STETSON UNIVERSITY COLLEGE OF LAW
Gulfport, Florida

GENERAL INSTRUCTIONS

THE ATTENTION OF ALL STUDENTS IS CALLED TO THE FOLLOWING INSTRUCTIONS:

1. The answers and the pledge are to be identified by examination number only. DO NOT WRITE OR TYPE YOUR NAME ON ANY BLUEBOOKS, SCANTRON SHEETS, OR ANYWHERE ON THE EXAMINATION; USE YOUR EXAMINATION NUMBER INSTEAD.

2. During the course of the examination, ABSOLUTELY NO EXAMINATION MATERIALS MAY BE REMOVED FROM THE EXAM ROOM. This includes the exam, any Scantron sheets, bluebooks, or examination answers.

3. This examination ends at the expiration of the time indicated, or when the examination is turned in, whichever comes first.

4. The professor will be permitted to grade only answers that have been submitted during the examination, in the method indicated by the professor.

5. At the conclusion of the time prescribed for the examination, students are forbidden from communicating with the professor with reference to the final examination until the grades have been turned in to the Registrar's Office except that students may communicate with the professor at any time concerning matters related to the Code of Student Professionalism and Conduct or the Academic Honor Code.

TIME: Four Hours (4 Hours)
SPECIAL INSTRUCTIONS

1. This is a LIMITED OPEN BOOK examination. You have previously been advised as to which materials you may use during the examination. You may bring to the exam the required books for the course and any of the seven (7) required handouts that were previously identified as permissible for the exam. As previously explained in class, if you bring any of these 7 handouts with you, they should be printed in the same format (i.e. font size, spacing, margins, etc.) in which they were posted on the course’s TWEN site. You may consult the permitted materials, and any handwritten notations you may have made in or on them, during the exam. You may NOT, however, bring any other materials with you to the exam.

2. This examination consists of TEN (10) PAGES. You should check now to confirm that you have all the pages. You have FOUR (4) HOURS to complete the exam.

3. The point values and suggested times for answering each question are noted at the beginning of each question or group of questions. Although each question may take you more or less time than suggested to complete, you should be conscious of the overall time allotted for the exam (4 hours) and budget accordingly.

4. The examination is divided into TWO (2) PARTS:

   PART I consists of FOUR (4) questions, all of which have discreet subparts. You are expected to ANSWER ALL FOUR QUESTIONS in PART I. PART I is worth a total of 180 POINTS.

   PART II consists of FIVE MULTIPLE CHOICE QUESTIONS. Each question is worth FOUR (4) POINTS. You are expected to ANSWER ALL FIVE MULTIPLE CHOICE QUESTIONS in PART II. PART II is worth a total of 20 POINTS.

5. Please use a blue exam book or books or a computer to answer all of the questions in PART I. Make sure to write or type your exam number on your answer, including each blue exam book you use. You may use as many exam books or type as many pages as you would like. Scrap paper is also provided but will not be considered as part of your answer for grading purposes.

6. If you handwrite your answers in blue books, please write on every other line and only on the front of each page (i.e. do not write on the backs of pages). It is an honor code violation to remove any bluebooks, used or unused, from the exam room.

7. In forming your answers, you should not feel compelled to include case names or citations, but should make clear which doctrine, statutory provision, or rule and which of the given facts you are relying on to support your analysis. Your answers should be limited to the question(s) asked, and should be organized accordingly. Organization is an important factor in the quality of your answer, so take care in structuring your responses. I suggest outlining your answer (however briefly) before writing. This is not required, but it can be a useful tool in structuring your response.
8. Please use the ANSWER SHEET included as the LAST PAGE of this examination to answer all of the multiple choice questions in PART II. Make sure to write your examination number on the answer sheet. If you believe that any of the multiple choice questions are ambiguous or you perceive a mistake or flaw in the question, you should still answer the question. Then, explain concisely on the back of the answer sheet why you think the question is flawed. I would not suggest that you use this option often because it takes time away from the rest of the exam.

9. Each multiple choice question has five possible answers designated A through E. Make sure you consider all possible choices.

10. You should assume that every lawsuit referred to in the exam has been filed in a United States District Court (i.e., a federal court) unless otherwise noted. You should also assume that every reference to the “FRCP” is a reference to the Federal Rules of Civil Procedure.

