

FINAL EXAMINATION

Social Decision-Making: Judicial

Instructions

PLEASE --

1. Sign your name on each examination "blue book" you use.
2. Write legibly on only one side of a blue book page, leaving margins. Try to limit your answers to two blue books (16 pages) but do not cram your handwriting. If you type your answers, double space, leave reasonable margins, and try to limit your answers to eight 8 1/2 x 11" pages.
3. Read and reread each question carefully before writing your answer. Plan your answer carefully. Clarity, conciseness and organization of your answers will be taken into account.
4. This is an open-book examination. You may consult your own notes, FRCP-1973, any material received as a handout or course assignment during the semester and any text book or law library book. You may not, however, examine written materials prepared by other students nor may you consult with any other living person except the instructor.
5. Although the examination is designed to be answered within three hours, six hours have been allocated in order to insure that time pressure does not become a significant factor. When you have completed your examination deliver it to Rita Davis' office, Room 7. You may then leave the premises but must not discuss the examination or any aspect thereof with any student who has not yet completed his or her examination.
6. The exam may be written in the large classroom, in the Satellite library or, it typed, in one of the seminar rooms. You may not leave the premises, except to go to a nearby restroom, until you have completed and turned in your examination. (Such unfortunate requirements are necessary until an "honor" system is adopted. Sorry.)

PROBLEM I (Suggested time: 2 hours)

Plaintiff, George Poopic (you may refer to him as P,) a citizen and resident of the State of Mississippi, is the Grand Dragon of the Knights of the Golden Whistle, a fraternal order. On August 8, 1973 at 2:00 a.m., while in Honolulu attending a convention of Blowhards (as members of the Knights are affectionately called), Poopic was run down by a fellow Blowhard on Kalakaua Avenue, while he, Poopic, was standing on the street near the curb tooting his golden whistle in order to summon a cab. The person who ran Poopic over was a local Blowhard, Rowdy Driver (you may call him D,) a citizen and resident of Honolulu, who was driving a

rented car. A post-accident investigation revealed that the rented car may have had defective brakes. The car was a Nauzy-Eight, manufactured by Admiral Motors Co., (you may refer to it as AM Co., a corporation organized under the laws of Delaware, having its principal place of business in Mississippi and doing business in all fifty states.

As a result of the accident Poopic was seriously injured, incurring special damages of \$25,000 in past and future medical bills and \$200,000 in lost earnings plus general damages consisting of severe and permanent pain. After consultation with Harry Replevin, his lawyer, Poopic authorizes Replevin to bring suit against both Driver (D) and Admiral Motors Co. (AM Co.) for \$1,000,000. (Under tort law plaintiff can sue both but can only collect once.) His claim against Driver (D) will be based upon negligence in that Driver, while under the influence of alcohol, collided with Poopic (P) by failing to maintain a proper lookout and/or by unreasonably failing to apply the brakes in time. His claim against Admiral Motors Co. (AM Co.) is based on negligence in failing to properly install or inspect the brakes.

You are Replevin's associate (for the purposes of questions 1 and 2 below). Replevin provides you with the above facts. He tells you that he would like to bring suit in a court or courts located in Hawaii and, if possible, to bring both, or at least one, of the claims in the U. S. District Court of Hawaii.

1. He asks you to draft a memorandum informing him whether he may bring suit against both defendants, only one, or none in the U. S. District Court for the District of Hawaii. He also wants to know what other court or courts located in Hawaii, if any, are available for suit in the event that both defendants or either of them can't be sued in the U. S. District Court.

Draft the memorandum. Be sure to discuss all legal issues which could affect Replevin's choice of the appropriate court or courts including, but not limited to, the question whether Admiral Motors Co. (AM Co.) can be joined as a defendant with Driver (D) in a suit brought in the U. S. District Court of Hawaii.

2. He asks you to draft a complaint against Driver (D) to be filed in U. S. District Court. This complaint, he tells you, must contain the minimum amount of information required by the Federal Rules of Civil Procedure--no more, no less.

Draft the complaint. (You may omit the title and caption.)

