

Final Examination
Civil Procedure I – Sections LS1 & LSN
Professor Ted Kionka
Fall 2007

1. You have **two (2) hours** to complete this exam.

2. This is a **closed** book exam.

3. This exam consists of two parts.

Part I consists of twenty-five (25) multiple-choice questions. Please mark your responses to the multiple choice questions on the separate “ParSCORE TEST FORM” using pen or pencil and following the instructions on that form. If you change your answer, place a clear **X** through the wrong answer and mark the correct answer. A machine will score the exam and any ambiguities will be counted as a wrong answer.

Part II consists of one (1) essay question. Please write your response in the blue books provided or using the ExamSoft software. If you use blue books, please write clearly, using only one side of each sheet of paper. I cannot give credit for any writing that I cannot translate.

4. Write your exam number on your exam envelope. Put your correct class section and student exam # at the top of this page, each page of questions, **each blue book**, and the “ParSCORE TEST FORM.” **Do not** use your name, student ID number or Social Security Number on any exam materials.

5. At the conclusion of the exam, return all test materials, including blue books, ParScore answer sheet, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

6. The following Rules and Judicial Code sections, **among others**, may be relevant:

FRCP 3: Commencement of Action

FRCP 4: Summons (including (c) Service with Complaint; by Whom Made; (d) Waiver of Service; (e) Service Upon Individuals; (g) Service Upon Infants and Incompetent Persons; (h) Service Upon Corporations or Associations; (k) Territorial Limits of Effective Service)

§§ 1331 (federal question); 1332 (diversity of citizenship); 1359 (parties collusively joined); 1367 (supplemental jurisdiction); 1391 (venue); 1404(a) (change of venue (transfer)); 1406 (cure or waiver of defects); 1441 (removal); 1446 (procedure for removal); 1652 (Rules of Decision Act); and 2072 (Rules Enabling Act).

GOOD LUCK!

Part II: Essay Question (50 points)

Recommended Time: One (1) hour

Plaintiffs Carl and Diane Swensen brought suit in the U. S. District Court for the District of Minnesota on claims against Nina Short, Don Short, and Goodlife, Inc. Count I seeks recovery of property and assets which the Swensens allege were fraudulently obtained from them by defendants. Count II seeks recovery pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 206 and 207, for unpaid wages and overtime compensation allegedly owed the plaintiffs by the defendants.

The Swensens' claims arose from the circumstances of their decision to join and their two-year membership in Goodlife Ranch, a religious community located near Conway, Arkansas. Goodlife Ranch was operated under the corporate aegis of Goodlife, Inc., an Oklahoma corporation registered to do business in Arkansas; both entities were formed by Nina and Don Short. Before they moved to Goodlife Ranch, the Swensens and their three children lived in another religious community with fifteen friends and relatives on the Swensens' farm in Minnesota. Before the Swensens and their children moved to Goodlife Ranch in late August 1979, they visited Goodlife twice, received a phone call from Nina Short, and were visited at their Minnesota farm by Nina and Don Short. A few weeks after they arrived at Goodlife Ranch, the Swensens transferred all their assets to Goodlife. The livestock and much of the equipment at their Minnesota farm were sold at an auction and the proceeds were sent to Goodlife; the Shorts returned to Minnesota to assist in organizing this sale. Farm property not sold at this auction was later transported to Goodlife Ranch.

After they joined Goodlife Ranch, at the request of the defendants, Carl and Diane Swensen signed statements that they were volunteers and expected no compensation for work performed in any of Goodlife's profit-making ventures. While at Goodlife Ranch, the Swensens worked in various businesses run by the defendants, including a restaurant and a convenience store. The Swensens received no wages for this work, but they were provided with nonmonetary benefits that included food and lodging, and each received three dollars a week as an "allowance."

On July 28, 1981, the Swensens left Goodlife Ranch and returned to Minnesota, where they now live. Goodlife, Inc. and the Shorts returned to the Swensens money and property worth only a fraction of the value of the assets the Swensens transferred to Goodlife.

The Swensens' original complaint consisted of a single count, alleging fraud and breach of contract in connection with the transfer of their assets to Goodlife, and named the Shorts and Goodlife as defendants. A little over a year after this complaint was filed, the Swensens amended it to include claims that Goodlife had willfully violated the FLSA

in failing to pay them wages and overtime for work they performed in its business ventures.

In their fraud claim, the Swensens allege that the defendants engaged various misrepresentations in order to convince them to move to Goodlife and to obtain their assets. They allege that the defendants falsely represented that they intended to set up a dairy comparable to that at their Minnesota farm and place it under Carl Swensen's management; in fact, only a small dairy was ever established. The Swensens also asserted that the Shorts grossly misrepresented the quality of life at Goodlife Ranch, including representations that decision-making at Goodlife was done on a group basis, that Goodlife, Inc., was run by a Board of Directors, and that Goodlife emphasized the promotion of family relationships. In truth, the Swensens allege, Goodlife Ranch and Goodlife, Inc., were under the complete control of Nina and Don Short, and family relationships were continually undermined.

Minn. Stat § 303.13, subd. 1(3) submits a foreign corporation to service of process if the "foreign corporation makes a contract with a resident of Minnesota to

be performed in whole or in part by either party in Minnesota, or if [the foreign corporation] commits a tort in whole or in part in Minnesota."

Minn. Stat. § 543.19 subd. 1 permits a court to exercise personal jurisdiction over any foreign corporation or nonresident individual who commits any of the

following acts:

- (a) Owns, uses, or possesses any real or personal property situated in this state,
- (b) Transacts any business within the state, or
- (c) Commits any act in Minnesota causing injury or property damage, or
- (d) Commits any act outside Minnesota causing injury or property damage in Minnesota . . .

Only causes of action "arising from" acts enumerated in either Minn. Stat. § 303.13 or § 543.19 may be asserted against a defendant in an action in which jurisdiction is based upon these provisions.

As their first motion, defendants all move to dismiss for lack of personal jurisdiction, or in the alternative, to dismiss for improper venue, or, in the alternative to transfer the case to the Eastern District of Arkansas.

1. How should the court rule on the motion to dismiss for lack of personal jurisdiction? Discuss.

2. Assume the court rules against the defendants on the personal jurisdiction issue. How should the court rule on the motion to dismiss for improper venue or, in the alternative, to transfer? Discuss.

3. Assume the court denies defendants' first venue motion. Following amendment of the complaint to add Count 2 (the FLSA claims), defendants renew their motion to dismiss or transfer for improper venue. (Assume that there is no "pendent venue." In other words, defendants are not precluded from renewing their venue motion to transfer or dismiss, based on a later amendment adding a new claim, even though venue was proper when the lawsuit was filed. Defendant can properly renew its venue motion after plaintiffs amend the complaint to add their FLSA claims.) How should the court rule? Discuss.

END OF EXAMINATION

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