END OF INSTRUCTIONS

GOOD LUCK AND HAVE A GREAT BREAK!
Pearly Baker’s Pizza Company (PB) is a profitable New England institution, providing delicious and creative pizza products to New Hampshire and Vermont residents for over 30 years. PB is a Vermont corporation with its primary production plant in Burlington, Vermont, and its corporate headquarters in Hanover, New Hampshire. After years of profitable sales in Vermont and New Hampshire, PB is ready to expand its product line in an attempt to ensure its future financial success. After months of painstaking research, PB’s pizza scientists developed the “Paco,” a culinary delight that consists of a taco wrapped in a pizza. In order to facilitate production of the Paco, PB contracted with a well-known taco company, Dupree’s Taco Shack (DTS), to provide the taco material (taco “substrate”) that will form the core of the Paco. DTS is a New Hampshire corporation with its principal place of business in Hanover, New Hampshire.

PB’s contract with DTS calls for an initial distribution of the Paco in the New England states—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut—and any other “geographically similar markets.” In order to get their initial distribution off the ground, PB and DTS sent discount shipments of the Paco to pizza parlors and taco stands in all six of the New England states explicitly mentioned in their contract. They also created print advertisements, circulated call-in order numbers, and created product booths for use in shopping mall concourses in the same six States.

Soon after their initial shipments of the Paco went out, PB received a call from a pizza parlor in New York City that had heard about the Paco and wanted to include it on its menu. In its excitement about the possibility of accessing the lucrative New York market, PB immediately sent a shipment of Pacos to the New York customer, but in its haste neglected to inform DTS that it was doing so. Two weeks after it began serving the Paco, Jack Straw, a Pennsylvania resident visiting New York City on vacation, became violently ill after eating a Paco from the New York pizza parlor. He was eventually treated in a Philadelphia, Pennsylvania hospital for food poisoning.

After being released from the Pennsylvania Hospital, Jack filed suit against PB and DTS in federal court in Pennsylvania, claiming that PB and DTS were jointly and severally liable for negligently producing the Paco in a way that made it unsafe for human consumption. Jack claimed $250,000 each in damages against PB and DTS for medical bills and lost wages due to his alleged Paco-related illness.

Jack timely served process on both PB and DTS by certified mail to their principal places of business, and both parties signed for the documents, indicating receipt.
PB and DTS responded to Jack Straw’s complaint with a number of motions under FRCP 12(b). You are a law clerk for the district court judge in Pennsylvania who is responsible for the case. The judge asks you for a memorandum analyzing and suggesting a ruling for the following motions by PB. Both of the motions listed below were filed simultaneously.

A. PB and DTS filed a joint motion under FRCP 12(b)(5) claiming that Jack Straw’s service of process on PB and DTS was inadequate under the Federal Rules of Civil Procedure. Your preliminary research revealed the following:

- New Hampshire’s service of process statute reads, in pertinent part: “service on a corporation is considered valid if it is performed by any method whereby receipt by the defendant is verifiable by defendant’s written affirmation thereof.”
- New York’s service of process statute reads, in pertinent part: “service on a corporation is considered valid if it is performed by hand delivery of a copy of the summons and complaint to any agent of the corporation deemed to be of suitable age and discretion.”
- Pennsylvania’s service of process statute reads, in pertinent part: “service on a corporation is considered valid if it is performed by delivering a copy of the summons and complaint in person to a managing agent of the corporation.”
- Vermont’s service of process statute reads, in pertinent part: “service on a corporation is considered valid if it is performed by delivering a copy of the summons and complaint in person to a managing agent of the corporation.”

Draft a memo analyzing PB and DTS’ 12(b)(5) motion. Explain your answer fully.

B. PB and DTS filed a joint motion to dismiss Jack Straw’s Complaint under FRCP 12(b)(6). The Complaint reads, in pertinent part, as follows:

¶ 14. Plaintiff alleges that the Defendants’ conduct caused his injuries and damages, which included significant medical bills and other damages.

¶ 15. Plaintiff alleges that he consumed a Paco made by Defendants PB and DTS. On that same night, he consumed nothing further except for one chili-cheese hot dog, two chicken chimichangas, 7 raw oysters, and four butter-crème-filled donuts.

