

REMINDER: LAW SCHOOL HONOR CODE

The School of Law's Honor Code applies to this examination and all work done in this course. The Honor Code prohibits plagiarism (regardless of intent to deceive, misrepresent, or gain unfair advantage) and violation of oral or written instructions concerning this examination in order to gain an unfair advantage over other students or under circumstances which a reasonable law student would know were likely to result in unfair advantage.

UNIVERSITY OF MISSOURI-COLUMBIA SCHOOL OF LAW

CIVIL PROCEDURE II -- SECTION 2 DEAN DESSEM

May 5, 2006

INSTRUCTIONS

1. This is the first part of your two-hour final examination. Please be sure that you have both pages of this portion of the examination.
2. You will have one hour to take this portion of the final examination. During this examination, you are permitted to have with you any written or printed materials. However, you are not to look at materials brought by others, speak with anyone concerning the examination during the examination period, consult materials outside the exam room, or bring materials into the exam room once the examination has begun.
3. Take sufficient time to think through and organize your answers before beginning to write.
4. Explain your answers and, if any assumptions of law or fact are necessary for any answer, set forth such assumptions.
5. Don't belabor the obvious in your answers, but focus on the more difficult aspects of the question.
6. This entire examination consists of the following essay question and a series of multiple choice questions. The essay question will count for approximately one-half of your grade, as will the set of multiple choice questions. The subparts of the essay questions will not necessarily be worth an equal number of points. After one-hour, you are to turn in your examination booklet and answer to this portion of the examination in order to receive the multiple choice questions.
7. Your examination number should be placed on your bluebook, as well as on your examination booklet (which must be handed in at the end of the first-portion of the exam along with your bluebook). Please write legibly and only on one side of each page.

EXAMINATION NUMBER

An American Airlines jet skids off the runway in Springfield, Missouri, and the 39 passengers and crew members are badly bruised and shaken-up as a result. Inspector Gadget, a Springfield attorney who represents American, happens to be at the Springfield airport at the time of the accident, and she speaks with the pilot, a stewardess, and three passengers about the accident on the afternoon that it occurred.

A federal diversity action seeking \$3,900,000 is filed in the United States District Court for the Western District of Missouri. The action is filed against American by four named plaintiffs on behalf of a class of “all passengers, pilots, and stewardesses who were on this flight.” The four named plaintiffs include the co-pilot, one of the stewardesses, and two passengers. The judge certifies the class action as requested.

Plaintiffs file a document request seeking “Inspector Gadget’s notes concerning her interviews with anyone on the flight” and “any witness statements taken by Gadget.” While admitting that notes and witness statements exist, American refuses to produce those documents.

At trial the four named plaintiffs testify to the trauma and other damages they suffered as a result of the accident. Plaintiffs then call Dr. Decay, an engineer who was a passenger on the plane. Decay’s testimony is summarized by his statement: “I’m not sure just what caused the plane to skid out of control, but my guess is that American hadn’t serviced this plane as it should have. There was either improper maintenance or a ‘microblast’ from the storm front that was moving through that caused us to skid out of control.”

After this testimony, plaintiffs rested their case. American Airlines filed a motion for judgment as a matter of law, which was granted. Plaintiffs then appealed.

While the first lawsuit is on appeal, an action is filed against American in state court in Texas (where American is headquartered) by (1) Paula Passenger, who had opted out of the first lawsuit at the time that the class action was certified; (2) Charlie Clueless, who received notice of the first lawsuit but never responded to that notice; and (3) Mary Moved, who moved immediately after the first lawsuit was filed and received no notice of that action’s filing.

Based upon these facts, please address the following questions.

(1) Presuming that a proper Rule 37 motion to compel had been filed, should the court have ordered production of Gadget’s notes and the witness statements?

(2) Should the federal court have certified the first case as a class action?

(3) Assuming that the federal court should have certified the first case as a class action, can American Airlines assert claim preclusion in the second action?

(4) Should the court have granted American’s motion for judgment as a matter of law?

Please explain each of your answers and discuss the applicable law in your answers.