

## Essay Question

1. This question has 5 subparts, each worth 4 points. Each subpart is independent of the other four. A brief paragraph or two should be sufficient for each question.

Tom Jefferson (a citizen of Virginia) traveled to Pennsylvania to see the Army-Navy football game. While he was there, he was in a car accident with Ben Franklin (a citizen of Pennsylvania).

- a) Tom files a personal injury lawsuit in the Commonwealth of Virginia in the proper state court, seeking \$50,000 in damages. As a part of the same action, he files a second count against Ben, seeking \$125,000 in damages based upon the defamatory statements that Ben made about Tom immediately after the accident. The allegations state that Ben angrily shouted to the gathering crowd, "I know this guy Tom. He is a convicted burglar."

Traveling in Virginia, while Ben was he was served with a summons. Ben petitions to remove the entire case to Virginia federal court. Should the case be removed? Discuss.

- b) Assume the motion to remove is granted. Virginia Rule of Civil Procedure 9(b) provides that defamation claims must be pleaded with particularity. Tom's allegations are written in general terms. Ben objects and moves to strike or dismiss those claims alleging defamation. How should the federal court rule? Discuss.

Note: See Rule 81(c) (first sentence only).

- c) After the complaint was filed and removed, Ben wrote to Tom: "I hold no ill will against you, but you are sadly mistaken. I am a quiet guy and I never made any statement at the time of the accident. To the contrary, I tried to assist you and seek medical help for you. I believe it was a stranger in the crowd who made those statements. I am asking you to promptly drop the defamation claim against me. Sincerely, Ben."

Tom does nothing. Six months later it is determined by the federal court that Ben made no such statement. Ben now seeks compensation based upon the letter and the subsequent events. How should the federal judge rule? Discuss."

- d) Ben files a motion raising 12(b)(6) issues, as well as a motion for a more definite statement. While that combined motion is pending (and a week after that motion was filed), Ben files a 12(b)(2) and 12(b)(5) motion, arguing that he was lured into Virginia by the fraudulent acts of Tom.

Should the, federal court consider the 12(b)(2) and 12(b)(5) motion? Discuss. (Note: you do not need to discuss the merits of the motion; the issue is only whether the court should even hear the motion).

- e) Tom dies before the case goes to trial. Virginia statutory law provides that defamation claims end with the death of the plaintiff. Pennsylvania case law provides that defamation claims survive and continue after the death of the plaintiff. The law is based on a 1999 decision from the Pennsylvania court of appeals, which was not reviewed by the highest court in the state, the Pennsylvania Supreme Court. Federal law is non-existent on this issue.

Defendant has now moved to dismiss the defamation claim. How should the federal judge rule? Discuss.