¶ 16. Plaintiff alleges that his illness occurred hours after he consumed the food described herein in ¶ 15, and was diagnosed as being “consistent with food poisoning that typically results from spoiled meat, seafood, or dairy products.”

¶ 17. Plaintiff alleges that the Defendants’ Paco caused his illness and the damages that are the subject of this action.

The judge asks whether you think the above language from Jack Straw’s Complaint is adequate to satisfy Fed. R. Civ. Proc. 8(a)(2) in light of recent Supreme Court precedent interpreting that rule. Please explain your answer fully.
QUESTION 2
Possible Points: 50 points
Suggested Time: 60 Minutes

Assume for purposes of this question only that PB’s 12(b)(5) and 12(b)(6) motions were denied. PB then filed an Answer in which it asserted defenses against Jack Straw’s allegations, including the defense that “PB is not subject to personal jurisdiction in Pennsylvania.” PB’s Answer also asserted a claim against DTS for breach of contract, claiming that DTS failed to produce taco substrates for the Paco that were safe for human consumption. After receiving PB’s Answer, DTS amended its original Answer in response to Jack’s claims against DTS to also include its own breach of contract claim against PB. DTS’ claim against PB sought to recover the costs of environmental cleanup at DTS’ production facilities resulting from modifications DTS was forced to make to its normal taco manufacturing process in order to produce substrates for the Paco.

A. Is there any procedural reason why PB’s personal jurisdiction defense would not be permitted? Explain your answer in detail.

B. Is the suit as described permissible under the rules of joinder? Please explain your answer in detail as to EVERY CLAIM mentioned in Question 2.

C. Does the suit as described satisfy the requirements of subject matter jurisdiction in federal court? Please explain your answer in detail as to EVERY CLAIM mentioned in Question 2.

QUESTION 3
Possible Points: 60 points
Suggested Time: 75 Minutes

Assume for purposes of this question there is no personal jurisdiction over PB or DTS in Pennsylvania. Jack Straw moves to transfer his case from the Eastern District of Pennsylvania in Philadelphia to the Southern District of New York in New York City. Plaintiffs are permitted to move to transfer cases by the FRCP under exactly the same terms as defendants. For purposes of this exam, you should assume that the long arm statute of the state of New York provides that the courts of that state will exercise jurisdiction over cases to the full extent permitted by the Due Process Clause of the Constitution.

A. Under which statutory provision(s), if any, may Plaintiff’s claims against PB and DTS be eligible for transfer?

B. Is transfer permissible in this case as to one or both of the Defendants?

C. Assuming that transfer is permitted, which State’s choice of law provision will govern the case against each Defendant upon its transfer to the Southern District of New York?
Assume for purposes of this question only that Jack Straw’s request to transfer the case to the Southern District of New York was granted. Upon arrival in New York, PB amended its Answer to include an indemnity claim against its insurance company, Terrapin Insurance. Terrapin is a New York Corporation with its principal place of business in Burlington, Vermont. In addition to PB’s claim against Terrapin, a new party sought to become involved in the suit. Larry’s Louisiana Lounge (LLL) is a Louisiana Corporation with its principal place of business in New Orleans, Louisiana. LLL’s signature menu item is the “Bayou Paco,” a beef taco wrapped in an oyster “po’ boy” sandwich. LLL filed a motion for intervention under FRCP 24, seeking to intervene and bring a claim for $75,000 against PB for a violation of the Lanham Act, 15 U.S.C. § 1051 et seq., the federal trademark statute. LLL claims that it made the name “Paco” famous, and as such has a right to preclude others from using that name under the Lanham Act.

Before any additional motions can be filed, the judge asks you, his law clerk, to analyze the following questions pertaining to Terrapin and LLL’s involvement in the suit:

A. What technical, procedural steps must Terrapin go through before it may participate in the case as an intervenor? Please explain your answer fully.

B. Are the claims involving Terrapin and LLL permissible under the rules of joinder? Please explain your answer fully.

C. Do the claims involving Terrapin and LLL satisfy the requirements of subject matter jurisdiction in federal court? Please explain your answer fully.
In the discovery phase of the litigation, PB sought to acquire the sworn testimony of customers that had purchased the Paco during the same time frame as Jack and from the same establishment to demonstrate that no other illnesses occurred from the product.

