exam, please write on every other line.**

PLEASE NOTE:
1. THERE IS A GENERAL FACT PATTERN PRECEDING PART I.
2. THERE IS A SHORT PARAGRAPH PRECEDING PART I, QUESTION 5. THAT PARAGRAPH AND THE GENERAL FACT PATTERN APPLY TO PART I, QUESTIONS 5-10.
3. THERE ARE TWO (2) SHORT PARAGRAPHS IN PART II. THE SHORT PARAGRAPH PRECEDING PART I, QUESTION 5, AND THE GENERAL FACT PATTERN APPLY TO ALL QUESTIONS IN PART II.

Read carefully, budget your time for the whole exam, answer the question asked, and have a safe, healthy, productive and relaxing summer.

Scott Cosman (Cosman) and Rik Fedyck (Fedyck) are business partners in Cosman/Fedyck Photography (Cosman/Fedyck), a Canadian Partnership Company. Cosman/Fedyck is a photography business with its only office in Vancouver, British Columbia. British Columbia is a western province in the nation of Canada. The partnership specializes in contracting with newspapers to follow and photograph celebrities who are in the Vancouver metropolitan area or British Columbia for business or for pleasure. Cosman and Fedyck both are domiciled in Vancouver.

On October 25, 2006 Cosman/Fedyck contracted with the Tokyo Shimbun and the Hong Kong Standard newspapers to photograph actresses Pamela Anderson (Anderson) and Denise Richards (Richards) in Vancouver from November 1, 2006 to February 14, 2007. Tokyo Shimbun is a Japanese Corporation headquartered in Tokyo. The Hong Kong Standard is a Hong Kong Corporation headquartered in Hong Kong. The contract required each newspaper to pay Cosman/Fedyck $40,000.00 (American Money) to follow and photograph or videotape Anderson and Richards during between November 1 and February 14. (The two actresses were going to be working on the film "Blonde and Blonder" over that time span. Anderson and Richards are the co-stars of the film.) All Cosman/Fedyck contracts contain a provision that requires Cosman/Fedyck contract disputes to be resolved in the British Columbian Province Court for the City of Vancouver, and governed by Canadian and British Columbian Contract Law.

Anderson and Richards arrived in Vancouver together on November 1, 2006. From November 1 to February 14, 2007, the actresses resided in separate condominiums at the River Rock Casino Resort (the Resort) in Vancouver. At all times between October 31, 2006 and May 9, 2007 Anderson was domiciled in Las Vegas, Nevada. At all times between October 31, 2006 and May 9 2007, Richards was domiciled in Los Angeles, California.

From November 1 until November 9, 2006, Cosman and Fedyck photographed and/or videotaped Anderson and Richards each time either actress or both made a public or semi-private appearance at the Resort or anywhere in metropolitan Vancouver. At about 5 p.m. on November 9, 2006 Cosman and Fedyck stood next to each other near a rail on the balcony of a Resort eighth floor suite during a cocktail reception. While standing there, they secretly photographed Anderson and Richards using their state of the art flashless cell phone cameras.

Richards saw Cosman and Fedyck at the balcony rail. When she realized what they were doing, she became enraged. First, Richards called them "paparazzi scum" and other less complimentary names in a long and loud harangue. Cosman and Fedyck denied her descriptions of them and gave some opinions about Richards. Before they could complete their opinions, Richards assaulted them, grabbed both of their state of the art cell phone cameras and threw them over the hotel suite balcony rail. The verbal

exchange and scuffle lasted twenty minutes, and the entire episode was recorded by hotel security cameras.

Anderson witnessed the course of events. She did nothing other than observe the altercation.

Later on November 9, Richards and Anderson made false and defamatory statements about Cosman and Fedyck during their interviews with the Resort security officers. Subsequently, they made the same statements during their interviews with the Vancouver police officers. They claimed that the men were "paparazzi stalkers" and they described what caused Richard's actions. Cosman and Fedyck did not press charges, and the Vancouver police did not charge Richards with a crime.

On the morning of November 10, 2006, Anderson and Richards held a press conference at the Resort to "set the record straight". The two women repeated and embellished what they told the Resort security and Vancouver police officers on November 9 and made further false and defamatory statements about Cosman and Fedyck. At the press conference, Richards declared that she would not pay for "paparazzi scum" photographing equipment under any circumstance.

