

Final Examination
Wednesday, December 9, 2009

GENERAL INSTRUCTIONS:

1. Be sure to write your anonymous number in the place provided at the top of this page. You are required to turn these test questions in at the end of the examination. Failure to return the test questions will result in a grade of **F** for this examination.
2. This is a limited open book examination. You are permitted to have with you the Rules pamphlet.
3. There are three parts to this examination:

PART I - Short Answer (10%)
PART II - Essay (40%)
PART III - Multiple Choice (50%)
4. Specific instructions for each part are located with that part. Read them carefully!
5. This is a 3 hour exam.
6. If you wish to leave the room during the examination, you may do so. You must, however, leave your test questions and answer sheet in the classroom. Moreover, you may not speak with any member of the class while outside the room.
7. All the examinations at the law school are conducted under the Student Code of Conduct, which forbids cheating or collaborating on examinations. If you witness anyone cheating in any form, it is your responsibility to report this to the Registrar or the Dean of Students. You are required to sign the form indicating compliance with the Student Code of Conduct at the completion of your examination.
8. All students are required to have a Widener University School of Law picture ID card with a validation sticker for fall 2009 on the desk in front of them during the examination.

PART I
SHORT ANSWER QUESTIONS
(suggested time: 20 minutes)

IMPORTANT

Read the following instructions CAREFULLY:

1. There are three short answer questions in this part.
2. Limit your answer to three or four sentences at most.
3. If you are handwriting your exam, put your answers on this test paper. If you are using ExamSoft, include the answers on your typewritten exam, but be sure they are marked clearly so they can be easily distinguished from your essay.

1. Under what circumstances will a defendant in default for failing to answer or otherwise defend seek relief by way of F.R.C.P. 55(c)? And under what circumstances will such a defendant seek relief by way of F.R.C.P. 60(b)?

2. Describe the F.R.C.P. 23(b)(1) class action, the F.R.C.P. 23(b)(2) class action, and the F.R.C.P. 23(b)(3) class action. Include the relationship, if any, to F.R.C.P. 19 and 20.

3. If an attorney takes photographs of an accident scene in anticipation of litigation, name two circumstances under which opposing counsel can obtain copies of those photographs. Be sure to cite the appropriate F.R.C.P. section(s).

PART II

ESSAY QUESTION

(suggested time: 1 hour, 10 minutes)

IMPORTANT

Read the following instructions CAREFULLY:

1. Unless you are using ExamSoft, use the “blue” books provided to write your answer. Be sure to put your anonymous number on each “blue” book. In addition, you **MUST** number each book, e.g., “1 of 1” or “1 of 3,” “2 of 3,” “3 of 3.”
2. If you are handwriting your exam, write only on one side of each sheet of paper. And remember, a legible exam makes a happy professor!
3. There is one fact pattern with three questions in this part of the exam.
4. If there are any facts you need to know to analyze the problem, indicate what they are and how they would affect your conclusion. Do not, however, rewrite the question!
5. Address only the issues of procedural law. Do not address the substantive law involved.

In 2009, Plaintiff Precious Perry, a citizen of Delaware, filed a multiple-count complaint in the U.S. District Court for the District of Delaware against First Bank of Philadelphia, Inc., and Dependable Loan Servicing Co. (“DLS”). Perry seeks damages for breach of contract, violations of the Federal Fair Credit Reporting Act, and various tort claims, all arising in connection with credit reports that defendants filed about Perry’s performance on a mortgage contract. First Bank is a Delaware corporation with its principal place of business in Philadelphia, Pennsylvania; DLS is a Pennsylvania corporation with its principal place of business in Harrisburg, Pennsylvania.

Perry, then a Philadelphia resident, signed a mortgage agreement with First Bank in 2004 for the purchase of a property in Philadelphia. Perry made timely payments on the loan in the appropriate amount. In April 2005, Perry made a timely monthly payment in the appropriate amount of \$1,335, but First Bank inadvertently recorded the payment at \$1,135, and reported Perry as delinquent to a credit reporting agency.

