

Examination Number \_\_\_\_\_

UNIVERSITY OF MISSOURI -- SCHOOL OF LAW

Professor Carl H. Esbeck

Fall Semester 2013

Civil Procedure I, 5010L -- Section 1

Directions to Part I -- Essay  
(1 hour and 20 minutes)

Do not start the examination until instructed to do so by the proctor. However, you may read the instructions on this first page.

Place your examination number in the upper right-hand corner of this examination.

Answer only the questions asked. Do not raise or answer questions not asked.

Arrange your answers including subparts in sequential order. That is, put your answer to Question 1 first, then your answer to Question 2, and etc. If you want to skip over a question and come back to it later, leave a page or two blank and begin the next question.

When finished, return these essay examination questions and submit your essay answers.

You are encouraged to use your laptop to complete Part I. It is to be taken in the Closed Laptop Mode

If you do not use your laptop, write your answer in the bluebook provided. Use a pen with blue or black ink. Write on only one side of each page. Do not write in the left-hand margin. Do not tear pages out of the bluebook.

You may bring with you into the examination room your casebook, TWEN downloads, 2013 federal rules supplement, and your own classroom notes (not borrowed notes).

You may also bring a course outline provided it is entirely your own work product. Copying the outline of others or copying the work of another is not permitted. Your outline is subject to being collected at the end of the examination. This would be done only to ensure that the outline you use is entirely your own work product. It is an Honor Code violation to have any other materials with you during the examination.

**\* \* \* Part I begins on the Next Page \* \* \***

**PART I -- ESSAY (1 hour and 20 minutes)**

**Question 1 (20 minutes):** Mr. and Mrs. Peterson have operated a farm in western Iowa for the past forty years until their retirement in 2011. In the final twelve months before retirement they were helped by a farmhand, Dean, who had drifted in from California. Closing down a farm operation is a lot of work, and Dean, a young man in his 20s, was of considerable help to M/M Peterson. In December 2011 the farm passed to the new owners and M/M Peterson moved to a nearby small town. Dean went back to California with what had been M/M Peterson's new pickup truck towing a new Slip-Stream Trailer. The truck and trailer had earlier that year cost M/M Peterson \$130,000.

In January 2012 M/M Peterson separated and by April 2012 it was apparent there would be no reconciliation. Mrs. Peterson promptly moves to San Diego, California, to be near her daughter.

On several occasions that summer and early fall, Mr. Peterson demands that Dean return the truck and trailer. Dean declines, claiming the vehicles were in payment for his work. In November 2012, Mr. Peterson files a lawsuit against Dean in the federal district court in Iowa. The suit seeks return of the two vehicles, or in the alternative damages in the amount of \$130,000. Dean timely files an answer denying the allegation and setting forth the ordinary defense that the vehicles were in payment for work in helping M/M Peterson close their farm. On the same day, Dean's lawyer files a Motion to Dismiss pursuant to Rule 12(b)(7), pointing out that Mr. Peterson failed to join Mrs. Peterson. Dean's motion claims that Mrs. Peterson is a necessary party because, if the vehicles are indeed the property of M/M Peterson, then Mrs. Peterson would have an undivided one-half interest in the vehicles. Dean's motion goes on to argue that because the joinder of Mrs. Peterson would destroy diversity, the court should dismiss. Mr. Peterson opposes the motion.

How should the federal district court rule on the Motion to Dismiss? Explain.

**Question 2 (10 minutes):** Federal Rule of Civil Procedure 4(k)(1)(B) [the "bulge rule"] appears to permit personal jurisdiction over a defendant found within a 100 mile radius of a federal courthouse even though the defendant, brought in under Rule 14 or 19, has no contacts in the state where the courthouse is located nor need the claim arise there. Is Rule 4(k)(1)(B) unconstitutional? Explain.