Articles about the November 9 episode and the full text of the November 10 Anderson/Richards press conference were printed in the Los Angeles Times, the Las Vegas Journal Review, the Tokyo Shimbun, and the Hong Kong Standard on November 11 and 12. A short Associated Press summary of the episode and the press conference appeared on the Internet and at least one newspaper in every state of the United States. The Atlanta Journal Constitution and Macon Telegraph published the Associated Press summary in their respective November 11 editions. The summary quoted the actress' false and defamatory statements verbatim.

On November 11, 2006, the Managing Editors for the Tokyo Shimbun and the Hong Kong Standard notified Cosman/Fedyck that they were cancelling the contract with the partnership effective November 15, 2006 on account of "conduct inconsistent with the spirit of our agreement."

On February 1, 2007, Cosman/Fedyck's attorneys filed a complaint against Richards and Anderson in State of California, County of Los Angeles Superior Court. The complaint charged Richards with assault on each partner while he photographed her. It further charged that Richards and Anderson made defamatory and false statements to Resort security and to the Vancouver police on November 9, and during the November 10 press conference. The complaint alleged the November 9 and 10 statements were deliberately calculated to embarrass, humiliate and ridicule each partner and the partnership.

Damages totaling $500,000.00 were sought for:

1. The assault,
2. Loss of revenue resulting from cancellation of the Tokyo Shimbun/Hong Kong Standard contract,
3. The making of false and defamatory statements,
4. The cost of replacing two state of the art flashless cell phone cameras, and
5. Emotional distress from:
    a. the assault
    b. cancellation of the Tokyo Shimbun/Hong Kong Standard contract
    c. the national and international publication of false and defamatory statements.

PART I

1.___ The State of California County of Los Angeles Superior Court:

A. Has authority to entertain the complaint

B. Has authority to entertain the complaint but no power to haul Richards into court from Vancouver even if she is properly served.

C. Has authority to entertain the complaint and power to haul Richards into court from Vancouver if she is properly served

D. Has no authority to entertain the complaint

E. Has no authority to entertain the complaint and no power to haul Richards into court even if she is properly served.

2.___ The State of California County of Los Angeles Superior Court:

A. Has authority to entertain the complaint
B. Has authority to entertain the complaint but no power to haul Anderson into court from Vancouver if she is properly served.
C. Has authority to entertain the complaint and power to haul Anderson into court from Vancouver if she is properly served
D. Has no authority to entertain the complaint
E. Has no authority to entertain the complaint and no power to haul Anderson into court even if she is properly served.

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3.___ The plaintiff's attorney:

A. Could add the Tokyo Shimbun and Hong Kong Herald to the complaint as written if the newspapers were sold in Los Angeles.
B. Can't add the Tokyo Shimbun and Hong Kong Herald to the complaint because they are aliens.
C. Can't add the Tokyo Shimbun and Hong Kong Herald to the complaint because of the Cosman/Fedyck contract forum selection clause.
D. None of the Above.

4.___ Richards' attorneys are contemplating removal of the case to the Federal District Court for the Southern District of California (Los Angeles) pursuant to 28 USC 1441. They:

A. Can remove the case if Anderson will agree to removal

B. Can remove because the amount in controversy exceeds $75,000.00 and a partnership is a citizen where each of its partners are domiciled.

C. A and B

D. None of the above

FOR QUESTIONS 5-10

After the actresses completed their filming work in "Blonde and Blonder" on February 14, 2007, Anderson returned to Las Vegas, Nevada. Richards returned to Los Angeles, California. Richards's attorneys and Richards agreed that the attorneys should negotiate a settlement. The attorneys for Richards and for Cosman and Fedyck reached a $400,000.00 settlement for the part of the partners' complaint against Richards on March 31, 2007.

5._____ (True or False) Anderson's attorney may remove the complaint against Anderson to the Federal District Court for the Northern District of California (San Francisco) according to 28 USC 1441 and 28 USC 1391 if it can show that there is personal jurisdiction over the Cosman/Fedyck partnership.

