

CIVIL PROCEDURE
Mid-Term Examination
Fall 1989
Instructor: Craig Smith

Time Allotted - Two 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

"Whistling Dixie"

Parks, a black resident of Georgia, attempted to rent an apartment in a building in Georgia owned by Dixie Corp., Inc., a Georgia corporation. Parks's offer to rent was refused, and the apartment was rented to Lee.

Parks then moved to California, obtained housing there, and sued Dixie Corp. in a California Superior Court alleging racially motivated denial of housing in violation of a federal statute. The complaint prayed for money damages and an injunction requiring defendant to give plaintiff possession of the apartment plaintiff had offered to rent or a similar apartment in the same building. Dixie Corp. maintained a bank account in California at Bank, but had no other business dealings in the state. This account after notice and hearing was attached by Parks.

The federal statute authorizes actions to be brought in "appropriate state or local courts of general jurisdiction" as well as federal court. The statute has been construed to require trial by jury in federal court suits. California law does not provide for jury trial in such cases.

Dixie Corp.

- (A) moved to dismiss the action on the grounds that
 - (1) Lee was not a party,
 - (2) The court lacked jurisdiction over the person and
 - (3) California was an inconvenient forum and,
- (B) made a timely demand for
 - (1) transfer to federal court and
 - (2) jury trial if the action was not dismissed or transferred.

How should the court rule on each ground set forth in the motion to dismiss and on the demand for jury trial and transfer?

QUESTION 2

"Two Geezers at Ceasers"

Cooney and Foreman, two well known (but over the hill) pugilists are scheduled to fight for the heavyweight championship of the world on January 21, 1990 at Ceaser's Palace in Atlantic City New Jersey. Madison Square Garden, (MSG) a New York Corporation, and Top Rank, Inc., also a New York Corporation, each claims to have an exclusive promotional contract with Foreman.

In the Spring of 1988 MSG, which had an option contract with Cooney for a heavyweight title fight, undertook to secure Foreman as Cooney's opponent. On May 16, Foreman's manager sent a telegram to MSG in New York indicating his conditional acceptance of MSG's suggested terms. A proposed letter agreement was then sent by MSG to Foreman, the terms of which differed from those of the telegram in several respects. Oral discussions followed; and Foreman apparently concluding that an agreement would not be reached with MSG, signed a contract to fight for Top Rank. MSG felt, on the other hand that an agreement had been consummated between it and Foreman prior to the execution of the Top Rank contract.

MSG decided to enter the legal arena and commenced an action against Foreman, a California resident, in the United States District Court for the Southern District of New York seeking to enjoin him from participating in any boxing match until he fulfilled his alleged contractual obligations with MSG. Service of process was made on Foreman's agent at his New York office. Top Rank submitted an application to intervene in the action as an indispensable party.

(A) How should the court rule on:

- (1) Foreman's objection based on lack of jurisdiction?
- (2) Top Rank's application to intervene?

(B) Assuming the trial court has jurisdiction, may Foreman litigate in this same action his claim that MSG still owes him \$10,000 from a previous bout?