3. Assume that you are attorney for Rowdy Driver (D). Driver tells you that he was neither drunk nor negligent when his rented car collided with Poopic, but that Poopic, was intoxicated and stepped in front of the car and, when Driver applied the brakes, they failed to work because they were defective. You decide to deny Driver's negligence, to assert

that Poopic was guilty of contributory negligence and to insist upon a jury trial. Draft an appropriate pleading, in response to the complaint drafted under question 2, above, which will achieve these purposes.

4. Assume that Poopic (P) sues Driver (D) in the U. S. District Court of Hawaii for negligence. The case is tried before a jury which renders a general verdict of not guilty in favor of Driver and also answers two interrogatories, under Fed. Rule of Civil Procedure 49(b), as follows:

"a. Was the cause of the accident and Poopic's resultant injuries defendant Driver's intoxication, his failure to maintain a proper lookout, his unreasonable failure to apply the brakes in time to stop without hitting Poopic, or any other negligence on Driver's part? Answer: No.

"b. Was plaintiff Poopic intoxicated at the time of the accident and, if so, did his intoxication cause him to take an unreasonable risk by stepping into Kalakaua Avenue into the path of Driver's automobile? (In short, was Poopic guilty of contributory negligence?) Answer: Yes."

Judgment was then entered in favor of defendant Driver and no appeal was taken by plaintiff Poopic. Thereafter, Poopic commences suit against Admiral Motors Co. in an appropriate state court in Hawaii. In his complaint Poopic alleges that Admiral Motor Co.'s negligence in installing and/or failing to inspect the brakes was the cause of his injuries. Admiral Motors Co., in its answer, pleads res judicata as an affirmative defense. Admiral Motors Co.'s lawyer then moves for a summary judgment under FRCP 56, appending a copy of the judgment and verdict in Poopic's first suit against Driver. In his memo in support of the Summary Judgment Admiral Motor Co.'s lawyer argues that the decision that Poopic was guilty of contributory negligence in his suit against Driver is binding on Poopic in this suit against Admiral Motors Co. and that, since contributory negligence is a complete defense (for the purposes of this question you may assume this to be true), Admiral Motors Co. is entitled to a summary judgment in its favor.

You are the judge. Decide the motion for summary judgment and write a clear, concise opinion explaining your reasoning.

5. If the first suit by Poopic against Driver is brought in the U. S. District Court in Hawaii,

- a. May Driver bring in Admiral Motors Co. as a third party defendant?
- b. Should Admiral Motors Co. be allowed to intervene as a defendant in order to insure that Poopic's negligence is "properly litigated?"

Explain your reasoning.

PROBLEM II (Suggested time: 45 minutes)

Sam Macadamia (M), a citizen of the State of Hawaii residing in Honolulu, takes his family to Disneyland in California. While in Los Angeles Sam is enticed into buying a "Mickey Mouse gasoline powered swamp buggy and ocean yacht" for the sale price of \$12,000 from Seller (S), a large retail dealer. In the agreement of sale title to the buggy passes immediately to Sam, but Sam signed a printed promissory note provided by Seller in which he agreed to pay the purchase price, plus interest, in monthly installments over a three year period. The promissory note, (which complied in all respects with the Truth-in-Lending Law and laws governing the rate of interest) contained the following provision:

"The maker of this note, Sam Macadamia, hereby designates Donna Duck, 52 West Third Street, Los Angeles, California, as agent for the purpose of accepting service of process within the State of California."

Thereafter, Macadamia and his family returned to Honolulu but, because of the fuel shortage, were forced to leave the "swamp buggy and yacht" with Seller in Los Angeles. Two months later Macadamia received a registered letter from Donna Duck containing a summons and complaint indicating that the Seller had brought suit against him in the U. S. District Court in Los Angeles in order to recover the entire unpaid balance of the note plus interest and penalties, on the ground that Macadamia had defaulted on the second monthly payment. The letter stated that Donna Duck had accepted service of process on Macadamia's behalf. In the very next mail Macadamia received a copy of a notice or attachment of his "swamp buggy and ocean yacht," quasi-in-rem, by Seller. The notice indicated that Macadamia has a right to appear, answer and defend his property but, if he does not appear, a default judgment will be entered and his property will be sold to satisfy the judgment.

