

Civil Procedure Fall 2005
Midterm Exam
Professor Kimberly Kirkland

Instructions—please read carefully.

Pick up exam in registrar's office, Friday December 21, 2005 at 2:30 p.m.

Due in my secretary Clare Mallinson's office, Saturday, October 22nd at 2:30 p.m.

Clare will be available to receive exams from 1:00 p.m. to 2:30 p.m.

Format:

Your answer must be typed. Type on only one side of the page.

You are limited to a **total** of six typewritten pages for your answers. (Suggested breakdown – 3 pages for question 1 and 3 pages for question 2.)

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 11 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. Both the exam number and the page numbers may be handwritten.

Honor Code Issues:

You are NOT permitted to **discuss your exam answers, or questions you have about the exam, with anyone other than the Registrar until all students have completed the exam. If you are working on the exam in proximity to other students in the class, make sure you are far enough from the nearest student(s) so that you are unable to see the rules, cases, and notes others are consulting as well as what they are writing. If you violate the instructions, I will pursue honor code charges and your grade will be adjusted accordingly.**

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. 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.

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 in the text that addresses that rule or test. Gilbert's, Emannuel's and the like are not sources of authority. If you quote material you did not author in your exam answer, you must use quotation marks to identify the language as non-original and you must cite the source.

You may cite cases from the text book using one of the parties names (e.g. Conley) and you may cite the Federal Rules of Civil Procedure as follows: FRCP 15.

You are NOT permitted to ask me any questions during the exam period.

Test Taking Pointers:

Think before you begin writing. Organize your answer and thoughts before you begin writing.

If your answer to an issue eliminates other issues clearly raised by the hypothetical, assume that the other issues will arise and discuss what would happen if the court addressed those issues. For example, if you conclude the complaint will be dismissed on statute of limitations grounds but the facts clearly raise an issue about whether the joinder of two parties as plaintiffs was appropriate, discuss the joinder issue even if you believe “in real life” the court would not reach that issue because the complaint would be dismissed on statute of limitations grounds.

Explain your conclusions. That is, with respect to each issue raised in the exam, make sure you do “a” and “b” below. Do “c”, and “d” where appropriate.

- a) Identify the applicable law (FRCP and/ or case law).
- b) Apply the applicable law to the facts given in the hypothetical, discussing any factual nuances that create uncertainty in applying the rules.
- c) If there is applicable case law on point, analogize and or distinguish the facts of the precedent to help you decide the “gray” areas raised by the hypothetical.
- d) Identify the policies underlying the relevant procedural rules and doctrine where appropriate (probably only where you encounter a “gray” area)

Some of the names used in the question below are the names of living individuals and existing corporations. The scenarios that follow are purely fictional. Use only the facts I give you in answering the questions asked. Do not assume any facts you may know independently about these people or entities.

Failure to follow any of these instructions may result in loss of points.

Angela Adams is a fashion and home furnishings designer. She designs high-end, contemporary rugs and handbags and paper goods. Her designs are remarkable for their 'retro'¹, geometric patterns and striking color combinations. For the first eight years she was in business Adams sold her products from her storefront in Portland, Maine.

Recently, Adams has begun marketing her wares to large, national catalog and 'brick and mortar'² retailers. In 2003 she entered into an agreement with Garnet Hill, a catalog retailer that sells upscale linens and women's fashions. Garnet Hill is incorporated in Delaware. Its headquarters and all of its facilities are located in Franconia, New Hampshire. The Adams-Garnet Hill agreement provided that Adams would design a line of women's handbags exclusively for Garnet Hill for the 2004- 2006 summer and winter seasons. In exchange Garnet Hill agreed to purchase a minimum 500 handbags for \$125.00 per bag. Under the agreement's "success clause" if Garnet Hill receives orders for more than 500 bags it agreed to purchase 500 additional handbags at a price of \$100.00 per bag. Garnet Hill further agreed it would market only one other line of women's handbags and that those handbags would be equivalent in quality and price to Adams' handbags.

