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Professor Ramo

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Essay 94

Tied for
Best essay, congrats!

Exam Score

79.5

1)

Class Certification Motion

P wants to bring a Rule 23 Class Action certification. There are two steps to this certification which is governed by Rule 23a and 23b. Rule 23a sets up the framework for certifying a class and looks at: Numerosity, whether there is enough class members. Usually under 25 class members will not work, but if you have over 40 class members the class can be certified. Next the court looks at whether there are Common issues of law. Then the Court looks to see if the class representatives are Typical of the other class members. Finally the the Court determines whether the representatives and the lawyers will adequately represent the class as a whole.

Applying this Rule 23a frameword to our case ^{10/10} we see that there are 600 class members of the eskimo tribe- the numerality element is fulfilled. There appears also to be a common issue of law, which is the nuisance complaint which is a tort- the commonality element ^{10/10} is fulfilled. We run into problems when we look at the typicality element. The 3 class reps are part of the group that still lives on the island, but the class is representing the 500 on the island and the 100 that have moved away. It would seem that one of the class members should have been of the 100 that left. On the other hand, there are many more people on the island than have left- I would argue that the typicality of the class reps is NOT fulfilled b/c of the lack of there being no one representing the 100 people that left the island. ^{10/10} We now turn to the class reps and the lawyers Representing adequalety that class as a whole. As I mentioned before the class reps lack a

member that has moved. It is reasonable to infer that the people that have left have spent and lost much more than the people still on the island. The 100 that left may not be represented properly by the class reps. In terms of the lawyer, we are told he has never done a class action nor has done a tort law case, he only knows about environmental law. The lawyer might be good to have on the case, in addition with an experienced class action and tort lawyer- based on these facts the environmental lawyer by himself probably won't represent the class adequately. 10/10

It would seem the class should not be certified based under the framework of 23a.

For arguments sake we will move on to step 2 and analyze under 23b. 23b lays out the types of class actions that the class can be certified under. 23b1 is a Common fund, 23b2 is an Injunctive class, and 23b3 is a Damages class. Since the class is seeking damages based on injuries and punitive damages- this class should be certified under the damages class. 10/10

23b3- Damages class certification requires that the issues of law to predominate among the class and the class method of adjudication be superior to any other form of adjudication. There are 4 factors that the court will look at to determine whether the predomination and superiority is present: the court will look at class control verses individual control of the issue, the court will look to see if there is other litigation present, the court will look to see if there are Erie-choice of law concerns, and the court will see if the class is Manageable.

Applying this 23b3 framework to our class. Individual control verses Class control: the 100

members that have left the island might want to separate from the claim, but we are told that none of the eskimos can afford to bring a suit against a big corporation. Therefore it would seem that Class control is a better option for the eskimos. There appears to be no other litigation nor does there appear to be any Erie-Choice of Law concerns. Finally, a class of 600 hundred is very manageable especially if they are in the same tribe. Communication will be easy. The Wal-Mart class is over 1 million people and it has been determined to be manageable.

10/10

It appears that the class could be certified under 23b3.

*Need to do analysis under predominant class facts
 via common and predominate over differences. You took into will
 100 w 500 but should discuss in pre detail every facts in
 quarter
 7/10*

In terms of notice- in a Damages class notices is required usually by letter. And the parties can opt out. The letter to each class member is sent via mail and must tell the class that they can opt out, maybe represented by their own attorney, and what will happen if they remain a part of the class. This notices must be paid for by the class.

10/10

SMJ here is under 1332- Diversity. The Eskimos are from Alaska and American Power is from California. There has been no amount in controversy mentioned, but I will assume one of the class reps has over \$75k in damages.

The Class Should not be certified b/c 23a was not fulfilled.

Preliminary Injunction Motion

The Preliminary Injunction (PI) standard is governed by Rule 65. Both parties must be present in court at the time of the motion (notice is required) and the PI will last until the trial has been concluded. The court must consider the following factors when deciding to grant of PI: the chances of succeeding on the merits, the harmful effect on the parties, the irreparable harm on the parties, and public policy and public interest concerns. For a PI to be granted a bond must also be submitted with the court

We are told that the law clerk, who must be in the GGU environmental clinic, agrees that the Ps will be successful on their action (Although I would disagree). There will be harmful effects on both sides as a result of the PI being granted- American Power will lose millions as a result and potentially could put them out of business. On the P's side the ocean will continue to rise and threaten their homes if the PI is not granted. In terms of irreparable harm happening- both stand to lose a lot- American Power could go out of business and the P's homes will be under water (but this will not happen quickly). How much will 1% of a year's supply of emissions raise the ocean levels? Not much in my opinion. The Public Policy/Public Interest Concerns are that if American Power goes out of business there will be no power for its customers- the winter is fast approaching and Christmas too- there would be no Christmas lights.

Based on this analysis I would deny the motion for PI b/c of the harm of putting American Power out of business (along with my Christmas tree).

*But need Circuit Standard is if P likely to prevail,
P need only show "possibility" of irreparable harm
→ 110*