
FINAL EXAMINATION – ESSAY

Closed-book. Two hours.

Write your exam number here: _____

All exam materials (including this booklet and the answer sheet) must be turned in at the end of the period. You will not receive credit unless you return this booklet with your exam number written above.

Do not turn the page until instructed to begin.

General Notes and Instructions

1. You may write anywhere on the examination materials — e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
2. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
 - a. During the exam: You may not consult with anyone – necessary communications with the proctors being the exception. You may not view, attempt to view, or use information obtained from viewing other students' answers and materials. This examination is "closed book" – you may not use any materials other than those provided to you by the proctors.
 3. After the exam: You may discuss the exam with anyone, except that you may not communicate regarding the exam with any enrolled member of the class who has not yet taken the exam, and you must take reasonable precautions to prevent disclosure of exam information to the same.
- c. Be complete, but avoid redundancy. Specifically, do not repeat the exact same analysis with substituted parties. For instance, computer users should probably not use the cut-and-paste function. Instead, to the extent called for, you may incorporate analysis by reference to another portion of your answer.
- d. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
- e. Feel free to use reasonable abbreviations.
- f. **Bluebooks:** Make sure your handwriting is legible. I cannot grade what I cannot read. Skip lines and write on only on one side of the page. Start a new page for each section and subpart of your answer. Label your bluebooks sequentially.
- g. **Computers:** Please clearly label your answers to each section and subpart.
- h. Do not write your name on any part of the exam response or identify yourself in any way, other than to use your examination I.D. number appropriately. Self-identification on the exam will, at a minimum, result in a lower grade, and may result in disciplinary action.

Specific Notes and Instructions for PART II:

- a. Read all exam questions before answering any of them – that way you can be sure to put all of your material in the right place.
- b. Organization counts.
- i. This Part II is worth approximately 2/3 of your exam grade.
- j. Good luck.

Section 1

1 HOUR, 42 MINUTES

Ranjana Rashagan is a third-generation baker born and raised in Cleveland, Ohio. A few years ago, Rashagan decided to open a confectionery specializing in exotic cupcakes and other sugary treats. After an exhaustive search of underserved markets for high-end bakery items, she opened Petit Pâtisserie in Sayre, Oklahoma, near the western border of the state.

The signature of Rashagan's confectionary work is her icing, based on a secret recipe she developed. On the strength of her amazing recipe, Rashagan's store became a runaway success.

Once she had enough money to hire some help, Rashagan hired her friend and distant cousin Charlie Clavell to run the kitchen of Petit Pâtisserie. Prior to letting Clavell see her secret recipe, Rashagan had Clavell sign a confidentiality agreement, which also contained a non-compete provision.

Initially Clavell was beside himself with gratitude to Rashagan for giving him a job. But after some time, Clavell's attitude gradually changed.

Instead of feeling lucky to be there, Clavell began to feel like Rashagan was lucky to have him on board. One night after closing out a particularly busy day, Clavell told Rashagan that he felt that much of the store's success was due to his talents, and based on this, he asked for a doubling of his salary and a large equity stake in the business. Rashagan told him that she valued him greatly as employee, and even more as a friend, but she felt the success had more to do with her recipe than anything else. And, at any rate, she said she could not afford to pay him more or give away part ownership. Clavell said he was deeply hurt, and that he felt he could no longer work there. He hung up his apron, handed over his keys, and quit.

About nine months later, Rashagan learned that Clavell was working for a competitor, Dulcinea Desserts in Shamrock, Texas, just 38 miles away from her store. Rashagan drove by Dulcinea Desserts and saw a line of patrons winding out the door and down the block. Asking around at the local café, Rashagan found out that Clavell started working at Dulcinea Desserts seven months back, and once he showed up, their decadent iced galletas and bizcochos became the talk of the town. Back in her office at Petit Pâtisserie, Rashagan put together a spreadsheet that looked at sales over time and incorporated customer geographical data from credit card transactions. The conclusion was clear: She had lost substantial business to Dulcinea Desserts since Clavell joined them.



Fig. 1: Some of Rashagan's sugary confections.