Around the same time, Adams entered into an agreement to design an exclusive line of area rugs for Design Within Reach (DWR), a catalog and 'bricks and mortar' retailer of contemporary home furnishings. DWR is incorporated in Delaware and has its principal place of business in Seattle, Washington. The agreement provided that Adams would design a line of area rugs exclusively for DWR. In exchange, DWR agreed to buy 500 rugs at a price of \$1000.00 per rug. Under the agreement's "success clause", if DWR received orders for more than 500 rugs, it agreed to purchase another 400 rugs at \$750.00 per rug. In addition, DWR agreed it would sell only two other lines of rugs and that those rugs would be of equivalent quality and price as Adams' rugs, but of distinguishable style.

Last year a clothing and house wares manufacturer, Elie Tahari Inc., approached both Garnet Hill and Design Within Reach and offered to produce a line of handbags and rugs and sell them to Garnet Hill and Design Within Reach respectively, at about half of the cost of Adams' products. Tahari proposed that Garnet Hill and Design Within Reach each pay 50% of the cost of the software it would need to design patterns reminiscent of, but not identical to, Angela Adams' designs. Both Garnet Hill and Design Within Reach agreed.

¹ "Retro" refers to "A fashion, decor, design, or style reminiscent of things past". Dictionary.com.

² "Brick and mortar" means "located or serving consumers in a physical facility as distinct from providing remote, especially online, services: *brick-and-mortar classrooms; a brick-and-mortar bookstore.*" Dictionary.com

Garnet Hill began marketing a line of handbags designed and manufactured by Elie Tahari Inc. under its own label in July. DWR began selling its own line of area rugs, designed and manufactured by Tahari, at about the same time. Both Garnet Hill's handbags and DWR's rugs are priced considerably less than Adams products. As a result, neither Garnet Hill nor DWR sold enough Adams' goods to trigger the success clauses of their respective contracts.

Question One (50%)

You represent Angela Adams. You must decide which claims you will assert, against whom and where to file. You prefer to litigate in the state court in Maine rather than in the United States District Court in Maine because the federal court is located several hours away in Augusta. To avoid the additional travel costs, you will take whatever steps are necessary to ensure the defendant cannot remove the case to the USDC. You are very concerned that although Adams' business is really starting to take off, litigating multiple lawsuits will be more expensive than she can afford. If you can resolve all of her problems in one lawsuit you will do so. Elie Tahari, Inc. is now bankrupt so it is not a viable defendant.

Assume you have done some legal research and believe you have viable causes of action for 1) breach of contract under Maine law, 2) conspiracy to interfere with contractual relations under Maine law and 3) violation of the Federal Unfair Methods of Competition Act. You should not spend time or space comparing the facts to the elements of any of these causes of action for purposes of deciding what claims to bring; you should just assume that any of them may be asserted for purposes of answering.

You should know that to prevail on the conspiracy to interfere with contractual relations claim you will need to prove (among other things) that the defendant agreed to interfere with contractual relations.

You should also know that the Maine Rules of Civil Procedure are identical to the Federal Rules of Civil Procedure.

Question Two (50%)

Assume the facts set forth above, but assume that Adams sued Garnet Hill and Design Within in Reach in the United States District Court for the District of Maine. (This is not an indication of how the question above should be resolved.) You now represent Design Within Reach.

Garnet Hill bought furniture for its headquarters from Design Within Reach. Garnet Hill has had problems with the furniture purchased for its outdoor dining area. All of the tables, chairs and benches discolored in the weather within the first three months of their purchase. Garnet Hill has had to replace all of the DWR outdoor furniture at a cost of \$90,000.

Assume that Garnet Hill's cross-claim complaint against DWR reads as follows:

Garnet Hill v. Design Within Reach
(Breach of Contract)

1) Garnet Hill and Design Within Reach entered into a contract for the sale of furniture. Design Within Reach, a pretentious and over priced seller of home furnishings, breached that contract. Garnet suffered damages as a result.

Wherefore Garnet Hill requests damages in the amount of \$90,000.

How will you respond to the complaint? If you decide to bring one or more motions, make the arguments you would make in support of those motions in your answer and tell me whether you think the arguments are likely to be successful.

The Law:

1) The Maine Rules of Civil Procedure are identical to the Federal Rules of Civil Procedure.

2) The elements of Breach of Contract in Maine are as follows:

1) A contract exists between the parties

Requires proof of:

Offer

Acceptance

Consideration

and,

2) One of the parties to the contract breached its obligations under the contract;

Requires proof of

The terms of the contract and

A material breach of one of the terms by the defendant(s)

and,

3) The non-breaching party suffered damages as a result.