

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 SCHOOL OF LAW CIVIL PROCEDURE II -- SECTION 2 PROFESSOR DESSEM

December 12, 2014

INSTRUCTIONS – ESSAY QUESTIONS

1. Do not start reading this 3-page exam (other than this cover page) until instructed to do so by the proctor. The exam is to be taken using EXAM4 in CLOSED mode.

2. The following two questions will count for approximately 60% of your final grade. The subparts of the essay questions will not necessarily be worth an equal number of points. You will have two hours to answer these two questions.

3. Place your exam number, but not your name, on both your answers and on this sheet.

4. *This is a closed book examination. During the exam you cannot refer to anything other than the examination itself. You also are not to speak with anyone other than the proctor about the exam during the exam period, consult materials outside the exam room, or bring materials into the exam room.*

5. *Electronic devices such as mobile phones should be turned off before the exam begins and during the exam. All backpacks or other containers should be closed and left at the front of the room.*

6. *Students may leave the exam room as needed to use restroom facilities. Except in case of an emergency, only one person should be out of the room at a time.*

7. Read the questions carefully, but do not presume they have been written to trick or mislead. Take time to think through and organize your answers before beginning to write. Explain your answers and, if any assumption of law or fact is necessary, set forth such assumption. Don't belabor the obvious in your answers, but focus on the more difficult aspects of the questions.

8. Turn in your answer sheet, these questions, and any scrap paper at the end of your exam.

EXAMINATION NUMBER

Question 1

Disc Discjockey hosts a local radio talk show in Manchester, New Hampshire. Although Disc would love to go big time, his show is produced in Manchester and only can be heard by a few thousand people in the area immediately surrounding Manchester.

People in Manchester are still talking about Disc's 2014 Halloween show. Among his guests on that show were Pierre LePue, a political activist from Portland, Maine, and Charles McCarthy, the mayor of Burlington, Vermont. The show was sponsored by Puritan Prunes, a California company that buys its prunes from local growers in the Western United States.

During the Halloween show, LePue sharply criticized Molly Maguire, a member of the Manchester, New Hampshire city council, stating that "Molly symbolizes everything that's wrong with New Hampshire and she makes me glad I'll be leaving New Hampshire immediately after this broadcast and returning to Maine." During this same broadcast McCarthy says, "It's Halloween tonight, a great time to play tricks on Democrats and other communistic-leaning folks." Dennis D. Menace, a juvenile delinquent in Reno, Nevada, hears this statement on a special radio receiver that he has built from stolen car parts and, as a result, firebombs the headquarters of the Reno Democratic Party. Another unfortunate result of Rush's broadcast is that several people in and around Manchester order Puritan Prunes from the California headquarters of Puritan Prunes. The prunes shipped to these individuals had been purchased by Puritan from Farmer Jones of Provo, Utah and had been treated by Jones with an insecticide that made several people in Manchester quite sick.

Please answer the following questions:

(a) Presuming LePue has never been to New Hampshire either before or after his appearance on Disc's show, would the United States District Court for the District of New Hampshire be able to entertain a lawsuit brought against him by Molly Maguire seeking \$110,000 in damages for slander? Be sure to address all of the prerequisites to the court's hearing this lawsuit in your answer.

(b) Presuming that McCarthy has never been to Nevada and has no ties to Nevada other than those described in this question, would a state court in Nevada have personal jurisdiction over McCarthy in a lawsuit brought against him by the Reno Democratic Party?

(c) Presume that Farmer Jones has never been out of the state of Utah and sold the bad prunes to Puritan Prunes in Utah, knowing that Puritan markets prunes throughout the United States. Would Farmer Jones be subject to personal jurisdiction in New Hampshire state court in lawsuits brought against him by the New Hampshire citizens who became sick after eating the prunes?

Question 2

A Trailways bus collides with a car driven by Abe Alaska, causing a big mess on an interstate highway in Montana. Alaska, a citizen of Alaska, brings a negligence action in the United States District Court for the District of Montana. This action seeks \$85,000 in damages against Trailways, which is incorporated in Delaware and has its principal place of business in Massachusetts. Trailways responds by asserting a counterclaim against Alaska, seeking recovery of \$45,000 in damages that its bus allegedly suffered as a result of Alaska's negligence.

Charles Classmember, who recently graduated from law school and was admitted to the bar, was a passenger on the Trailways bus that was involved in the accident. Classmember, a citizen of Idaho, brings a separate class action against Trailways "on behalf of all 65 bus passengers" – including the 50 members of the All-Montana State High School Chorus. Classmember, who suffered a minor concussion in the accident, seeks \$80,000 on behalf of himself and \$50,000 for each member of the class due to the alleged negligence of Trailways and its driver.

Please answer the following questions:

- (a) Does the federal court have subject matter jurisdiction over the counterclaim asserted by Trailways?
- (b) If Trailways would not have been required to file a counterclaim under Montana state law, can it be required to do so by the Montana federal court?
- (c) Does the court have subject matter jurisdiction to hear Classmember's class action?
- (d) Should the court certify Classmember's action as a class action?