Photo: Erica, [Colourful Easter petits fours.jpg](#), [CC BY-SA 2.0](#), via Wikimedia Commons

Rashagan sent one of her employees, Brandon Brindell, to purchase a few treats from Dulcinea Desserts. Upon tasting the first bite of Dulcinea's iced churro, Rashagan knew immediately that Clavell was using her secret recipe.

Rashagan filed suit against Clavell and Dulcinea Desserts in the U.S. District Court for the Western District of Oklahoma. Her complaint detailed the facts as she understood them and included a copy of the confidentiality/non-compete agreement as Exhibit A. The cause of action brought against Clavell was breach of contract, which was based on both the confidentiality clause and the non-compete clause of the agreement. Her claim against Dulcinea Desserts was the tort of intentional interference with contractual relations, which was based on the allegation that Dulcinea Desserts interfered with the contract between Rashagan and Clavell.

Clavell and Dulcinea Desserts filed answers to the complaint and both sides commenced discovery. One month before the close of discovery, Rashagan obtained Clavell's cell phone records. Review of these records showed that Clavell had a number of calls with the owner of Dulcinea Desserts before and after he quit his job at Petit Pâtisserie. Rashagan moved to amend her complaint in order to assert a claim against Clavell and Dulcinea Desserts for civil conspiracy to commit theft of trade secrets. Under state law, the statute of limitations for this civil conspiracy claim ran out during the course of discovery. The court denied Rashagan's motion.

Clavell and Dulcinea Desserts jointly moved for summary judgment. In support of their motion, the co-defendants submitted an affidavit from Clavell. Attached to Clavell's affidavit as Exhibit A was a screen shot of a text message from Rashagan to Clavell dated the day Clavell left Rashagan's employ. It reads:

Hey, we r all good. Don't worry bout the contract, k? We r friends 4-ever.

Clavell and Dulcinea Desserts argued that Rashagan's text message had the legal effect of waiving any contractual rights Rashagan might have had vis-à-vis Clavell, thereby vitiating all claims against them. Rashagan responded to the motion with her own affidavit, in which she stated the text message was not intended to nor could reasonably be read to have legal effect, but instead was a social message of reassurance. The court denied the defendants' motion.

The case went to trial. After opening statements, Rashagan's attorneys put on several witnesses, laying out their case. Defense attorneys introduced the text message from Rashagan to Clavell in cross-examination. Rashagan repeated her statements made in response to the motion for summary judgment about the meaning of the message. After the close of the plaintiff's case, Clavell and Dulcinea Desserts moved for judgment as a matter of law, again relying on the text message as they had done in their motion for summary judgment. The court denied the motion.

The case was submitted to the jury. During their eight hours of deliberations, the jury never asked for any clarification of their instructions or any further look at the evidence, but they did make repeated requests for the judge to please send back cupcakes, cookies, donuts, or anything sweet. After finally filing back into courtroom, the jury

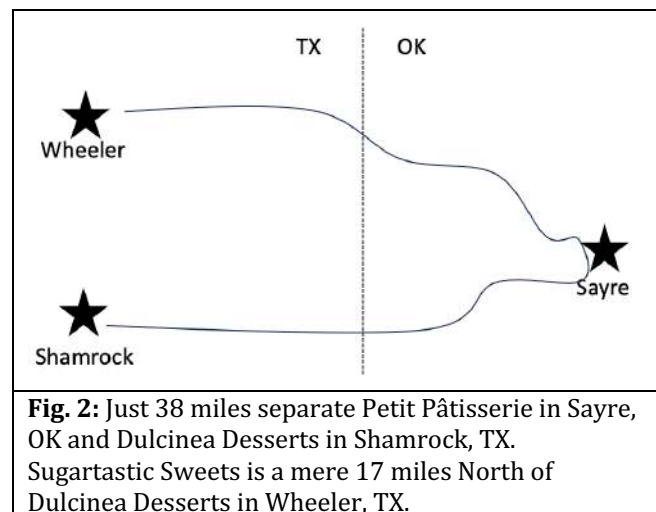
returned a verdict for both defendants on all claims. The court entered judgment on the verdict.

Rashagan moved for a new trial. Rashagan pointed to her testimony documenting the hiring of Clavell, the contract Clavell signed, and the trial testimony of her employee Brindell. The court denied the motion.

