

Essay Question One

1. Desperate for relief from the frozen North, Jane Peterson, a psychologist in St. Paul, Minnesota, signed up for a 7 day tour to an exciting new luxury hotel in the Dominican Republic. The tour was organized and promoted by Sunshine Tours, Inc. a Minnesota corporation with its principal place of business in Minneapolis. In written brochures, slide presentations and oral statements, the hedonistic pleasures of the hotel were advertised - private, two mile long beach; private golf course and tennis courts; cable television in each room; Olympic size fresh water pool. The normal rate at the hotel is \$250. But under the vacation package, Jane would pay only \$700 for a 7 night day. The cost of meals and the plane flight were not included in the vacation package.

Jane and approximately 250 others flew to the Dominican Republic, and checked in at the El Sol Hotel, a Dominican corporation. Jane was bitterly disappointed: drinking water was contaminated; the filthy beach was shared with guests of other hotels and natives; the closet golf and tennis were public facilities, five miles away; the only swimming pool was small and salt water. The rooms had old furniture and were not cleaned regularly; the promised wireless connections did not exist; the shows on television were entirely in Spanish. Jane was not amused. In addition, she suffered from intestinal flu for the last four days. She stayed the seven days only because she had prepaid.

Jane has come to your law firm for legal advice. The senior partner has concluded that he can allege, in good faith, a prima facie claim for fraud and breach of contract against both the tour operator and the hotel. He believes this lawsuit is potentially very remunerative to the law firm, and he wants to bring a class action if possible. However, he is concerned that too many difficulties exist with the potential lawsuit.

He asks you to write a memo that objectively points out problems and difficulties with the class action law suit. He tells you that because of time limitations, he wants a memo that raises all the problems, even if they cannot be discussed comprehensively. The format of the memo is unimportant; but organization is crucial. In addition, he is seeking solutions to the problems. He reminds you that Minnesota Rule 23 is identical to Federal Rule 23.

Essay Question Two

2. Patsy Plaintiff brings an action in Arkansas federal court against Dave Defendant for infringement of a federal copyright that Patsy Plaintiff holds on a book. The case is tried to a jury.

Note: each of these subparts stands independently, each is worth 1 or 2 points, each needs only a short answer (probably 3 or 4 sentences).

- (A) Dave Defendant moves for judgment as a matter of law at the close of Patsy Plaintiff's evidence. The motion is denied. After presenting his own evidence, Dave again makes a motion for a judgment as a matter of law. The motion is denied again. The jury is instructed, deliberates, and returns a verdict for Patsy Plaintiff.

May Dave Defendant now file for the third time a motion for judgment as a matter of law? (1 point)

- (B) Patsy Plaintiff does not move for a judgment as a matter of law at the close of the evidence. The jury returns a verdict for Dave Defendant. Patsy Plaintiff believes that the jury's verdict is completely unsupported by the evidence and seeks a new trial.

May the court grant a new trial because of the evidence? (2 points)

- (C) Dave Defendant moves for judgment as a matter of law at the close of the evidence. The motion is denied, and the jury returns a verdict for Patsy Plaintiff. Judgment is entered on the verdict. Dave Defendant believes that the verdict is flawed. Three days after judgment is entered, Dave renews his motion for judgment as a matter of law. The judge denies the motion five weeks later. Dave Defendant then moves for a new trial on the grounds that the jurors were drinking alcoholic beverages during lunch. The judge confirms that they were drinking.

How should the judge rule? (2 points)

- (D) At the conference on jury instructions, both parties objected to the proposed instructions. The case was submitted to the jury, which returned a verdict for Dave Defendant. Patsy Plaintiff moves for a new trial on the ground that the judge improperly instructed the jury on the standard for recovery under the copyright statute. Dave Defendant argues strenuously that the instructions were proper. The judge concludes that Patsy Plaintiff is right and orders a new trial.

May Dave Defendant obtain appellate review now? (2 points)

- (E) Dave Defendant moves for judgment as a matter of law at the close of the

evidence on the grounds that Patsy Plaintiff's evidence is too weak to support a verdict. The motion is denied, and the jury returns a verdict for Patsy Plaintiff. In frustration, Dave Defendant reviews his notes and recalls that the judge allowed Patsy Plaintiff to introduce hearsay evidence that have been excluded. Although he did not object during the trial, Dave Defendant researches the evidentiary issue and concludes that the evidence was indeed improperly admitted. Within ten days, Dave Defendant makes a motion for a new trial on the ground that the hearsay evidence should have been excluded.

Does the judge have the authority to grant the motion for a new trial? (2 points)

- (F) Dave Defendant filed a motion for judgment as a matter of law at the conclusion of all the evidence, but it was denied and the jury ruled for the plaintiff. Now Dave Defendant files a renewed motion for judgment as a matter of law and for a new trial on the grounds that three jurors were biased. The judge denies both motions. Dave Defendant appeals.

What will happen if the court of appeals concludes that judgment as a matter of law should have been granted? (2 points)

- (G) The judge elects a general verdict form, and the jury returns a verdict with an award of \$10,000 to Patsy Plaintiff and an award of \$5000 to the American Library Association (a non profit organization that has not been involved in the lawsuit at all). Patsy asks the court to award the entire \$15,000 to her as compensation for copyright infringement.

Dave asks the court to strike the entire award. How should the trial judge rule? (2 points)

- (H) At the conclusion of all the evidence neither party files any motions. The jury finds for Dave Defendant. The post-trial motions of Patsy are denied. Two months after the verdict credible evidence comes to Patsy's lawyers that a juror was bribed. Nine months later, Patsy files a motion to set aside the verdict.

How should the court rule? (2 points)