EXAMINATION

CIVIL PROCEDURE II -- LAW 6213

Section 13 -- Siegel

Spring 2014

INSTRUCTIONS

1. This is an open book examination. You may use any written materials that you have brought with you (including handwritten, typewritten, printed, or published materials). The use of computers to type answers is permitted.

2. You have THREE HOURS to complete the exam.

3. The exam consists of this cover page and seven exam pages numbered 1 through 7. Make sure you have all the pages.

4. There are SIX QUESTIONS, some of which have subparts. All students must answer all questions including all subparts. The questions are of equal weight and should take about 30 minutes each.

5. Do not put your name anywhere on your answers. Do not indicate whether you are taking the class pass/fail. Do not write “Thank you for a great class” or anything similar on your exam.

6. If you are writing your answers by hand, remember to write legibly.

7. 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.

8. Using good judgment, address all the issues presented and assigned by the questions, even if your answers to some issues would, in real life, eliminate the need to address other issues.

9. Good luck.
QUESTION ONE
(30 minutes)

Portia Pruitt undergoes a surgical operation. She is injured during the operation and she brings suit against Darren Denham, the surgeon who performed the operation, for malpractice. The suit is in United States District Court and jurisdiction is based on diversity.

The following questions arise in connection with the case. Answer the questions and explain your answers:

A. Pruitt’s counsel serves Denham with the following request for production under Rule 34: “Produce every written record pertaining to every surgery you have ever performed.” Denham’s counsel objects on such grounds as might be expected. Pruitt’s counsel moves to compel production and Denham’s counsel moves for a protective order. What should happen to these motions?

B. Pruitt’s counsel takes the deposition of Walter Watkins, a nurse who assisted in the operation on Pruitt. During the deposition, Pruitt’s counsel asks Watkins, “Since the operation, have you heard any doctor, whether involved in the operation or not, say that Dr. Denham performed the operation on Pruitt negligently, and if so, who said it?” Denham’s counsel objects to this question on the ground that it calls for inadmissible hearsay. Must Watkins answer the objected-to question during his deposition?

C. Pruitt’s counsel takes the deposition of Samuel Shen, the Chief Administrator of the hospital at which the operation on Pruitt was performed. Denham’s counsel is present at the deposition and has an opportunity to question Shen. During the deposition, Shen states that, after the operation, he received an anonymous phone call from someone who told him that Dr. Denham was drunk when he performed the operation on Pruitt.

The case goes to trial. Before the trial, Shen dies. At the trial, Pruitt’s counsel attempts to introduce into evidence the portion of Shen’s deposition just described. Denham’s counsel objects that the evidence would be inadmissible hearsay. Should the evidence be admitted?

(In case you missed them, be sure to read instructions 4-8 on the cover page.)
PEARSON POTTER, a citizen of Indiana, is driving in Ohio one day in 2015 when his car is struck by a car driven by Della Donati, a citizen of Ohio. Potter suffers serious personal injuries. Potter sues Donati in the United States District Court for the Northern District of Ohio. He seeks $750,000 in damages. Jurisdiction is based on diversity.

The case is tried to a jury. At the close of evidence, the court holds a charge conference. The parties agree that in tort cases involving interstate elements, an Ohio state court would apply the substantive tort law of the place where the tort occurred. The parties also agree that the court should instruct the jury that, if it finds in favor of the plaintiff, it should award the plaintiff “the sum of money that will fairly and reasonably compensate the plaintiff for all damages he sustained as a result of the accident.”

Defendant Donati asks the court to further instruct the jury, “if you award money damages to the plaintiff, the plaintiff will not have to pay state or federal income taxes on the amount awarded,” which is true. Donati calls attention to Goldstein v. Bobrowski, a 2010 decision by the Supreme Court of Ohio (Ohio’s highest state court). Goldstein, another case about a car accident in Ohio, was tried in state court in Ohio. In its decision on appeal, the Supreme Court of Ohio said:

Tort damage awards are not taxable, and juries in tort cases should be informed of this fact. If a jury is not so informed, it may mistakenly award the plaintiff an extra amount so that the plaintiff would, after paying taxes, be left with the amount that the jury believes represents plaintiff’s damages. Such a jury would be overcompensating the plaintiff, which would be unfair to the defendant. It is therefore error to fail to instruct the jury that the damage award will not be taxable.

