

FINAL EXAMINATION

This is an open book examination. You may use any materials which you have brought with you whether prepared by you or by others. Questions will be weighted equally for grading purposes and you should spend equal amounts of time on each question. If there are individual parts within a question, each part within the question will be weighted equally.

Please write legibly, begin each question on a new page, and leave a margin on the left-hand side of the page.

Use only your social security number to identify your blue book. If you use more than one blue book, identify each one ("No. 1 of 2," "No. 2 of 2," etc.), make sure that your social security number is on each one, and insert all others into the first one.

The Federal Rules of Civil Procedure apply to all questions. You may assume, if relevant, that any American state has a long-arm statute identical to that of Illinois which is printed at pages 697 and 703 of your casebook. You may also assume that the courts of any American state follow the Federal Rules of Civil Procedure.

AWI told Toby that she had earned an "A" for her internship and set her to work researching a complaint for libel. Toby soon found that the application of this claim in the political arena is affected by the First Amendment's guarantee of freedom of the

statement is libel even if its publication is inadvertent." claim of libel doesn't depend on intent. An injurious false statement that injures another's reputation, and the tort AWI's law student intern, Toby Lifter, said, "Libel is a written theory of law that would justify an award of damages. Finally was more difficult because AWI could not think of a substantive submitted. The question of recovering damages, however, said AWI, was in breach of contract if it didn't publish the advertisement as the newspaper's bill for the advertisement because the newspaper AWI told Cuttlebung that, at a minimum, Cuttlebung should not pay Cuttlebung consulted a lawyer, Paul AWI of Tackhammer & AWI.

tax." printed, proclaimed that Cuttlebung was "in favor of a state income tax." Unfortunatly the Redactor omitted, possibly by inadvertence, the word "not." Therefore the advertisement, as voters in large type that he was "not in favor of a state income tax." advertisement to the Window Locks Redactor newspaper advising in his home town of Window Locks, New Hampshire. He submitted an Cuttlebung was a candidate for the New Hampshire legislature

QUESTION ONE

press. In New York Times Co. v. Sullivan, 376 U.S. 254 (1964), the Supreme Court held that a public figure could not recover damages from a newspaper for defamatory falsehood unless the public figure proves that the defendant published it knowing that it was false, or in reckless disregard of whether it was false or true.

Toby realized that Cuttlebung, as a candidate for office, was a public figure under the New York Times doctrine.

Toby also found out that the company which publishes the Redactor, Monolithic Press, is a Delaware corporation with a principal place of business in California. It owns local newspapers all over the United States.

Toby drafted and Awl filed a complaint in New Hampshire Superior Court. The complaint contains the following allegation:

In order to comply with the First Amendment to the United States constitution plaintiff is required to prove, and therefore hereby does allege, that defendant acted with knowledge of the falsity of the publication or with reckless disregard of whether it was false or true.

Monolithic Press believes the action to be unmeritorious because Cuttlebung actually approved the advertising copy. (Apparently he did not notice the error either). Monolithic Press plans to counterclaim for the unpaid price of the advertisement in the amount of \$10,251.57.

Answer each of the following sub-questions "Yes" or "No," followed by a brief explanation. Your one-word answer, "Yes" or "No," counts as forty per cent of each sub-question. Your brief explanation counts as the remaining sixty per cent of each sub-question.

6. Assume that Monolithic Press filed the motion to dismiss referred to in sub-question 5. Three weeks have passed and the judge still has not decided Monolithic's motion. Monolithic proceeds to take Cuttlebung's deposition. In the deposition, Cuttlebung admits that he has no knowledge that anybody at the Redactor knew that the statement was false or that its publication was anything other than a typographical error. On the basis of this admission, can Monolithic move for summary judgment in its favor even though its motion to dismiss is undecided and it has not

whether it was false or true?

5. Can Monolithic Press successfully move to dismiss the complaint under Rule 12(b)(6) because it does not state any facts which would show that Monolithic published the erroneous statement with knowledge that it was false, or with reckless disregard as to

do so in another action?

4. Under the federal rules, must Monolithic Press counter-claim for the unpaid \$10,251.57 or else forego the opportunity to

for the unpaid \$10,251.57?

3. Under the federal rules, can Monolithic Press counterclaim court regardless of your actual answers to sub-questions 1 and 2.

case has been removed from New Hampshire state court to federal In the remaining sub-questions 3 through 9, assume that the

state court to federal court on federal question grounds?

2. Can Monolithic Press remove the case from New Hampshire

state court to federal court on diversity grounds?

