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Civil Procedure II

The University of Oklahoma College of Law
Course 5203-603
Spring 2014
Professor Kit Johnson

FINAL EXAMINATION: PART TWO

Notes and Instructions

1. The duration of Part Two of this exam is two and one-half hours.
2. The first half-hour of the exam period is a reading period only. This is your time to carefully read the question(s) and organize your thoughts about how to respond. **You may not begin typing or entering into bluebooks any response during these first 30 minutes.**
3. This is an open-book exam. You may use any printed material including, but not limited to, books, commercial outlines, group outlines, and your own notes. You cannot use electronic or interactive resources including, but not limited to, the internet and your cell phone.
4. There is no word, page, or line limit on responses.
5. Do not turn the page until instructed to begin.
6. You will not receive credit unless you return this booklet at the end of the period with your exam number written above.
7. 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.
8. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems within the scope of the course's subject matter. It is upon these bases that you will be graded.
9. During the exam: You may not consult with anyone – necessary communications with the College of Law staff being the exception. You may not view, attempt to view, or use information obtained from viewing other student examinations or from viewing materials other than your own.
10. After the exam: 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.
11. Base your exam answer on the general state of U.S. law, including all rules, procedures, and cases discussed in class.
12. Organization counts.
13. Keep in mind: The weight given to each part is specified, but not all issues within each part will be given equal weight. Thus, it may be entirely appropriate for one issue to be dispensed with considerable brevity, while another might require very detailed analysis. You should divide your time according to which issues require the most discussion and analysis.
14. **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. Please put answers to each section in a separate blue book and label the blue books accordingly. Please write in pen using blue or black ink.
15. **Computers:** Please clearly label your answers to each section.
16. 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.
17. Good luck.

In 2010, Astrid Arbuckle moved from Hazen, North Dakota (pop. 2,411) to Los Angeles, California with a dollar, a dream, and her cat Sparkles. She packed everything she owned into her serviceable 1995 Toyota Tercel and headed for the City of Angels to become ... an actress!

Life in Los Angeles was tough. Astrid did not have much luck in the acting department, though she auditioned regularly for television, film, commercials – you name it. And then she got her big break. In December 2012, producers at Universal Cable Productions cast Astrid as tough-as-nails-with-a-heart-of-gold Marshall Mary Mathers on the new (and sure to be hit) series *Witness Protection*. The series was to follow the lives of U.S. Marshalls and the witnesses they're sworn to protect. The only hitch was that the series was going to be shot in Albuquerque, New Mexico.

In January of 2013, Astrid went to New Mexico for eight days to shoot the pilot. The show was picked up immediately, so, in February 2013, Astrid vacated her L.A. apartment, popped all her belongings into that trusty Tercel, and set up camp in Albuquerque's Extended Stay America hotel.

The seven-day-a-week shooting schedule kept Astrid in Albuquerque straight through July. When filming ended, Astrid packed up her Tercel and headed back to California to see if she could land a role in an off-season indie film, now that she had *Witness Protection* on her resume.

Astrid drove with her friend and co-worker Kate Klinton. Kate was a late-season addition to *Witness Protection*. Kate had been in New Mexico on vacation when the casting director spotted her eating lunch at the Duran Central Pharmacy. He convinced Kate to extend her vacation by an additional week so that she could appear in one episode as the sassy (but deadly) Krystal Kanter, ex-wife of a Kansas City mob boss with her own angle. The producers like Kate's performance so much they talked about including her as a regular in season 2. While the details hadn't been worked out, Kate had negotiated an extended leave of absence from her job as a NICU nurse in St. George, Utah. She was driving with Astrid to L.A. to do rounds of meetings with network executives, producers, and a talent agent. Assuming things went well, California would be the next chapter in her life.

Unfortunately for Astrid and Kate, while on their trip to California, on August 2, just two days after shooting wrapped, the girls were involved in a serious car accident just outside of Flagstaff, Arizona.

Danny Druthers, a long-haul trucker, fell asleep at the wheel and swerved into Astrid's lane. Danny had been 13 hours into a 14-hour shift, which was the workday mandated by his union, the Highway Laborers of America Local 853 (HLA 853), representing long-haul truckers nationwide. His truck nicked the rear passenger side of Astrid's car, sending it spinning off the highway and into an exit sign.

Danny lives in Provo, Utah and works for Harry's Haulers, Inc., a Maryland corporation. Harry's Haulers has offices in nearly every state, including Los Angeles and Utah. But Harry's CEO and HR department are based in Santa Fe, New Mexico.

The accident was made much worse because the fuel tank on Astrid's Tercel exploded on impact with the exit sign due to a manufacturing defect in the fuel tank. Ferrity

Fuels manufactured the fuel tank at its plant in Charlotte, North Carolina. Ferrity sells its fuel tanks to just one company: Toyota. Ferrity ships the tanks to Toyota's manufacturing plant in Tupelo, Mississippi, where Tercels are assembled. The Toyota plant is owned by Toyota Motor Engineering & Manufacturing North America, Inc. (TEMA), a Delaware corporation with its principle place of business in Kentucky. TEMA is owned by Toyota Motor Corporation (TMC), a Japanese company based in Toyota City, Japan.