Plaintiff Potter objects to the proposed instruction. He observes that prior to the Goldstein decision, neither Ohio nor Indiana courts said anything about this issue, and that Indiana courts have still said nothing. He urges the court to rely on the 2007 case of Silversmith v. Callahan, a case about a car accident in Ohio, which was tried in federal court in Ohio pursuant to diversity jurisdiction and then appealed to the U.S. Court of Appeals for the Sixth Circuit, which said:

It is best not to mention taxation when instructing a jury on tort damages. Any mention of taxation is likely to confuse the jury and to distract it from its task of determining the plaintiff’s damages. A jury instructed that tort damage awards are not taxable might award too little, which would be unfair to the plaintiff.

The district judge asks you, his law clerk, for a memorandum discussing the issues presented by the proposed jury instruction and making a recommendation on how he should rule.

Write the requested memorandum.
QUESTION THREE

(30 minutes)

The Federal Odometer Act (FOA), a federal statute, makes it unlawful to alter a car’s odometer, which keeps track of the number of miles a car has been driven, so as to show a different number. The Act provides that any person who violates the Act with intent to defraud shall be liable to the injured party for three times the resulting damages.

Ned Naive, a citizen of Iowa, buys a used Lexus car from Sid Sleazy, who is also a citizen of Iowa. The car’s odometer shows 30,000 miles, and Naive pays Sleazy $25,000 for the car. Later, a mechanic tells Naive that the car really has about 200,000 miles on it and is only worth $5,000.

Naive sues Sleazy in the United States District Court for the District of Iowa. His complaint alleges that Sleazy violated the FOA by altering the odometer of the car he sold to Naive with intent to defraud. Naive seeks an award of $60,000 (i.e., three times his actual damages of $20,000). In his answer, Sleazy denies the complaint’s allegations: he denies that the car’s odometer was altered, he denies that the car has more than 30,000 miles on it, and, even assuming the car’s odometer was altered, Sleazy denies that he knew anything about it.

Two weeks after filing his answer, Sleazy moves for summary judgment. Sleazy submits no evidence with the motion, but he asserts that Naive has no evidence that Sleazy altered the car’s odometer or that Sleazy intended to defraud anyone.

Ten days after Sleazy files his motion, Naive files an opposition. He attaches an affidavit from the mechanic swearing that, in the mechanic’s judgment, the car has about 200,000 miles on it. As to whether Sleazy altered the odometer, Naive submits no evidence, but in his opposition he notes that he alleged in his complaint that Sleazy altered the odometer with intent to defraud. Naive’s opposition also states, “I haven’t had a chance to conduct any discovery yet. I hope to develop evidence regarding Sleazy’s actions and state of mind through discovery.”

Together with his opposition to Sleazy’s motion for summary judgment, Naive files a motion for jury trial. Sleazy opposes this motion on such grounds as might be expected.

Finally, Sleazy files a motion to dismiss, noting that under Iowa state law, all complaints alleging any kind of fraud must be verified (i.e., the plaintiff must swear to the allegations of the complaint). Naive’s complaint was not verified. Naive opposes this motion.

You are the law clerk to the federal district judge hearing the case. Write a memorandum discussing the issues presented by the pending motions and recommending how to rule on each issue.

(Hint: Your answer to the state law issue should be very brief.)
The Perfect Place company sues Denise Delgado in state court in Arizona. It alleges that Delgado, while at her home in Arizona, purchased a kitchen appliance from one of the plaintiff’s door-to-door salesmen and never paid for it.

Although the case is in state court, all relevant state rules and principles of civil procedure are identical to the federal rules and principles of civil procedure that we studied.

Delgado raises two defenses: (1) the salesman made false claims about the appliance’s capabilities that amounted to fraud; and (2) the day after she made the purchase, Delgado sent Perfect Place a letter cancelling the purchase. Federal law, Delgado observes, guarantees the right to cancel any purchase made in the home within three days. Either of these defenses would, if established, be a complete defense to the plaintiff’s claim.

Perfect Place denies that its salesman made any false claims about the appliance. Perfect Place also denies that Delgado exercised her right under federal law to cancel the purchase—it asserts that it never received any cancellation letter from Delgado.

The case is tried to a jury. After the close of evidence, plaintiff Perfect Place moves for judgment as a matter of law. This motion is denied. The court holds a charge conference. Plaintiff Perfect Place asks the court to instruct the jury that fraud is an affirmative defense as to which the burden of proof rests on the defendant. The court agrees.

The next day, the court gives the jury its instructions. Notwithstanding what the judge said previously, the judge (who changed her mind overnight) instructs the jury that the burden rests on plaintiff Perfect Place to prove that its salesman made no false claims in the course of selling the appliance. Counsel for the plaintiff objects. The judge refuses to change the instruction and says, “Your objection is untimely; you are required to raise any objections at the charge conference.”