1. Can Monolithic Press remove the case from New Hampshire

The countries of the European Union ("EU"), seeking to create a transnational legal system, must deal with problems of personal jurisdiction comparable to those of the American federal system. The EU convention on jurisdiction, called the Brussels Convention, provides for general jurisdiction in the defendant's domicile or, in the case of a business, in its principal place of business. In

QUESTION TWO

under Rule 24(a)?

defense to a claim of libel). Can Tilltapper intervene as of right the statement in the Redactor was true, and truth is 100% good really does favor a state income tax. (If Tilltapper is right then to intervene in the case for the purpose of proving that Cuttlebung 9. Tilltapper, Cuttlebung's opponent in the election, wants

Times's criterion)?

advertisement (which allegation would plainly satisfy New York to include a factual allegation that Greenoods sabotaged the Can Awl amend Cuttlebung's complaint, without leave of court, so as 8. The judge has still not decided the motion to dismiss.

the federal court?

Cuttlebung's complaint so as to add Greenoods as a defendant in Greenoods is a resident of Window Locks. Can Awl now amend as to falsify Cuttlebung's position on the state income tax. the Redactor's editor, Greenoods, sabotaged the advertisement so 7. Information later comes to Cuttlebung which suggests that

answered the complaint?

that Mr. and Mrs. Robinson are travelling by automobile from their
Consider World Wide Volkswagen (casebook p. 707). Imagine

Part A.

3. On a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending.

2. As a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seized of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

1. Where he is one of a number of defendants, in the courts for the place where any one of them is domiciled;

A person domiciled in [an EU country] may also be sued:

Article 6

3. In matters relating to tort, delict or quasi-delict [civil law words meaning approximately the same as "tort"], in the courts for the place where the harmful event occurred; . . .

2. In matters relating to maintenance [i.e. support and alimony], in the courts for the place where the maintenance creditor is domiciled or habitually resident;

1. In matters relating to a contract, in the courts of the place of performance of the obligation in question; . . .

A person domiciled in [an EU country] may, in another [EU country], be sued:

Article 5

TITLE II, SECTION 2

rules, some of which are set forth below:

addition, the Brussels convention includes a number of specific

domicile in Norway¹ to take up a new domicile in Italy when they have an accident in France. The equivalent of the world wide Volkswagen Co. is a distributor that serves auto retailers in Norway, Sweden and Finland. Would the result in World Wide Volkswagen be different under the Brussels convention? Why or why not?

Part B.

Consider Burnham (casebook p. 778). Imagine that Mr. Burnham, a domiciliary of Ireland, is visiting Portugal where he is served with process by his Portuguese-domiciliary ex-wife. Would the result in Burnham be different under the Brussels convention? Why or why not?

Part C.

Consider Gray (casebook p. 698). Imagine that Mrs. Gray is a resident of Spain, the American Radiator Co. has its principal place of business in Germany, and the Titan Valve Co. has its principal place of business in Belgium. Would the result in Gray be different under the Brussels convention? Why or why not?

¹ Norway, Italy, France, Ireland, Portugal, Spain, Germany and Belgium are all members of the EU.

There still is a French Foreign Legion. It still enlists only non-French citizens, and it still guards the identity of its legionnaires by enrolling them in the Legion under false names--noms du Legion. All this Minnie of Methuen found out, to her sorrow, when she divorced her no-good husband Minnie. When Minnie walked out on Minnie in 1996, he told her that he was going to join the French Foreign Legion. It was just about the only true statement he ever made to her. This was the last she saw or heard of him. In 1999 she filed for divorce, on the grounds of desertion, in the appropriate Massachusetts state court. Minnie's first problem was to serve the summons and complaint for divorce upon Minnie. She sought to make personal service in accordance with French law which, if effected, would have been valid service under Rule 4(f). The French process-server, however, could not locate anybody named Minnie in the Foreign Legion for the very good reason that nobody by that name was enrolled. Minnie then sent the summons and complaint by international certified mail to Minnie c/o the Foreign Legion at its headquarters in Corsica. Same result. Finally Minnie applied to the court for an order authorizing her to serve Minnie by publication. This was allowed. Notice of the pending divorce proceedings, addressed to Minnie, was published for three weeks in the Boston Herald and in the Paris edition of the English-language International Herald-Tribune. Minnie, however, was engaged in a tribal civil war in Mali, Africa,

Fighting with the rest of his Legion battalion, and he never saw the notice.

After Winnie failed to appear in the divorce proceedings, Winnie's divorce was granted by default. The judgment of divorce contained two provisions of consequence: (1) it recited that a child, Serena, had been born to the couple, and (2) it ordered Winnie to pay \$100 per week to Minnie for the support of the child retroactive to her date of birth, June 14, 1998.

Abandoned by her husband and caring for a two-year-old, Minnie applied for public assistance. As a condition of assistance she assigned to the Welfare Department her right to seek and collect child support from Winnie. No more than Minnie could the welfare Department find French Foreign Legionnaires under false names, so all that happened was that Winnie's unpaid child support was recorded on the Welfare Department's computer in ever-increasing amounts.