**Question 3 (50 minutes):** Paul and David are employed at Sun Systems Technologies, Ltd. (SST), in Albuquerque, New Mexico. David's wife, Sally, also works at SST. SST has an employee handbook, and its policies are a part of the employer-employee contract. In the last section of the handbook it says that should a dispute arise concerning the terms and conditions

set forth in the handbook, then the courts of New Mexico shall have exclusive personal jurisdiction over the lawsuit. One of the policies in the handbook is that no conversations are to be recorded during the course of employment without the expressed written permission of at least one party to the conversation. A second policy is that no dating or other romantic relationship is to occur between SST employees where one party is the supervisor of the other. The handbook explains that such relationships are often not consensual and lead to sexual harassment lawsuits.

David is an accountant. Paul and Sally are both computer hardware engineers, and their jobs entail frequent travel to customers to provide technical services and thereby promote sales of SST products. Paul is Sally's immediate supervisor. In late February of 2013 Paul traveled on business to Microsoft headquarters near Seattle, Washington. David suspected there was a romantic relationship between Sally and Paul. So David secretly put a phone tap and recording device on Sally's desktop telephone at work. Sure enough, while Paul was at Microsoft headquarters he telephoned Sally several times on his work phone and the conversations revealed a romantic and, indeed, sexual relationship, between them. A total of six such conversations were secretly recorded by David.

David first confronted Sally with the tapes at their residence in Albuquerque, and Sally later that day told Paul that their relationship had been discovered. The next work day, David told Paul's supervisor about the romantic relationship involving Sally, in particular revealing that on business trips Paul and Sally had stayed at the same hotel in Seattle where the relationship began. Paul is fired by SST because he violated the company policy. A reprimand is placed in Sally's personnel file, and her last pay raise is rescinded. David is also reprimanded by SST for the phone tap and recordings, both contrary to company policy.

Within a week Paul leaves Albuquerque to seek new employment in the technology corridor along the Pacific Coast states of California, Oregon, and Washington. Two weeks later Sally quits her job and goes to travel with Paul and to also look for new employment. David and Sally have a nine month old child, Linda. Sally abandons Linda to David's care.

Eight months pass. Sally has found employment as an engineer in the Silicone Valley area of California. Paul is staying with Sally off and on while continuing to look for work with employers along the Pacific Coast corridor. Paul and Sally file a tort claim against David in a state court of general jurisdiction in the State of Washington citing the phone tap and recordings. Paul and Sally claim an invasion of their privacy when Paul made the six calls to Sally, and each seeks damages in the form of humiliation for exposure of their private lives and for lost wages. Paul seeks \$300,000, and Sally seeks \$100,000. Sally alleges that it took her four months to find a new job, whereas Paul alleges he is still looking for suitable employment.

Under the law of Washington, telephone recordings are unlawful unless done with the expressed permission of everyone who is a part of the conversation. Under the law of New

Mexico, the phone tap and recordings are not prohibited. Paul and Sally’s lawsuit not only cites the law of Washington, but they refer to the SST employee handbook as having given rise to their expectation of privacy. The State of Washington has the same long-arm statute as Missouri; the State of New Mexico has the same long-arm statute as Florida. SST is a Delaware corporation with its principal place of business in San Francisco, California.

**Subpart A:** David is personally served in Albuquerque with summons and complaint. David timely removes the lawsuit to federal district court in the State of Washington, and the following day files a Motion pursuant to FRCP 12(b)(2). Paul and Sally timely oppose the Motion to Dismiss but not the removal. How should the federal district court proceed and why? Explain.

**Subpart B:** Assume that the federal district court—rightly or wrongly—denies the Motion to Dismiss in Subpart A, and does nothing else. [Do not be concerned any longer with the court’s handling of the matter in Subpart A.] David now brings a counterclaim against Sally for past child support in the amount of \$8,000, and seeks an order for future child support payments of \$1,000 per month. Sally timely files a Motion to Dismiss the counterclaim arguing that the court lacks personal jurisdiction. How should the federal district court rule on this Motion to Dismiss? Explain.

\* \* \* END OF PART I \* \* \*

**Turn in both these examination Questions and your Answers. After a 10 minute break, all students will begin Part II together.**