

Name _____

FINAL EXAMINATION
Law 391: Civil Procedure II
Professor Janutis
Spring 2001

Instructions

1. Please put your name, and **not** your exam number, at the top of this. Put your exam number, and **not** your name, on the computer readable answer sheet. Also, if you are handwriting your exam, put your exam number, and **not** your name, on each blue book.
2. At the end of the exam, please **turn in both the exam questions and your answers**. Failure to turn in the exam questions may result in a significant grade reduction. Place the exam questions in one stack and the blue books in another. **Do not put the exam questions inside your blue book.**
3. You will have **3 hours** to complete this exam. You **must** stop writing or typing when time is called. If you continue writing or typing after time is called, your grade may be significantly reduced.
4. This exam is closed book. You may refer to the statutory material provided with this exam only.
5. To help ensure legibility, please write on only one side of a page.
6. This exam consists of two parts. You must complete **both** parts. Part I consists of 25 multiple choice questions. For each question, choose the best alternative and fill in your answer on the computer readable answer sheet with a No. 2 pencil. Part II consists of three essay questions based on one fact pattern. You must answer **all three** questions. To assist you in managing your time, a suggested time allotment is listed below. The suggested time allotment for each question also appears below the question.

Part I

25 Questions: 1 hour total

Part II

Question 1: 50 minutes

Question 2: 40 minutes

Question 3: 30 minutes

Good Luck!

Thank you for a wonderful semester. Have a nice summer.

PART II

Fact Pattern

During his first year in practice at a large Chicago law firm, Larry Lawyer built up a substantial savings account. Anxious to put this money to good use, he contacted his friend Connie Consultant. Lawyer and Consultant agreed to purchase a two-flat brownstone in Chicago's Roscoe Village neighborhood. Lawyer and Consultant agreed to live together in the first-floor apartment, rent out the second-floor apartment and divide the rental proceeds equally between the two of them. Lawyer applied his savings to the down payment on the property. Consultant contributed an equal amount of money towards the down payment.

Working through a Chicago-area mortgage broker, Lawyer and Consultant negotiated for and obtained a loan from Chase Manhattan Bank for the remaining purchase price. The loan was to be payable over 30 years and was secured by a mortgage on the two flat. Chase Manhattan also required Consultant and Lawyer to personally guarantee the loan. When Lawyer received copies of what were to be the final loan agreement, mortgage and guarantee, he noticed that the interest rate and a few other terms were incorrect in each of the documents. Lawyer tried to resolve the matter through the mortgage broker. However, after several unsuccessful attempts, Lawyer contacted the responsible lending officer at Chase Manhattan directly. Lawyer called the lending officer in her office in New York City, sent e-mail to her business e-mail address and faxed documents to her in her New York office. Eventually, the lending officer sent revised copies of the loan agreement, mortgage and guarantee to Lawyer directly. Lawyer and Consultant execute the revised mortgage agreement and guarantee at the closing in Chicago on the two flat.

Under the terms of the revised loan agreement, mortgage and guarantee, Lawyer and Consultant were jointly and severally liable for any deficiency remaining after foreclosure on the brownstone. Lawyer and Consultant were to send mortgage payments to Chase Manhattan's New York office. Also, Lawyer and Consultant were to notify Chase Manhattan of any change of address by sending written notice to Chase Manhattan's New York office.

After a few years of successfully renting the second-floor apartment and sharing the rentals from the apartment, Consultant informed Lawyer that she has accepted a transfer to the New York office of her consulting firm and that she intended to move there and marry her long-time boyfriend who lived and worked in New York. Consultant promised to continue to pay her half of the mortgage in exchange for a continued share in the rental proceeds. However, a few months after she moved to New York, Consultant stopped paying her portion of the mortgage. Unable to make the full mortgage payment himself, Lawyer defaulted on the loan.

After foreclosing on the two flat in Illinois, Chase Manhattan filed suit in New York state court against Lawyer to collect the \$100,000 remaining due under the

loan agreement and guarantee. Lawyer retains you to represent him in the lawsuit filed by Chase Manhattan and in connection with a possible third-party action against Consultant.

Question 1

(Suggested Time Allotment: 50 minutes)

Lawyer explains to you that he would prefer to litigate in Illinois rather than New York. You do some legal research and factual investigation and learn the following:

- ? Section 302 of the New York Civil Practice Law and Rules provides, in relevant part:
 - (a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:
 - 1. transacts any business within the state or contracts anywhere to supply goods or services in the state;
- ? No federal or state regulations pertain to commercial mortgages.
- ? New York state courts will not dismiss an action on the grounds of forum non conveniens.
- ? Chase Manhattan is a Delaware corporation with its principal place of business in New York.
 - A. Does Lawyer have any valid jurisdictional objection to a suit in New York state court?
 - B. If not, is there any method by which Lawyer may have the action transferred to a court in Illinois?
 - C. Would your analysis change if Chase Manhattan sued both Consultant and Lawyer in the New York state court litigation and asserted its claim for breach of the loan agreement and guarantee against both Consultant and Lawyer?

Question 2

(Suggested Time Allotment: 40 minutes)

Lawyer tells you that he would like to assert claims against Consultant for breach of their agreement to share the mortgage payments and also for misrepresentation based on Consultant's statement that she would continue to pay her half of the mortgage after moving to New York. Lawyer also would like to recover punitive damages from Consultant. Your legal research has revealed that New York law permits a party to recover for negligent as well as intentional misrepresentations. Illinois law, on the other hand, permits a party to recover for intentional misrepresentations only. Likewise, New York law permits a party to recover punitive damages for breach of contract when the breaching party engages in tortious behavior in connection with the breach. Meanwhile, Illinois law never allows a party to recover punitive damages for a breach of contract. New York applies interest analysis to resolve all conflicts of law questions. Illinois applies the First Restatement approach to resolve conflicts issues arising in tort claims and the Second Restatement approach to resolve conflicts issues arising in contract claims.

- A. If the case proceeds in federal court in New York, what law will govern Lawyer's claims?

- B. If the case proceeds in federal court in Illinois, what law will govern Lawyer's claims?

Question 3

(Suggested Time Allotment: 30 minutes)

In the course of your research, you also discover that the New York General Assembly passed tort reform legislation, including a provision enacting section 5502 of the New York Civil Practice Law and Rules. Section 5502 of the New York Civil Practice Law and Rules provides:

No party may assert in any pleading a claim for punitive damages except upon leave of court. A court may not grant leave to plead a claim for punitive damages unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such punitive damages.

You also recall that Federal Rule of Civil Procedure 8 provides:

A pleading which sets forth a claim for relief . . . shall contain . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks.”

- A. If the case proceeds in federal court and New York law governs Lawyer’s claims against Consultant, will Lawyer have to comply with Section 5502 before asserting a claim for punitive damages?