

**Civil Procedure Fall 2006
Midterm Exam
Professor Kimberly Kirkland**

Instructions---please read carefully.

PLEASE USE THE EXAM NUMBER THAT IS ON FILE WITH THE REGISTRAR'S OFFICE

Due between 2:00 – 2:30 p.m. in the Registrar's office, Saturday, October 14, 2006.

1. Format:

- Your answer must be typed. Type on only one side of each page.
- You are limited to a **total** of five typewritten pages for your answer.
- Your answer should be double-spaced. Use 8 1/2" x 11" paper. Use 1 1/2 inch left margins. All other margins should be 1 inch. Use 12 point (or larger) Times New Roman font.
- Put your **exam number** on the top of each typewritten page you turn in. Place a page number on the bottom of each page you turn in. The exam and page numbers may be handwritten.

2. Honor Code Issues:

- You are NOT permitted to **discuss your exam answer, or questions you have about the exam, with anyone other than the Registrar until all students have completed the exam. If you do, your score for the exam will be 0, and I will pursue honor code charges.**
- You may use an outline you prepared, your textbook, and your rulebook to help you answer the questions. You may use any commercial study aids that you find useful to help you to understand the material. You shall not do any legal research to help you answer questions. Do not read or consult any judicial opinions other than the excerpts of opinions in your textbook and the cases assigned in the syllabus. This is a test of your analytic skills; it is not a test of your ability to find cases or narratives setting forth analysis performed by others. Violation of the instructions constitutes an honor code violation.
- Although you may refer to commercial outlines if you feel they help you understand the material, they are not authority for your answers. In other words, if you are stating the rule or test that **applies** in a given situation, you need to cite the Federal Rule of Civil Procedure and/or the judicial opinion you were assigned that addresses that rule or test. Gilbert's, Emmanuel's and the like are not sources of law. If you quote material you did not author in your exam answer, you must

Chelsea Taylor was a contestant on a reality television series¹ called "Project Catwalk." Project Catwalk is the creation of Project Catwalk Productions, Inc., a Delaware corporation with its principle place of business in New York, New York. Project Catwalk's producers select 15 budding fashion designers from across the country to compete for the chance to show a collection of their women's clothing designs as part of New York Fashion Week. Every year during Fashion Week well known designers show their new fall women's clothing collections. Only the most successful designers are asked to participate so the opportunity for three Project Catwalk contestants, all newcomers to the design world, to show their designs is a prize in and of itself. After fashion week the Project Catwalk series judges select the winning contestant who receives \$100,000.00 to start his or her own fashion design company.

The weekly television series chronicles the process of whittling the field of 15 contestants down to three finalists who will showcase their creations in front of a large audience at Fashion Week. Each week the contestants are presented with a design task. Each contestant has 48 hours to design an outfit, select fabric, and fabricate the garment. One week the challenge might be to design an outfit for a woman and her dog going for a walk in Central Park; the next week the contestants might be asked to design an outfit for an international jet setter- an outfit that could be worn on an overnight transatlantic flight and into next day without looking wrinkled. The design tasks on Project Catwalk are the inspiration of Tim Dunn, Project Catwalk's on and off camera design director. Dunn is the fashion director at Larson's School of Design in New York City where the Project Catwalk competition takes place. Throughout the 14-week competition, Dunn coaches the contestants through the challenges giving them feedback on their works in progress.

Once the contestants have completed their designs, their creations are displayed on the "runway" and evaluated by four judges. Heidi Plum, a supermodel, who is a German citizen and Michael Storrs, a well-known and highly successful fashion designer who lives and works in New York City are regular judges.

Chelsea was selected as one of 15 contestants for Project Catwalk's third season. Before she was selected for the 14-week competition, Chelsea ran her own small clothing shop in San Francisco where she lives.

When Project Catwalk's producers offered Chelsea a place as a cast member for the show, they asked her to sign several contracts. The first contract, which was labeled "Recording Contract" provided that in exchange for the opportunity to compete in Project Catwalk, Chelsea consented to the video and audio recording of her participation in the contest and to the broadcast of any of the material recorded. The contract contained an exception that prohibited the producers from recording or broadcasting anything that constituted "purely personal matters".

¹ The term "reality television series" is used to refer to television programs that feature casts made up of real people rather than actors.

audio recording she gave when she signed the Recording Contract. Chelsea alleges she had a serious boyfriend in San Francisco and he left her after watching the broadcast. The complaint also includes a count alleging breach of contract against Project Catwalk for breach of the “purely personal matters” provision of the Recording Contract. She is seeking a total of \$100,000.00 in damages against Project Catwalk. The complaint contains an allegation that Project Catwalk's President, Jules Davis, is a kleptomaniac.

In her complaint, Chelsea has also brought claims against Heidi Plum and Michael Storrs for intentional infliction of emotional distress. She claims that their disparaging remarks caused significant emotional distress. She claims damages of \$50,000.00 against Plum and \$50,000.00 against Storrs.

Question One

Your assignment:

You represent Project Catwalk. You have researched the federal Electronic Recording Privacy Act and you believe Chelsea’s complaint states a claim under the statute. You also have concluded she has stated a claim for breach of the Recording Contract. The President of Project Catwalk, Jules Davis, tells you that when Chelsea left the show, she refused to provide the producers with a copy of her sketches for the garments she designed for the show. Davis believes that this constitutes a breach of the Clothing Production Contract. You have researched New York Law and reviewed the contract and you agree. You have concluded Project Catwalk can claim damages for this breach in the amount of \$10,000.

Davis also tells you that Tim Dunn violated company rules when he told the camera people to record Chelsea and Seth’s conversation. The President tells you Tim has significant assets as a result of several endorsement deals he has made since Project Catwalk has become a success and he has become a celebrity. Davis also tells you that Plum and Storrs’ contracts with Project Catwalk (the “Judges’ Contracts”) include promises that they will not “disparage the contestants personally”. The contracts include \$80,000 liquidated damage provisions for breach of these provisions. Davis believes that Plum and Storrs comments violated their contracts. You have reviewed the contracts and believe you can state a claim against Storrs and Plum for breach of the Judge’s Contract.

You would prefer to litigate this case in state court if possible because the state court decides cases far more quickly than the federal court, which has a substantial backlog. Project Catwalk would like to get this case over with so it can begin its next season without the distractions of this lawsuit.

Davis also tells you that Project Catwalk has a contract with Plum to host another series called “Europe’s Top Models” and Plum refused to show up for the scheduled pre production meetings. You have reviewed the contract and you believe Plum breached the

The defendant's conduct was outrageous;

The defendant's actions were intentional or reckless;

The plaintiff suffered severe emotional distress; and

The plaintiff's emotional distress was proximately caused by the defendant's conduct.

Damages

4) New York law recognizes the doctrine of Respondeat Superior. In other words, in New York an employer may be held liable for the conduct of his or her employees and, accordingly the employer may sue the errant employee to recover any amount it has to pay the plaintiff for the employee's wrongdoing.

5) New York has adopted Rules of Civil Procedure identical to the Federal Rules of Civil Procedure