In May 2005, First Bank assigned the mortgage contract, along with approximately 500 other similar contracts, to DLS, which assumed the contract in its entirety. DLS did not correct the recording error made by First Bank, and placed Perry’s April 2005 payment in a “suspense account.” With each monthly payment, DLS paid the previous month’s balance, along with late fees, and placed the remaining amount back into the suspense account for the next month. By November 2006, DLS reported Perry’s credit to a credit reporting agency. Starting in June 2007, and continuing through June 2008, DLS refused to accept Perry’s monthly payments on her mortgage.

In early 2007, Perry had a loan request denied, and following that action, her counsel advised both First Bank and DLS that Perry disputed the credit reporting and threatened to file suits against them. In October 2007, First Bank responded to Perry and admitted to the inaccurate reporting. However, it failed to correct the inaccuracy. DLS did not respond.

On November 7, 2007, DLS filed a foreclosure action against Perry in the Pennsylvania Court of Common Pleas for Philadelphia County. On May 16, 2008, the state court wrote in an order that DLS had agreed “to accept reinstatement of monthly payments and the parties will continue to negotiate.” A month later, in an order dated June 16, 2008, the state court dismissed the foreclosure proceedings, as the parties had agreed to a settlement.

Perry wrote to a credit reporting agency in early 2009 and asked it to investigate the problems with her credit. Based on that investigation, Perry alleges that First Bank and DLS continued to provide incorrect credit information to credit reporting agencies after 2008, despite letters from Perry asking defendants to expunge the credit history. Perry alleges that as a result of the false credit reporting by defendants, Perry was denied credit from third parties on numerous occasions from 2007 to the present.

Meanwhile, Perry moved to Delaware and established a domicile there at the beginning of 2006. She has since continued to own the Philadelphia property at issue, and uses it for rental income. She filed a change of address form with DLS, who thereafter sent all her statements to her Delaware address. This change of address posed no problem for DLS. Although it holds no

mortgages on property outside of Pennsylvania, it has several dozen clients who reside in Delaware.

DLS filed an answer to Perry's federal complaint raising a F.R.C.P. 12(b)(2) defense and containing a two-count cross claim against First Bank. The first count seeks indemnity from First Bank for its initial error. The second count alleges fraud as to not only Perry's mortgage, but also about 100 of the other mortgages assigned with Perry's mortgage. DLS claims that First Bank concealed problems with the mortgages and fraudulently overvalued them. First Bank responded to the first count of the cross claim, making appropriate admissions and denials, and moved to dismiss count two pursuant to F.R.C.P. 12(b)(1). In addition, Perry has filed a motion for partial summary judgment, seeking a ruling that the earlier foreclosure action precludes DLS from relitigating whether Perry was delinquent in her payments.

You are the law clerk to the federal judge assigned to this case. She has asked you to write the following three memoranda:

1. Discuss the arguments of DLS and Perry on DLS's F.R.C.P. 12(b)(2) defense, and make a recommendation as to how the judge should rule. (The relevant long-arm statute is on the following page.) **Suggested time: 30 minutes.**
2. Discuss the arguments of First Bank and DLS on First Bank's motion to dismiss count two of the cross-claim, and make a recommendation on how she should rule. **Suggested time: 30 minutes.**
3. Discuss Perry's summary judgment motion, and make a recommendation on how the judge should rule. **Suggested time: 10 minutes.**

10 Del. Code Ann. § 3104. Personal jurisdiction by acts of nonresidents.

(a) The term “person” in this section includes any natural person, association, partnership or corporation.

(b) The following acts constitute legal presence within the State. Any person who commits any of the acts hereinafter enumerated thereby submits to the jurisdiction of the Delaware courts.

(c) As to a cause of action brought by any person arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any nonresident, or a personal representative, who in person or through an agent:

(1) Transacts any business or performs any character of work or service in the State;

(2) Contracts to supply services or things in this State;

(3) Causes tortious injury in the State by an act or omission in this State;

(4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if the person regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed in the State;

(5) Has an interest in, uses or possesses real property in the State; or

(6) Contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation or agreement located, executed or to be performed within the State at the time the contract is made, unless the parties otherwise provide in writing.

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(i) Nothing herein contained limits or effects the rights to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the rights otherwise existing of service of legal process upon nonresidents.

(j) When jurisdiction over a person is based solely upon this section, only a cause of action arising from any act enumerated in this section may be asserted against the person.

