



## ESSAY QUESTION ONE

1. City Bus Authority, Inc. ("CBA") operates a bus system in Little Rock. Last month, a CBA bus collided with a passenger car driven by Terry Tourist from Texas. The accident occurred when Terry suddenly veered into the bus operator's lane at a major intersection. The bus operator was unable to stop the bus in time to avoid the collision, and Terry was injured. Immediately after the accident occurred, the bus operator telephoned his supervisor to report the accident. Then, following CBA's standard procedures, the bus operator completed an "operator's Report of Accident" form. The completed form included the date, time, and place of the accident, the road conditions, the names of witnesses, a brief description of how the accident occurred, and a description of the personal injuries and property damage caused by the accident.

When a CBA supervisor arrived 20 minutes after the accident occurred, she took a statement from the bus operator and recorded that statement on a "Supervisor's Investigative Report" form. Then she interviewed Terry and recorded Tourist's statement on the "Supervisor's Investigative Report" form. The supervisor noted all witnesses' names, addresses, and telephone numbers in her report. She took photographs of the accident scene, including the position of each vehicle. Finally, she drew a diagram of the scene on the last page of the "Supervisor's Investigative Report" form.

Terry has filed a personal injury action against CBA in federal court, properly invoking the court's diversity jurisdiction. Terry alleges that the bus operator, CBA's employee, was driving negligently. She further alleges personal injury and property damage in a total amount exceeding \$200,000. CBA has filed an answer denying the claim of negligence and asserting the comparative fault of Terry.

Terry served two requests for production of documents on CBA. (1) One request was for "any and all accident reports, diagrams, photographs, and any other documents which relate in any way to the collision between the bus and the car." (2) A second request was for the bus operator's "entire personnel file that is maintained by CBA, including disciplinary actions, safety records, and driving records." CBA has refused to produce the accident reports that the operator and the supervisor created on the grounds that the reports were "prepared in anticipation of litigation." In addition, CBA refuses to produce the bus operator's personnel file because the information that it contains "is not relevant."

Terry has made a motion to compel production of (1) the accident reports and (2) the bus operator's "entire personnel file."

How should the trial judge rule? Why? (5 points for each request).

NOTE: This question comes from the February 2007 Arkansas Bar Exam (MEE).

# Black Forest Ham

The Black Forest Ham has never been better. Not only is it a \$5 FOOTLONG™ every day, this April it's a \$3 Six-Inch Select as one of our April Featured Values! Load it up with all the crunchy veggies you like on your choice of freshly baked bread. Even try it fresh toasted with melty cheese and mustard. Yum!



### Nutrition information

Default nutritional values are based on the standard 6" sub recipe. Values and portion size will automatically update when the Calculate Yours feature is used.

<b>SERVING SIZE (g)</b>	221
<b>CALORIES</b>	290
Calories from Fat	40
<b>TOTAL FAT (g)</b>	4.5
Saturated Fat (g)	1
Trans Fat* (g)	0
<b>CHOLESTEROL (mg)</b>	25
<b>SODIUM (mg)</b>	800
<b>CARBOHYDRATES (g)</b>	46
Dietary Fiber (g)	5
Sugars (g)	8
<b>PROTEIN (g)</b>	18
<b>VITAMIN A % DV</b>	8
<b>VITAMIN C % DV</b>	20
<b>CALCIUM % DV</b>	30
<b>IRON % DV</b>	15

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6"sub\*



Prices and participation may vary. Additional charges for extras. Plus tax. Prices higher in Alaska and Hawaii.



\*Heart-Check certification mark next to a menu item refers to designated 6-inch sandwich and salad meals prepared according to standard recipe served with apple slices and water. Certified salad meals may only include Sweet Onion Dressing. Certified kids meal includes the following: Kid's sandwich, apple slices and 12 oz. low fat-milk. Addition of ingredients or condiments containing sodium or fat may result in a meal no longer meeting the AHA meal criteria.

