

Civil Procedure A
Fall 2000
Prof. Brill

Essay Question
(20 points)

In 1995 the State of Tennessee enacted Act 768, which provides:

"In all civil actions in which punitive damages are permitted, no claim for damages shall be filed containing a prayer for relief seeking punitive damages. However, a party may, pursuant to a pretrial motion and after a hearing before the court, amend the pleadings to include a prayer for relief seeking punitive damages. The court shall allow the motion to amend the pleadings if the moving party establishes at such hearing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages."

The Act was passed as part of a tort reform package. It was intended to eliminate the leverage or pressure that is presumed to follow when a plaintiff in her pleading seeks a large award of punitive damages. The Act has not yet been interpreted by the Tennessee courts.

Frances Forrest is a resident of Forrest City, Arkansas. She frequently works and shops in Memphis, Tennessee. While on one such trip to Memphis, she was in an automobile accident and suffered catastrophic injuries. The other vehicle was owned and operated by Missouri Computer Equipment, Inc. (MCE), which is a Missouri Corporation doing business in Tennessee, Arkansas, Mississippi and Missouri. Frances believes that the other driver, while on company business, was driving under the influence of alcohol. (Under the law of Arkansas, the use of alcohol while operating a vehicle raises the malice or continuation of reckless conduct in disregard of the consequences, thus providing a basis for punitive damages in Arkansas).

Frances sued MCE in state court in Arkansas, seeking \$80,000 in compensatory damages and \$1,000,000 in punitive damages. MCE admitted to personal jurisdiction in Arkansas, but then removed to federal court for the Eastern District of Arkansas.

The Eastern District of Arkansas accepted the case under removal jurisdiction. MCE has now filed a Rule 12(f) motion to strike the prayer for \$1,000,000 in punitive damages, arguing that the prayer is in violation of Act 768, and further that the claim for punitive damages in a motor vehicle accident is inconsistent with the Tennessee law on punitive damages. MCE has also filed a motion to transfer to Tennessee federal court under Section 1404; however, the judge has temporarily delayed any ruling or argument on that motion.

Frances responded:

- 1) Act 768 is procedural and is not binding on a federal court;
- 2) No federal law conflicts with Act 768;
- 3) Arkansas law permits punitive damages when alcohol is allegedly used by a driver;
- 4) If deemed necessary, the federal judge should now use FRCP 15 and should allow an amendment for punitive damages. Therefore the prayer for punitive damages should remain.

You represent MCE. You are standing in front of the federal judge. Make your argument to strike the prayer for punitive damages. Be organized, be creative, be thorough. Although you do not have to follow the format of the response of Frances, you must deal with all her points in some way. Set forth your argument as a primary position.

Note: After the exam, you may wish to look at Rhet Traband, An Erie Decision: Should State Statutes Prohibiting the Pleading of Punitive Damage Claims be Applied in Federal Diversity Actions, 26 Stetson L. Rev. 225 (1996) On the other hand, do not look at this article if it might lead to dismay or remove your Christmas joy.