Clavell and Dulcinea Desserts then appealed the denial of their motions for summary judgment and judgment as a matter of law to the United States Circuit Court of Appeals for the Tenth Circuit.

Eight months after the entry of judgment in *Rashagan v. Dulcinea Desserts*, Rashagan became aware of a new bakery that was causing a sensation because of its beautifully iced cupcakes: Sugartastic Sweets in Wheeler, Texas. With the help of a friend who went to check it out, Rashagan discovered that Clavell was working at Sugartastic Sweets, and upon tasting one of the establishment's cupcakes, Rashagan was convinced Sugartastic Sweets was using her secret icing recipe. Rashagan immediately filed a complaint against Clavell and Sugartastic Sweets in the U.S. District Court for the Northern District of Texas, alleging that Clavell was barred from working at Sugartastic Sweets by his non-compete contract and that Clavell violated the confidentiality agreement with Rashagan by using her secret icing formula.

Rashagan, hotly angry at Clavell, sent Clavell a sharply worded e-mail to which she attached the summons and a copy of the complaint. She also sent one of her employees, Gabi Germano, to Clavell's house with a copy of the summons and complaint. Clavell wasn't home, so Germano left the documents with Clavell's 13-year-old daughter, Willow Wazir. For service on Sugartastic Sweets, a corporation, Clavell had a United States deputy marshal serve the chief executive officer by hand at the Sugartastic Sweets office, which is located behind its retail bakery.



Both Sugartastic Sweets and Clavell plan to contest service of process. If that effort fails, both Sugartastic Sweets and Clavell plan to move to dismiss Rashagan's suit on the basis of *res judicata*.

Question

In assessing the legal issues that arise from the above facts, organize your response as follows, clearly labeling the subparts:

REGARDING RANJANA RASHAGAN V. DULCINEA DESSERTS AND CHARLIE CLAVELL:

Subpart A: Discuss any issues concerning Rashagan's motion to amend.

Subpart B: Discuss any issues concerning Clavell and Dulcinea Desserts' motion for summary judgment.

Subpart C: Discuss any issues concerning Clavell and Dulcinea Desserts' motion for judgment as a matter of law.

Subpart D: Discuss any issues concerning Rashagan's motion for a new trial.

Subpart E: Discuss any issues concerning Clavell and Dulcinea Desserts' appeal.

REGARDING RANJANA RASHAGAN V. SUGARTASTIC SWEETS AND CHARLIE CLAVELL:

Subpart F: Discuss any issues concerning service of process on Clavell and Sugartastic Sweets.

Subpart G: Discuss any issues concerning Clavell and Sugartastic Sweets' planned motion to dismiss.

CATCHALL:

Subpart H: If there is anything else you wish to discuss, which does not belong in any of subparts A through G, please put it under this Subpart H.

A few things to keep in mind: The subparts will not all be given equal weight. The subpart structure is provided for organizational purposes only. Thus, it may be entirely appropriate for one subpart to be answered with considerable brevity, while other subparts might require very detailed analysis. Pace yourself appropriately, and plan ahead to put information where it belongs.

Some suggested abbreviations for your answer:

BB:	Brandon Brindell	PP:	Petit Pâtisserie
CC:	Charlie Clavell	RR:	Ranjana Rashagan
DD:	Dulcinea Desserts	SS:	Sugartastic Sweets
GG:	Gabi Germano	WW:	Willow Wazir

Section 2 18 MINUTES

You are a clerk for the Honorable Jeffrey S. Sutton of the U.S. Court of Appeals for the Sixth Circuit, who is the Chair of the Standing Committee on Rules of Practice and Procedure. The Advisory Committee on Civil Rules has proposed changing the language of Federal Rule of Civil Procedure 26(b)(1) as follows:

Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case considering the amount in controversy, the importance of the issues at stake in the action, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. —~~including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter.~~ ~~For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action.~~ Relevant information ~~need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.~~

Underlined text is language that is proposed to be added. Strikethrough text is language that is proposed to be removed. Other text would be unchanged from the current version.

Is this rule change a good or bad idea? Back up your view with a policy discussion that pays heed to the aims of and values implicit in the Federal Rules of Civil Procedure as a whole. Feel free to make reference by analogy, to the extent you think appropriate, to other rules and the policies reflected in those rules.