The jury returns a general verdict with answers to written questions. The general verdict is for defendant Delgado. In response to the questions, the jury indicates that it finds that the plaintiff’s salesman did commit fraud, and so the jury finds for the defendant on the fraud issue; it also finds that the defendant exercised her right to cancel the purchase within three days, and so the jury finds for the defendant on the cancellation issue as well. The plaintiff again moves for judgment as a matter of law. This motion is denied and the court enters judgment for defendant Delgado.

Plaintiff Perfect Place appeals. On appeal, the plaintiff argues (1) that the trial court incorrectly instructed the jury with regard to the burden of proof on the fraud defense, and (2) that no reasonable jury could have found for the defendant on the evidence presented with regard to either defense. Both sides make all arguments that might be expected with regard to these points.

(Question continues on next page . . . )
You are the law clerk to one of the judges on the court of appeals. Your judge says to you: “On the question of which side had the burden of proof on the fraud defense, it’s a close call, but I think the trial judge got it wrong. The burden should have been on the defendant. The factual evidence in the case was also closely balanced, but I think the plaintiff had better evidence and if I had been on the jury I would have found for the plaintiff and against the defendant on both of the defendant’s defenses.”

“So,” your judge asks, “what should I do? Please write me a memorandum discussing the issues presented by the appeal and recommending how the court of appeals should rule on each issue. And please conclude your memorandum by saying what the court of appeals should do on the case overall – should it affirm the judgment or not?”

Write the requested memorandum.
QUESTION FIVE
(30 minutes)

Lightning Labs develops an improved battery that can power a smartphone for up to three days before requiring charging. In 2014, Lightning Labs receives a patent on its new battery. (This is the only patent Lightning Labs owns, and the patent claims only one invention.)

In 2015, Lightning Labs sues the Motorola Corporation in federal district court for infringing its battery patent. Federal question jurisdiction exists because the patent statute is a federal law. Motorola raises two defenses: (1) the plaintiff’s patent is invalid, and (2) even if the patent is valid, Motorola’s products do not infringe the patent.

The case is tried to a jury. The jury returns a general verdict with answers to questions. The general verdict is for the plaintiff. In response to the questions, the jury finds (1) that the plaintiff’s patent is valid, and (2) that the defendant’s products infringe the plaintiff’s patent. Judgment is entered on the verdict. In 2017, the judgment is affirmed on appeal.

In 2018, Lightning Labs brings two new lawsuits: First, Lightning Labs sues Motorola again in federal district court for patent infringement. Lightning Labs claims that Motorola, in 2018, is continuing to violate its battery patent. Motorola raises two defenses: (1) the plaintiff’s patent is invalid, and (2) even if the patent is valid, Motorola substantially reformulated its products after the previous lawsuit so that the products no longer infringe the patent.

In addition, Lightning Labs, in a separate lawsuit, sues the Nokia Corporation in federal district court for infringing its battery patent. Nokia raises two defenses: (1) the plaintiff’s patent is invalid, and (2) even if the patent is valid, Nokia’s products do not infringe the patent.

The following motions are made in the two suits: (1) Motorola moves for summary judgment on the basis of claim preclusion. (2) In its suit against Motorola, Lightning Labs moves for partial summary judgment on the issue of the validity of its patent on the basis of issue preclusion. (3) In its suit against Nokia, Lightning Labs moves for partial summary judgment on the issue of the validity of its patent on the basis of issue preclusion.

What should happen to these motions? Explain.
QUESTION SIX
(30 minutes)

You are the Legislative Director for U.S. Senator Gus Goodman. Another Senator proposes the following amendment to the Constitution of the United States:

Amendment XVIII (28): The Seventh Amendment to the Constitution of the United States is hereby repealed. Congress may by law determine when the right of jury trial shall apply to civil cases in federal courts.

Senator Goodman asks you to write him a memorandum evaluating this proposal. Your memorandum should explain what the likely effects of adopting the proposal would be and evaluate whether the proposal is a good or a bad idea. If you think the proposal could be improved by any relevant amendments that Senator Goodman could offer to it, you should mention those, or you may recommend that he support it as is or that he just oppose the whole thing. The Senator is not an expert on civil procedure so some basic explanation of what the proposal is all about would be useful, but the main focus of your memorandum should be your evaluation of the proposal from a policy perspective.

END OF EXAM