



1. Patsy Plaintiff brings an action in federal court against Dave Defendant for infringement of a federal copyright Patsy Plaintiff holds on a book. The case is tried to a jury. Note: each of these subparts stands independently, each is worth 2 points, each needs only a short answer (probably 2 or 3 sentences).
  - (A) Dave Defendant moves for judgment as a matter of law (directed verdict) at the close of Patsy Plaintiff's evidence. The motion is denied. Dave Defendant renews the motion after presenting his own evidence. The motion is denied again. The jury is instructed, deliberates, and returns a verdict for Patsy Plaintiff. May Dave Defendant now move again for judgment as a matter of law (j.n.o.v.)? (2 points)
  - (B) Dave Defendant moves for judgment as a matter of law (d.v.) at the close of the evidence. The motion is denied. The jury returns a verdict for Dave Defendant. Patsy Plaintiff believes that the jury's verdict is completely unsupported by the evidence.
    - (1) May Patsy Plaintiff now move for judgment as a matter of law (j.n.o.v.)? (2 points)
    - (2) May she move for a new trial because of the sufficiency of the evidence? (2 points)
  - (C) Dave Defendant moves for judgment as a matter of law (d.v.) 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 completely unsupported by the evidence. Three days after judgment is entered, Dave renews his motion for judgment as a matter of law, under Rule 50(b). 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. What happens next? (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 probably should have been excluded. Although he did not object at the time, Dave Defendant researches the evidentiary issue and concludes that the evidence was indeed improperly admitted. Within ten days, Dave Defendant makes two motions, one for a new trial on the ground that the evidence should have been excluded, and a second motion for judgment as a matter of law (j.n.o.v.) on the ground that without the inadmissible evidence, Patsy Plaintiff's case was too weak to go to the jury.

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

(2 points)

(2) Does the judge have the authority to grant the motion for judgment as a matter of law? (2 points)

(F) Dave Defendant filed a motion for d.v. at the conclusion of all the evidence, but it was denied and the jury ruled for the plaintiff. Now Dave Defendant moves for judgment as a matter of law (j.n.o.v.) and for a new trial on the grounds that the verdict was against the weight of the evidence and that the judge's instructions to the jury were improper. Dave did object in a timely fashion to the proposed instructions. The judge denies both motions. Dave Defendant appeals. What will happen if the court of appeals:

(1) concludes that judgment as a matter of law (j.n.o.v.) should have been granted? (2 points)

(2) concludes that j.n.o.v. was properly denied and that the verdict was not against the weight of the evidence but that the instructions were improper? (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)

2. For several years, Ed Employee worked for Bill Boss at Custom Computers in Bordertown, Texas. Employee was Boss's sole employee. Together they assembled and sold customized computer hardware and software to local businesses in Bordertown and in surrounding communities, including Eastville, which is located in Oklahoma. Boss is a citizen of Texas. Employee, on the other hand, lives in Eastville and is a citizen of Oklahoma.

On January 1, 2001, Boss fired Employee. On February 1, 2001, Employee opened a new business, Ed's Customized Computers, in Eastville, and began soliciting customers from among the businesses that previously had done business with Boss's firm. Employee won business, in part, by telling Boss's former customers that "I did all the work when I worked for Boss" and that "Boss is a drunken bum who cannot be relied upon."

In late 2001, Bill Boss sued Ed Employee in federal district court in Eastville, alleging that Employee had stolen most of Boss's customers and caused Boss damages of more than \$100,000. The complaint alleged that Employee had "maliciously interfered with Boss's contractual relationships with former customers by lying about the extent of Employee's role in Boss's business and by lying about Boss's drinking habits."

Both Texas and Oklahoma recognize the tort of malicious interference with contractual relations. The law of each state provides that "malice" exists only when one person interferes with another person's contractual relationships either (a) with improper motive—that is, with intent to injure the plaintiff's business for a purpose other than competition, or (b) by improper means—that is, by means that are civilly actionable or criminally unlawful.

Employee filed a motion to dismiss the complaint for failure to state a claim upon which relief could be granted. Employee attached to the motion to dismiss an affidavit in which Employee swore "that employee's efforts to take Boss's customers away were motivated not by malice but by an honest desire to compete and win the business for Employee."

The trial judge accepted Employee's motion and affidavit, treated the motion as a motion for summary judgment, and gave Boss the opportunity to file opposing affidavits. Bill Boss filed a memorandum in opposition to Employee's motion but did not attach any documents or affidavits. How should the trial judge rule on Ed's motion? Discuss.

NOTE:

This question comes from the July 1995 Arkansas Bar Examination.