6.___ If Anderson's attorneys' petitioned to remove the complaint to the Federal District Court for the Southern District of California (Los Angeles) pursuant to 28 USC 1441, there would be federal subject matter jurisdiction for the Federal District Court to entertain the claim according to 28 USC 1332 because:

A. The remaining amount in controversy in the complaint exceeds $75,000.00.
B. There is diversity of citizenship between the Anderson on the one hand and Cosman, and diversity of citizenship between Anderson and Fedyck on the other.
C. A and B
D. None of the Above

7.____ If Anderson's attorneys can successfully remove the complaint to the Federal District Court for the Court of California (Los Angeles) according to 28 USC1441 and 28 USC1332, Anderson could, pursuant to FRCP 14, implead:

A. The Los Angeles Times

B. The Las Vegas Journal Review

C. A and B

D. None of the above

8._____ (True or False) After removing the case in accord with 28 USC 1441, the attorneys for Cosman and Fedyck could amend their complaint by FRCP Rule 15(a) within 20 days and add both a claim for $100,000.00 against the Los Angeles Times and a claim for $100,000.00 against the Las Vegas Journal Review.

9._____ (True or False) If Anderson's attorneys can successfully remove the complaint to the Federal District Court for the Southern District of California (Los Angeles) according to 28 USC1441 and 28 USC 1332, then a 28 USC1407 motion to transfer venue to the Federal District Court for the District of Nevada will succeed.

10. _____ (True or False) If Anderson's attorneys can successfully remove the complaint to the Federal District Court for the Southern District of California, (Los Angeles) then they can move to dismiss the complaint on account of forum non coveniens.

PART II

The Associate Press is a Delaware Corporation with corporate headquarters in Atlanta, Georgia. Corporate headquarters are the center for administration and financial management, but the Associated Press Regional Offices are the center for the corporation's business of reporting the news. There are regional headquarters in Boston, New York City, Washington, D.C., Atlanta (In a building separate from the Corporate Headquarters.), Houston, Chicago, Denver, Seattle and Los Angeles.

The Associated Press General Counsel has been following the Cosman/ Fedyck/ Richards/ Anderson November 9 episode, the November 10 press conference and the 2007 litigation nervously. She is concerned about the potential defamation liability for the Associated Press from those events. The Associated Press article reported the episode and press conference published in every state including the Atlanta Journal Constitution and the Macon Telegraph in Georgia. She sees three litigation options:

OPTION 1) Cosman and Fedyck's attorneys could amend the existing complaint to add the Associated Press as a necessary defendant to the litigation.

OPTION 2) Cosman and Fedyck's attorneys could sue the Associated Press for defamation in a separate complaint.

OPTION 3) Anderson's attorney could implead the Associated Press according to FRCP 14.

Since Cosman and Fedyck v. Richards settled, and since Cosman and Fedyck v. Anderson still is in the Pleadings stage, there is no final judgment that would preclude litigation of a Cosman and Fedyck claim or their litigating the defamation issue against the Associated Press today.

You are a new law clerk in the Legal Department, and the General Counsel knows about your Jurisdictions and Judgments knowledge. She has five questions for you.

1. Could Cosman and Fedyck successfully survive an Associated Press 12(b)(1) motion to dismiss if it filed a complaint seeking damages for defamation against Associated Press in either the Federal District Court for the Northern District of Georgia (Atlanta) or the Federal District Court for the Middle District of Georgia (Macon)?

2. Could their attorneys satisfy federal service of process standards if they served the Associated Press Atlanta Regional Director's Executive Assistant at a time when the Atlanta Regional Director was not in the office?

3. Is there any basis in this course of human events for the Associated Press to petition for a declaratory judgment under the Declaratory Judgments Act?

4. Would a Federal District Court in Georgia apply the Georgia common law principles of defamation if the case went forward in either the Federal District Court for the Northern District of Georgia (Atlanta) or the Federal District Court for the Middle District of Georgia (Macon)?

5. The General Counsel learned that the Tokyo Simbun just opened up its third regional sales office in the United States, and the third regional sales office is located in a building on Peachtree Road in Atlanta. The other two are in Detroit and Baltimore. A Tokyo Simbun Manager maintains a Tokyo Simbum savings account at the Atlanta Lenox Mall Wachovia Bank branch as well. The Associated Press is contemplating a civil suit against Tokyo Simbun alleging a violation of the United States Occupational Safety and Health Act (OSHA) Section 1. The General Counsel wants to know if she should attach the Tokyo Simbun savings account before filing the OSHA claim. Advise her.