In September, 2001, Winnie's enlistment in the Foreign Legion ended. He returned to Massachusetts with \$10,000 in profits from various black-market transactions in Mali. With this money he opened a checking account at the Last National Bank under his real American name and social security number. He then made the serious mistake of writing a check on that bank account to renew his

2. Formally called, in Massachusetts, the Department of Transitional Assistance. The business of collecting delinquent child support is in the hands of another agency, the tax collector at the Department of Revenue. For simplicity, the combined functions of the Department of Transitional Assistance and the Department of Revenue are called the "Welfare Department" in this question.

Massachusetts or elsewhere, in order to answer this question. are not expected to know any domestic relations law, of [NOTE: This Question Three is not a Family Law question. You

insufficient. How should the judge decide the motion? Why? motion pursuant to Rule 12(f) to strike these defenses as Welfare Department's arguments of law, Winnie's lawyer made a judicata and collateral estoppel. For the purpose of testing the Welfare Department answered raising the affirmative defenses of res a declaratory judgment that he is not the father of Serena. The Department. Winnie seeks the return of his \$10,000. He also seeks Represented by legal services, Winnie sued the Welfare father. It's res judicata."

"Sorry, Mac," said the Welfare Department worker. "You're the continuously since 1996."

"But," said Winnie, "I've been out of the United States Welfare Department worker.

Winnie asked when Serena was born. "June 14, 1998," said the nothing about.

obliged for the next sixteen years to support a child he knew dad." Not only was he penniless but, also, he found that he was

he learned for the first time the meaning of the term "deadbeat explanation. The bank sent him to the Welfare Department. There

Winnie was ripped. First he went to the bank for an security number, levied on the account taking the entire \$10,000.

finding a bank account identified to Winnie by name and social Massachusetts driver's license. The Welfare Department's computer,

consider the divorce judgment to be no different from any other judgment for res judicata and collateral estoppel purposes].

QUESTION FOUR

The Computer Tutor is an encyclopedia on a CD-ROM. The CD is sold for \$129.99 by door-to-door salesmen to anxious parents who want to improve their children's school performance. Since the CD costs practically nothing to make, and since the encyclopedia copyright is already owned by the Computer Tutor Co., the sale is pure profit. Computer Tutor Co. is a Delaware corporation with a principal place of business in New York City.

Maxmillien Ripoff had the exclusive franchise to distribute the Computer Tutor in Maine. Ripoff's job, however, was not to sell the Computer Tutor but rather to recruit salesmen and saleswomen. To each salesperson Ripoff would assign an exclusive territory within Maine. Ripoff then received a commission on each sale made by the salesperson.

Ripoff's contract with Computer Tutor Co. included the following term:

Marketer [this means Ripoff] and Computer Tutor Co. agree that any state or federal court located in the Borough of Manhattan, New York City, New York, shall have exclusive jurisdiction over any case or controversy arising under or in connection with this Agreement, and shall be a proper forum in which to adjudicate such case or controversy.

This is an example of a "forum selection clause." There is not complete agreement in this country as to the validity of forum selection clauses. The modern trend is clearly to treat them as enforceable, and the United States Supreme Court has sustained a

protect franchisees).

evil against which the Franchisee's Day in Court law is supposed to was terminating his marketing agreement. (This of course is the without working for it when Computer Tutor Co. notified him that it Maine. He was just beginning to relax and enjoy making money sales force capable of reaching every remote village and farm in Ripoff had worked pretty hard for five years to develop a franchisee.

Computer Tutor Co. being the franchisor and Ripoff being the conforms to the Maine statute's definition of a "franchise," and Computer Tutor Co., known as a multi-level marketing agreement, Franchisor to show sufficient cause. The contract between Ripoff the franchisor except for cause, and the burden is on the which provides that a franchise agreement may not be terminated by Maine, however, has enacted a "Franchisee's Day in Court" law

This Agreement is terminable by either party upon ninety days' written notice. No cause for termination need be specified in such notice, nor shall absence of cause be a defense to termination.

The contract also contained the following term:

in a 1982 case. unenforceable. One of them is Maine, which reaffirmed its position American states still hold that forum selection clauses are otherwise competent to adjudicate a dispute between them. Some simply by making an agreement, to oust the jurisdiction of a court parties. The older view was that parties should not be able, of giving effect to the freely bargained expectations of the forum selection clause in an admiralty case citing the desirability

END OF EXAMINATION

Why?

How should the Maine federal court judge decide these motions?

Day in Court law.

New York has no statute comparable to the Maine Franchisee's

to 28 U.S.C. s. 1404(a).
 District of New York (which sits in Manhattan) pursuant
 case to the United States District Court for the Southern
 2. In the alternative, a motion to transfer the

1. A motion to dismiss for want of jurisdiction,
 citing the forum selection clause in the contract;

motions:

Ripoff brought suit in a state court in Maine seeking to
 enjoin Computer Tutor Co. from terminating the marketing agreement,
 or damages in the amount of \$500,000 if the injunction were
 refused. Appearing specially, Computer Tutor Co. removed the case
 to the United States District Court for the District of Maine on
 the basis of diversity of citizenship. In the federal court, still
 appearing specially, Computer Tutor Co. has filed the following