Astrid's femur shattered when the car slammed into the exit sign. But Astrid, Kate, and Sparkles survived the accident and made it out of the car before it became engulfed in flames. Kate had not a scratch on her, though she lost her one suitcase of luggage. Astrid, however, lost virtually all of her possessions.

Astrid underwent emergency surgery at Flagstaff General Hospital which, luckily for her, is regarded as having the best orthopedics department in the southwest. The doctors did what they could, but Astrid's injuries left her with a permanent and pronounced limp.

The producers at Universal Cable Productions were as patient as they could be with Astrid's recovery. But as soon as it became apparent that Astrid's limp was not going away, they re-wrote season 2 of *Witness Protection* to kill off the beloved Marshall Mathers and replace her with young-and-perky-with-something-to-prove Laura Linard. Universal Cable Productions is an arm of NBCUniversal Cable Entertainment Group, which is a division of NBCUniversal, Inc. ("NBCU"), a Delaware corporation that is headquartered in the Rockefeller plaza in Midtown Manhattan, New York City.

Astrid filed suit in Coconino County Superior Court of Flagstaff, Arizona, against Harry's Haulers, Toyota, TEMA, and Ferrity for negligence and products liability. She claimed damages of five million dollars for her pain and suffering, lost car and belongings, and lost earnings on *Witness Protection* – which looked like it might last several seasons.

Toyota petitioned to remove Astrid's case to the U.S. District Court for the District of Arizona. Judge Jimmy Jagerson granted the petition.

Astrid amended her now-federal complaint to: (1) join Kate as a plaintiff and (2) add an additional claim against NBCU. Like Astrid, Kate had claims against Harry's Haulers, Toyota, TEMA, and Ferrity for negligence and products liability. Kate sought \$40,000 in damages – mostly emotional damages related to the fear she experienced that she might die in the Flagstaff accident. Astrid's claim against NBCU was for employment discrimination under the Americans with Disabilities Act as codified in 42 U.S.C. § 12112.

Harry Haulers sought to add Danny to the litigation, arguing that Danny was individually responsible for the accident. Judge Jagerson granted that request.

Danny, on becoming a party to the suit, sought to add HLA 853 to the litigation, arguing that since the union's 14-hour workday mandate far exceeded industry norms and was reached as a result of improper collusion with Harry's Haulers, the union was, in fact, liable for the accident. Judge Jagerson granted the request to add the union.

NBCU and Ferrity separately moved to dismiss for lack of personal jurisdiction. Judge Jagerson denied both motions.

One bright spot for Astrid and Kate was that Arizona has a special law concerning highway accidents: Cost-effective Recovery for Accidents on State Highways (CRASH), 14 Ariz. Rev. Stat. § 21-501 et seq. CRASH requires trial judges to prioritize lawsuits arising out of highway accidents, expedite discovery in such cases, and conduct jury trials within six months of the date of filing any CRASH claims. Astrid and Kate argued that they were entitled to expedited discovery and trial under CRASH. Defendants countered that CRASH did not apply in federal court and that the court should follow Fed. R. Civ. P. 26(b)(1)¹ and Fed. R. Civ. P. 40.² Judge Jagerson declined to follow CRASH.

QUESTION

Did Judge Jagerson make the right calls?

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

Subpart A: Discuss any issues concerning Toyota's removal petition.

Subpart B: Discuss any issues concerning Astrid's joinder of Kate.

Subpart C: Discuss any issues concerning Astrid's joinder of NBCU.

Subpart D: Discuss any issues concerning the joinder of Danny.

Subpart E: Discuss any issues concerning the joinder of the Highway Laborers of America Local 853.

Subpart F: Discuss any issues concerning NBCU's motion to dismiss.

Subpart G: Discuss any issues concerning Ferrity's motion to dismiss.

Subpart H: Discuss any issues concerning CRASH.

Keep in mind the subparts will not be given equal weight. The subpart structure is provided for organizational purposes only. It may be entirely appropriate for one subpart

¹ Fed. R. Civ. P. 26(b)(1) reads, in relevant part: "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 – 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."

² Fed. R. Civ. P. 40 reads: "Each court must provide by rule for scheduling trials. The court must give priority to actions entitled to priority by a federal statute."

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.

Finally, avoid needless repetition. Do not repeat the exact same analysis with substituted parties. You may incorporate analysis by reference to another portion of your exam answer to the extent appropriate.

Some suggested abbreviations for your answer:

AA:	Astrid Arbunkle	JJ:	Judge Jimmy Jagerson
CRASH:	Cost-effective Recovery for Accidents on State Highways	KK:	Kate Klinton/Krystal Kanter
DD:	Danny Druthers	LL:	Laura Linard
FF:	Ferrity Fuels	MM:	Marshall Mary Mathers
HH:	Harry's Haulers	NBCU:	NBCUniversal, Inc.
HLA 853:	Highway Laborers of America Local 853	TEMA:	Toyota Motor En'g & Mnf'g N.A.
		TMC:	Toyota Motor Corporation
		WP:	<i>Witness Protection</i>

END OF EXAMINATION