1. Which of the following BEST describes the discovery device(s) that are best suited to gather that information?

   A. FRCP 33 Interrogatories and FRCP 30 Oral Depositions are both viable options because the answers must be under oath.
   B. FRCP 34 Document requests because the people from whom the information is being gathered are not parties to the suit.
   C. FRCP 33 Interrogatories because the answers must be under oath and are most likely going to come from other parties.
   D. FRCP 30 Oral Depositions because the people of interest are not parties to the suit and the answers must be under oath.
   E. FRCP 30 Oral Depositions and FRCP 34 Document Requests because it is important to have documentary evidence before questioning a witness under oath.

PB decides that it would like to move for partial summary judgment against Jack Straw on the grounds that Jack cannot establish the causation element of his claim, i.e. that Jack cannot establish at trial that PB’s Paco is what caused his illness, regardless of whether the other elements of Jack’s tort claim are met.

2. Which of the following BEST describes what PB must accomplish under FRCP 56 to win its motion for partial summary judgment?

   A. PB must establish facts that disprove all of the elements of Jack’s case, including causation.
   B. PB must establish that there is no genuine issue of material fact as to the causation element of Jack’s tort claim and that PB is entitled to judgment as a matter of law on that element.
   C. PB must establish that there is no genuine issue of material fact as to any of the elements of Jack’s claim, and that PB is entitled to judgment as a matter of law on all of those elements.
   D. PB must establish that there is a genuine issue of material fact as to the causation element and that PB is thus entitled to judgment as a matter of law on that element.
   E. PB must establish that there is an issue of material fact as to all of the elements of Jack’s tort claim against PB and that PB is thus entitled to judgment as a matter of law on all of those elements.
3. During its summary judgment argument, PB makes the assertion that Jack cannot prove causation at trial because there is no evidence in the record to suggest that the Paco Jack ate was made by PB. What is the BEST argument Jack can make in response?

A. Jack should argue that his inability to provide evidence about who manufactured the Paco is precisely the sort of issue of material fact that makes summary judgment inappropriate.
B. Jack should rely on the argument that his bare assertion that the Paco he ate came from PB should be enough to defeat summary judgment.
C. Jack should be permitted additional opportunity for discovery to acquire evidence from the New York pizza parlor about where the Paco they sold Jack came from.
D. Jack should contend that he should win on PB’s summary judgment motion because the lack of evidence means there is no issue of material fact, and that is what FRCP 56 requires for an award of summary judgment.
E. Jack should argue that even though he cannot point to evidence that the Paco was manufactured by PB, he is still entitled to judgment as a matter of law because someone has to pay for his sickness, and it shouldn’t be him.

4. Two weeks after the parties’ FRCP 26(f) conference, Jack’s lawyer called counsel for PB and demanded a list of all witnesses that may have some information about the case. Which of the following is the best response PB’s lawyer could have provided?

A. FRCP 26(a) does not require that I provide a list of witnesses, just a description of the type of witnesses I plan to call.
B. Discovery has not yet begun.
C. I cannot provide you with a list of witnesses under FRCP 34 because such a list does not already exist.
D. FRCP 26(a) provides 21 days from the FRCP 26(f) conference to exchange information, and that time period has not yet expired.
E. FRCP 26(a) only requires that I provide a list of witnesses that support my client’s claims and defenses; your request is too broad.

5. Jack’s suit against PB is in federal court. Which of the following BEST describes the law that will govern his case?

A. State law will govern all aspects of the case because he is alleging a violation of state tort law against PB.
B. Federal law governs all aspects of the case because the case is in federal court.
C. The federal court will apply federal procedural law and New Hampshire’s choice of law doctrine because New Hampshire is the defendant’s home state.
D. The federal court will apply federal procedural law and New York’s choice of law doctrine because the court is located in New York.
E. The court will apply federal procedural law and then will have a choice between applying New York tort law or making its own decision as to the best resolution of the case based on general principles of tort law.
PART II - MULTIPLE CHOICE ANSWER SHEET

Please Circle Your Answer for Each Question

Question #1
A  B  C  D  E

Question #2
A  B  C  D  E

Question #3
A  B  C  D  E

Question #4
A  B  C  D  E

Question #5
A  B  C  D  E

ON MY HONOR, I HAVE NEITHER GIVEN NOR RECEIVED AID ON THIS EXAMINATION.