

II A: Essay question: seventy minutes

Tom Traveler, a New Yorker who owns a small travel agency, agrees to arrange a trip to the Arctic Circle for a group of fifty people, all members of a local travel club. Scanning a copy of *Exotic Vacations*, a widely circulated travel industry magazine to which he subscribes, Tom sees an article on arctic excursions that describes trips organized by several companies, including Arctic Adventures; the article also says that most of the companies mentioned will have booths at an April 2001 travel exposition in Newark, New Jersey, a short distance from his New York City office. Tom decides to attend the expo in order to find the most appropriate tour operator for his group.

After Tom speaks to representatives of several travel companies at the expo, he considers booking his group's trip to the Arctic Circle for early September with Arctic Adventures, Inc., a Delaware corporation with its principal place of business in Anchorage, Alaska. Tom speaks with Steve Smith, the president of Arctic Adventures who is staffing the company's booth, about the cost for the trip, which Steve sets at \$10,000 per person, with a required deposit of \$250,000. After the travel expo, Tom e-mails Steve from his office with a number of questions about the trip package. Steve responds to Tom's questions several times and then mails him a detailed description of all services included in the package. Satisfied by Steve's responses, Tom mails a check for the amount of the deposit to Steve's office at Arctic's headquarters.

In response to one of Tom's questions about the equipment that group members will need for the trip, Steve suggests that Tom contact Martha Maven, an expert who helps inexperienced travelers select the necessary gear for arctic travel. Martha runs her own one-woman consulting business out of her home in Stamford, Connecticut and frequently borrows her brother's New York City apartment to meet with clients before escorting them on shopping trips. After Martha mails Tom her resume describing her expertise in arctic travel, Martha and Tom meet at the New York apartment to discuss Tom's needs for the trip; Martha then accompanies him to several New York stores that specialize in supplies for northern travel, where they examine possible items for later purchase. She then puts together a package of equipment costing \$85,000 and mails Tom a bill which also includes her consulting fee of \$15,000, together with a cover letter assuring him that the equipment she has selected is perfectly suited to the planned trip. Tom mails Martha a check for the total amount of her bill and agrees to pick up the equipment at the New York apartment.

Tom also visits the informational web sites of various airplane charter companies to find the most economical transport to Anchorage, where Arctic's trip will begin, for his group. The best deal is offered by Bargain Travel, a partnership run by Charles Charter out of his Philadelphia office. After Tom calls Bargain Travel to charter a jet for his group at a cost of \$78,000, Charles tells him that he can pick up the charter documents in New York from Charles' cousin Susan, a partner in the business who routinely helps out by distributing paperwork to Bargain's New York customers at her Manhattan law office.

On September 11, 2001, two days before Tom's group is scheduled to depart for Anchorage,

the World Trade Center is attacked. The federal government immediately orders all commercial and private air travel suspended, and the charter flight Tom has booked with Bargain is cancelled. When Tom e-mails Steve about rescheduling the trip, Steve tells him that the autumn season for arctic travel is already fully booked and he cannot offer any other dates. Tom then asks for a refund of his deposit and Steve refuses, insisting that he has already incurred expenses for the trip and that the booking agreement specifically provides that no refunds will be made for cancellations within one week of departure. When Tom next contacts Charles about a refund for the cost of the charter, Charles also refuses. Finally, Tom seeks a refund from Martha, and she too refuses. When Tom contacts the stores he visited with Martha, he discovers that she has sold him cheap imitations of the gear they had looked at together and has charged him highly inflated prices.

Tom next consults his attorney, Linda Lawyer, who advises Tom that he has potential claims against Arctic Adventures and Bargain Travel for inequitable enrichment, a common law cause of action, and against Martha for fraud and breach of contract. Linda would like to bring suit against Arctic, Bargain, and Martha in a single action, preferably in federal district court in the Eastern District of New York (Manhattan). Linda asks you, an associate in her law firm, to prepare a memo analyzing whether the three defendants can be sued together in federal court and whether such a suit filed in New York would satisfy the requirements of subject matter jurisdiction, personal jurisdiction, and venue. In the course of your research, you find that the New York long-arm statute, CPLR 302(a)(1), permits a New York court to exercise personal jurisdiction over “any non-domiciliary who in person or through an agent transacts any business within the state or contracts anywhere to supply goods or services in the state.”

Draft a memo for Linda Lawyer addressing the issues she has raised and making a recommendation as to the filing of claims against Arctic, Bargain, and Martha.

II B. Essay question: twenty minutes

Francine Fan, a Massachusetts citizen and a life-long Boston Red Sox supporter, decides to make the team's World Series victory the theme of her extravagant wedding reception at her estate near Boston. Francine hires Paul Planner, a Connecticut wedding planner, to coordinate the event. Paul promises Francine that the wedding will be featured in the style pages of Boston newspapers, boosting sales for Francine's new self-help book, *The Bride's Bible*, by \$100,000. Paul then contracts with Charles Caterer, also from Connecticut, to provide the food, wine, and flowers for the reception at a cost of \$80,000, and with Ready Rockets, Inc., a fireworks company incorporated in Massachusetts with its offices in Connecticut, to put on a fireworks display in red and blue during the reception at a cost of \$25,000. Charles in turn contracts with Barbara Blossom, a Massachusetts floral designer, to create centerpieces in the shape and colors of a Red Sox cap at a cost of \$30,000. On the morning of the wedding Barbara arrives with yellow and orange centerpieces shaped like sunflowers. Charles' catering van and Rockets' truck collide in the estate driveway, setting off the fireworks, which seriously damage the van and the food inside (Paul has to bring in burgers from a local fast-food chain to feed the guests); the driveway requires \$15,000 in repairs from the explosion. Furious at the press coverage of her wedding disaster and its damaging effect on the publicity campaign for her book, Francine refuses to pay Paul's \$150,000 bill. She also discourages another bride, who was considering hiring Paul for a fee of \$40,000, from giving him the job.

Francine retains Howard Honcho as her attorney, and Howard files a law suit in federal district court in Massachusetts against Paul, claiming breach of contract and seeking damages of \$100,000. Assume no problems obtaining personal jurisdiction over any of the parties involved in the wedding arrangements or venue in the Massachusetts district court.

Based on the fact pattern described above, how - if at all - can the following claims be included in Francine's suit?

1. Paul's claims against Francine for non-payment of his bill and for defaming him to another bride.
2. Paul's claims against Charles and Rockets for failing to provide their contracted services.
3. Charles' claim against Barbara for breach of her contract.
4. Claims by Charles and Rockets against each other for the driveway collision.
5. Francine's claims against Charles and Rockets for damage to her driveway caused by the collision.

Respond briefly to the questions above, explaining your answers with reference to the relevant Federal Rules of Civil Procedure and the federal statutes studied this semester.