

MID-TERM EXAMINATION

CIVIL PROCEDURE I -- LAW 6212

Section 1C – Siegel

Fall 2020

INSTRUCTIONS

1. This is an open book examination. You may consult written materials during the exam. "Written" materials include materials that are handwritten, typewritten, printed, published, and the electronic equivalents thereof, including materials posted on the Internet. The materials may be written by you or by anyone else. They may include commercial materials. The materials must have been written before the exam began.
2. It is forbidden to consult any other person about the exam, directly or indirectly, during the exam. It is forbidden during the exam to discuss the exam with any other person, even in a general way, regardless of whether or not the other person is a student in the class, regardless of whether or not you and/or the other person have downloaded the exam, and regardless of whether or not you and/or the other person have already submitted answers. For purposes of this paragraph, the phrase “during the exam” means starting at the earliest time when any student is permitted to download the exam and ending at the time when all students are required to have submitted their answers, i.e., from 2 pm Eastern time on October 13, 2020 to 2 pm Eastern time on October 14, 2020.
3. You have ONE HOUR to complete the exam. You may start the hour at any time from 2 pm Eastern time October 13, 2020 to 1 pm Eastern time October 14, 2020. The hour starts when you click “start exam.” After that time, you have one hour to complete your answer and upload it to the Records Office using MyLaw. For further details, consult the instructions you received from the Dean’s Office.
4. The exam consists of two pages of instructions and two pages of questions.
5. There are TWO QUESTIONS. All students must answer both questions.
6. Do not put your name anywhere on your answers.
7. If you are writing your answers by hand, remember to *write legibly*.

8. If, with regard to any question, you think additional facts are needed to answer the question, state clearly what facts you think are missing. Then make a reasonable assumption about the missing facts and answer the question based on your assumption. Do not change the given facts.
9. Using good judgment, address all the issues presented and assigned by the question, even if your answers to some issues would, in real life, eliminate the need to address other issues.
10. Unless otherwise specified, answer all questions on the basis of current law.
11. Good luck.

QUESTION ONE

Premium Dairies, Inc. (“Premium”) is a corporation incorporated in and having its principal place of business in Missouri. Premium supplies dairy products to large-scale buyers. Premium produces dairy products at many places across the United States.

Duncan’s, Inc. (“Duncan’s”), a corporation incorporated in and having its principal place of business in Oregon, operates a chain of restaurants on the west coast of the United States. Duncan’s has locations in California, Oregon, and the state of Washington. Duncan’s buys dairy products from Premium six to eight times a year. Duncan’s and Premium have no long-term agreement. Each purchase is negotiated separately. The two have never had a long, written contract with legalistic terms. Their experience is simply that Duncan’s places occasional orders, Premium fulfills the orders, and Duncan’s pays within 30 days after each delivery by sending a check to the Premium sales representative from which Duncan’s made the purchase.

On March 1, 2020, Fernando, a buyer for Duncan’s, calls Georgina, a Premium sales representative, at Georgina’s office in Arizona. Fernando and Georgina each have authority to make contracts on behalf of their companies. Fernando asks Georgina for a price on 200,000 gallons of milk, to be delivered to Duncan’s in Portland, Oregon. Georgina tells Fernando that Premium has that much milk available in Idaho that can be shipped the next day for \$250,000. Fernando offers to buy the milk at that price. Georgina accepts the offer. Georgina informs Premium’s headquarters of the sale. Later that day, Harry, a clerk at Premium’s headquarters in Missouri, emails Fernando, “Please confirm your purchase of 200,000 gallons of milk, to be delivered from Idaho to Portland tomorrow, for \$250,000.” Fernando emails back, “Purchase confirmed.” The next day, the Premium milk is shipped from Idaho to Duncan’s in Portland as agreed.

Subsequently, however, the COVID-19 pandemic crisis causes great disruption to Duncan’s restaurant business, and Duncan’s does not pay for the milk. Premium brings suit against Duncan’s in a state court of general jurisdiction in Missouri for \$250,000. Premium’s complaint alleges the above facts. Premium has process served on Duncan’s president personally in Oregon.

Missouri has adopted state court rules that are identical to the Federal Rules of Civil Procedure. Duncan’s moves to dismiss Premium’s suit against it for lack of subject matter jurisdiction and for lack of personal jurisdiction. Among other things, Duncan’s asserts that the case is a diversity case that belongs in federal, not state, court. Duncan’s does *not* move to dismiss for improper service of process. Both sides make all arguments relevant to the pending motion that one would expect given the above facts.

A statute of the state of Missouri provides that Missouri’s courts may exercise personal jurisdiction over “any person who transacts any business within this state.”

How should the court rule on the defendant’s motion? Explain, and be sure to say whether the motion should ultimately be *granted* or *denied* on each of the stated grounds.

QUESTION TWO

Title VII of the Civil Rights Act of 1964, a federal statute (“Title VII”) prohibits employers from (among other things) refusing to hire any individual because of that individual’s “race, color, religion, sex, or national origin.” The statute provides that any person whose rights under the act are violated may bring a civil action against the offending employer.

ViacomCBS Inc. (“Viacom”) is a broadcasting corporation incorporated in Delaware with studios and offices throughout the country. Its biggest studio is in Los Angeles, California. Its corporate headquarters, where its top executives work, is in Manhattan, in New York City, New York.

David, a citizen of California who resides in Los Angeles, is a producer employed by Viacom. David is in charge of creating a new show for Viacom. The new show is being produced at Viacom’s studio in Los Angeles. All activity relating to the show takes place in Los Angeles, and David has full authority to make all casting and other personnel decisions. Viacom’s New York office plays no role in such decisions. Paulina, a citizen and resident of New York, hears about the new show from a friend of hers in Los Angeles, goes to Los Angeles to audition for a part in the show, does very well, and makes it to the final round of auditions. However, Paulina has red hair, and David ultimately tells her he doesn’t want a redhead for the part.

Paulina brings suit against Viacom and David in federal district court in the Southern District of New York (which contains Manhattan). The complaint alleges that the defendants violated Title VII by discriminating against her because of race, color, and national origin. Her complaint, which alleges the above facts and seeks \$50,000 in damages, contains the following allegation:

The plaintiff anticipates that the defendants will assert that discrimination against redheads is not discrimination based on “race,” “color,” or “national origin” within the meaning of Title VII. However, the plaintiff will show that discrimination against redheads is covered by Title VII. The plaintiff is of Irish descent. The plaintiff will show that persons of Scottish or Irish descent are much more likely to be redheads than others.

Paulina has process properly served on Viacom and David. Paulina’s process server serves David personally while he is visiting Viacom’s New York City headquarters.

Viacom and David move to dismiss Paulina’s complaint for lack of subject matter jurisdiction and improper venue. The defendants do *not* move to dismiss for lack of personal jurisdiction or for improper service of process. Both sides make all arguments that one might expect given the above facts.

How should the court rule on the defendants’ motion? Explain, and be sure to say whether the motion should ultimately be *granted* or *denied* on each of the stated grounds.