Macadamia consults your senior partner, Mr. Whiplash. He tells Whiplash that he has never met Donna Duck and has no idea who she is. Whiplash expresses the belief that Seller's lawyer is seeking to get "in personam" jurisdiction over Mr. Macadamia but, in case that fails, is also trying to get "quasi-in-rem" jurisdiction over Macadamia's "swamp buggy and ocean yacht." He believes that if in personam jurisdiction is acquired, the attachment of Macadamia's property will also enable Seller to execute an in personam judgment by selling the "swamp buggy and ocean yacht." Thus, Whiplash believes that the purpose of the attachment is twofold: to acquire quasi-in-rem jurisdiction, if that becomes necessary, but in any event to provide security for any judgment which may be entered for Seller. Mr. Whiplash requests you to draft a memorandum suggesting what steps he should take to protect Mr. Macadamia's interests, including your analysis and reasons. More specifically, Whiplash wants to know whether it would make sense to make no response whatsoever and thereby save Macadamia the expense of hiring a lawyer to defend him in Los Angeles.

Draft the memorandum.

PROBLEM III - (Suggested time: 15 minutes)

Rule 7 of the "Rules of Civil Procedure for the United States District Court for the District of Hawaii" (presumably adopted under the authority of 28 U.S.C. §2071 (FRCP 1973, p. 337)) provides as follows:

(a) By nonresident.

In every action in which there is a plaintiff who is not a resident of this district, there shall be filed with the complaint, and in every action removed from a territorial court to this court by a party who is not a resident of this district, there shall be filed with the record on removal, a bond for costs in the sum of \$250 unless the court on motion, which may be made ex parte, and for cause shown, dispenses with the bond or fixes a different amount. The bond shall have sufficient surety and shall be conditioned to secure the payment of all fees that must by law be paid by the nonresident parties to the clerk, marshal, or other officer of the court, and all costs of the action which they may ultimately be required to pay to any other party. If a bond in the sum of \$250 is filed no approval thereof is necessary. After the bond has been filed, any opposing party may raise objections to its form or to the sufficiency of the surety for determination by the clerk. If the bond is not filed within the time specified, or if the bond filed is found insufficient, the court may order that a sufficient bond be filed within a specified time and if the order is not complied with, the clerk shall dismiss the action as of course for want of prosecution.

(b) By Other Parties.

The court, on motion or of its own initiative, may order any party to file an original bond for costs or additional security for costs in such an amount and so conditioned as the court by its order may designate.

(c) Qualifications of Surety.

Every bond for costs under this rule must have as surety either (1) a cash deposit equal to the amount of the bond or (2) a corporation authorized by the Secretary of the Treasury or the United States to act as surety on official bonds under the act of August 13, 1894, (28 Stat. 279), as amended, U.S.C., Title 6, Sections 1-13, or (3) two individual residents of the district each of whom owns real or personal property within the district sufficient in value above any incumbrances to justify the full amount of the suretyship.

(d) Suits as Poor Persons.

At the time application is made, under the Acts of Congress providing for suits by poor persons, for leave to commence any civil action without being required to repay fees and costs or give security for them, the applicant shall file a written consent that the recovery, if any, in the action, to such amounts as the court may direct, shall be paid to the clerk who may pay therefrom all unpaid fees and costs taxes against the plaintiff and, to his attorney, the amount which the court allows or approves as compen-

sation for the attorney's services.

Assume (for the purposes of this question only) that no such bond is required in a civil suit brought by a non-resident in the Hawaii Circuit Courts.

If a non-resident plaintiff brings a suit in the U. S. District Court for the District of Hawaii, and jurisdiction is based on diversity of citizenship (28 U.S.C. §1332, FRCP-1973, p. 326), must the non-resident plaintiff comply with rule seven? Explain your reasoning.

End