

CIVIL PROCEDURE
Final Examination
Spring 1991
Instructor: Craig Smith

Time Allotted - Three Hours

An answer should demonstrate your ability to analyze the facts presented by the question, to select the material from the immaterial facts, and to discern the points upon which the case turns. It should show your knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. It should evidence your ability to apply the law to the facts given, and to reason logically in a lawyer-like manner to a sound conclusion from the premises adopted. Try to demonstrate your proficiency in using and applying legal principles rather than a mere memory of them.

An answer containing only a statement of your conclusions will receive little credit. State fully the reasons that support them. All points should be thoroughly discussed. Although your answer should be complete, you should not volunteer information or discuss legal doctrines that are not necessary or pertinent to the solution of the problem.

Unless a question expressly asks for California law, it should be answered according to legal theories and principles of general application.

QUESTION 1

Laurel and Hardy were coauthors of a screenplay. Both felt that Fox, a major movie studio, stole their screenplay. Laurel, as a sole plaintiff, brought suit against Fox in New York state court seeking an injunction barring further use of the screenplay, an accounting, and damages. Laurel made a timely demand for jury trial which was denied. The case was then tried to a judge sitting without a jury who rendered judgment for Fox. Laurel decided not to appeal.

Hardy then brought suit in California state court against Fox for plagiarism and unfair competition. However Hardy did not serve Fox with the summons and complaint until some two years after he filed his lawsuit. Fox moved to dismiss Hardy's complaint for failure to effect service in a timely manner. Fox's motion was granted and the complaint was dismissed. Hardy filed a timely notice of appeal.

In the meantime, Hardy immediately filed a complaint in federal district court against Fox for copyright infringement. The basis of the complaint was the same set of facts underlying his state court claims. Fox made a 12(b)(6) motion for failure to state a claim, which the federal court granted. After his federal case was dismissed Hardy timely filed a notice of appeal.

While Hardy's federal appeal was pending the state court appeal was resolved. The state appellate court ruled that the state trial court erroneously dismissed Hardy's complaint. The matter was remanded to the state court.

Laurel then made a motion to join Hardy's state court suit as a coplaintiff.

Discuss what objections Fox might raise to:

- a. Laurel's participation in the lawsuit as a coplaintiff.
- b. Continued prosecution of Hardy's state court suit.

QUESTION 2

Motorist was involved in an automobile collision with Trucker, who was driving a truck for Employer. At the direction of Employer, Trucker gave a statement to Employer's insurance adjuster the same day regarding the accident which had just occurred. Employer's insurance adjuster also talks to Passenger, who is a friend of Motorist's and who was riding in Motorist's car at the time of the accident. Passenger gave a statement to adjuster but cannot remember what he said. Employer's insurance adjuster also visits Motorist while Motorist is still in the hospital. Motorist thinks that he gave a statement to the adjuster and knows that he talked to the adjuster about the accident. Motorist timely brings a lawsuit against Employer only. Motorist has no direct memory of the collision. With the passage of time Trucker is unable to recall significant aspects of the collision.

Motorist moves for the following:

- (a) Production of his (Motorist's) statement.
- (b) Production of the statement Trucker gave to the insurance adjuster.
- (c) Production of the statement Passenger gave to the insurance adjuster.
- (d) To have Trucker submit to an eye examination.
- (e) Disclosure of the identity of any expert witnesses Employer may have consulted, whether or not he intends to call them at trial.

Employer serves interrogatories on Passenger (who is not a party to the lawsuit) asking whether Passenger had seen Motorist drink any alcoholic beverages in the hour preceding the accident.

Assume that a timely objection is made to each party's requests for discovery. What are the possible grounds for objection and how should the court rule on each?

QUESTION 3

Boone, a resident of Kentucky suffered head injuries in a one-car accident that occurred in Tennessee. Boone, went to Crockett, a Tennessee doctor. Crockett examined Boone, concluded he had a headache and told him "Take two aspirin and call me in the morning." Boone followed Crockett's instructions but before he could call the Doctor back he slipped into a coma from which he never awoke.

Boone's guardian brought suit against Crockett in federal district court in Tennessee. The relevant part of the complaint alleged that Crockett "negligently misdiagnosed" Boone's injuries.

Crockett moved to dismiss the complaint on the ground that Tennessee law requires that a complaint allege "ultimate facts" and that conclusory allegations are insufficient to state a claim. The motion is denied.

The case goes to trial. Boone's evidence consists of the State Trooper who responded to the accident who testifies that Boone was bleeding profusely from the head, but was conscious and refused an ambulance or other medical assistance. The trooper testified that Boone stated "I'm going to see Dr. Crockett." Boone introduced into evidence Crockett's appointment book that shows that Boone had an appointment to see Crockett two hours after the accident. Boone also calls Dr. Houston as an expert witness who testifies that Boone will have a life expectancy of an additional 45 years. Boone rests. Crockett makes no motions nor presents any witnesses, choosing instead to rely on the state of plaintiff's evidence. The jury returns a verdict for Boone in the amount of \$2 1/2 million dollars. The court immediately enters judgment on the verdict.

Seven days after judgment is entered Crockett makes a motion for judgment notwithstanding the verdict or in the alternative for a new trial. Thirty days after judgment is entered Boone dies of cardiac arrest. Forty-five days after judgment is entered Boone makes a motion to be relieved from judgment. All motions were denied.

Discuss:

The correctness of the trial courts rulings denying:

- a. The motion to dismiss.
- b. The motion for JNOV.
- c. The motion for new trial.
- d. The motion to vacate the judgment.