*While many factors affect heart disease, diets low in saturated fat and cholesterol may reduce the risk of this disease.*

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## ESSAY QUESTION TWO

2. Frank the Gourmand loves a fresh sandwich. In particular, he enjoys eating at Subway. His favorite is the Black Forest Ham, loaded with veggies, on a Monterrey Cheddar bun. During April he has enjoyed it six times, always buying the \$5 Footlong Special.

But he has recently learned that the bun is only 11 ½ inches. He is dismayed. Using a calculator he discovered that he is receiving 4% less sandwich than he believed.

Dismayed, Frank has brought a class action lawsuit in federal court, properly invoking subject matter jurisdiction. He has asserted theories of fraud, breach of warranty and unjust enrichment. He seeks compensatory damages, punitive damages, and disgorgement of profits. He has asked to be certified as the representative of “a class of individuals who, in good faith reliance on Subway advertisements of a sandwich that is 12 inches in length, purchased such a product but instead received a shorter sandwich than that advertised; such class being limited to consumers in Arkansas in the past two years.” The defendant is Hog, Inc, which operates 12 Subway outlets in Northwest Arkansas.

You have finished your first year of law school. You are clerking for the ABC law firm. It represents Hog, Inc in this matter.

It is Monday, May 13, your first day on the job: Senior Partner Patty comes to you: “Lucy/Larry Law Clerk. Welcome to the firm; welcome to the real world of litigation, not the ivory tower of law school. I know you have had passed Civil Procedure; now lets’s see what you can do.

Our client Hog, Inc has just been sued. There are no problems with jurisdiction, venue or the method of service. I don’t care about the substantive law or the three theories. My issue is: what procedural steps should we consider taking in this matter to represent Hog, Inc. I don’t want a treatise on class action; I don’t want you to give me all your notes on historical developments. I don’t even necessarily want depth. I want a list of bullet points, with perhaps a few relevant comments, that we may develop in our defense. Be creative; be thoughtful; be comprehensive, even though brief.

Come see me in 30 minutes and give me your report. Welcome to the real world. Remember this is the reason you came to law school; not just to read the outline that some unknown former student made and passed on to unsuspecting 1Ls.”

### ESSAY QUESTION THREE

3. Office Equipment Inc. (OEI) is a U.S. distributor of office machines. It is incorporated in Arkansas, where it has its principal place of business. British Copiers Limited (BritCo) is a manufacturer of copiers. It is incorporated in Scotland and has its principal place of business in London, England.

OEI sued BritCo, alleging that BritCo had breached a long-term contract to supply copiers to OEI. The suit was filed in the United States District Court in Little Rock, and OEI properly invoked the court's diversity (alienage) jurisdiction.

BritCo made a timely motion to dismiss the complaint on the ground that it was filed in violation of a forum selection clause in the supply contract that required all contract disputes to be adjudicated in London. While its motion to dismiss was pending, BritCo filed an answer to the complaint.

In its answer, BritCo denied breaching the supply contract. BritCo also made a counterclaim seeking damages for OEI's alleged breach of a contractual covenant not to compete with BritCo.

OEI filed a motion for judgment on the pleadings on BritCo's counterclaim, arguing that the covenant not to compete was unenforceable as a matter of law.

After a short period of discovery, the district judge issued the following two orders:

- 1) OEI's motion for judgment on the pleadings is granted. The contractual covenant not to compete is void as a matter of public policy and is therefore unenforceable. Given that this is strictly a legal issue and entirely severable from OfficeEquip's breach of contract claim, there is no just reason for delay, and I accordingly direct that judgment should be entered in favor of OEI on BritCo's counterclaim.
- 2) BritCo's motion to dismiss is denied. Enforcement of the forum selection clause would be unreasonable in this case. OEI has never done business in London, and it would be extremely inconvenient for it to litigate there.

Trial on the breach of contract claim is scheduled in three months.

1. Can BritCo immediately appeal the district court's order granting OEI's motion for judgment on the pleadings with respect to BritCo's counterclaim? Explain. (5 points)
2. Can BritCo immediately appeal the district court's order denying its motion to dismiss? Explain. (5 points)

NOTE: Do not discuss the merits of the issue on appeal; only whether an immediate appeal is appropriate.

NOTE: This question comes from the July 2011 Arkansas Bar Exam (MEE).