

For each of these essays I suggest that you allot 65 minutes – 10 minutes to read the question and diagram your answer, and 55 minutes to write/revise your answer.

ESSAY NUMBER 1

Facts:

Peter Petty is a medical student at the University of Chicago. He is originally from Columbia, Missouri. He has lived in Chicago attending school for the last four years and is about to graduate. He has financed his education by buying old muscle cars that are basically in good condition, fixing them up and detailing them, and then reselling them. One day he sees a 1965 Porsche Spyder for sale on E-Bay. The car is described as being in “good condition” with a “fresh 470 horsepower engine”. Peter submits a bid for \$50,000. He knows a commodities trader who has made clear that he would buy a fully restored ‘65 Spyder for \$80,000.

E-Bay is an on-line auction site that allows people to list items for sale on a website. The listings function like advertisements – technically they are solicitations of bids. Buyers can view the listings and submit bids through the site. E-Bay essentially acts as a broker for the sale – it charges the seller a fee for the listing and another fee if a successful sale is made.

Peter receives an email from E-Bay informing him that his was the winning bid on the Spyder and that the seller is a company called Diamond Motors (DM) in Osage Beach, Missouri. DM operates a used car lot in Osage Beach and also sells cars over the internet using sites like E-Bay and Craigslist. Peter calls DM and speaks to Danny Diamond, the proprietor. Peter tells Danny that he lives in Illinois and so they agree to enter into the sales contract by fax. Danny faxes an unsigned contract to Pete. The contract states that any disputes arising out of the transaction are to be decided under the laws applicable in Camden County, MO (where Osage Beach is located), and further that the contract is not binding until accepted by the seller. Pete signs it and faxes it back. Then Danny signs it and faxes a copy of the contract with both signatures on it back to Pete, for his records. Once Peter receives the contract with Danny’s signature, he wires \$50,000 to a bank in Osage County. On Danny’s recommendation he also arranges to have a car transport company from Columbia, Tom’s Transport, pick up the Spyder from DM’s lot and deliver it to him in Illinois.

Problems ensue: The driver from Tom’s Transport is an idiot. He manages to back over Peter’s regular car, a ‘98 Ford Tempo, causing approximately \$5,000 worth of damage. Worse, the Spyder is non-operational. The clutch, brakes, and engine are all ancient and in terrible condition. Pete has to pay a tow company to bring the Spyder to a garage, where he ends up paying storage and repair fees of \$10,000 just to get the car operational enough to sell it for \$20,000.

Peter files suit in against DM and Danny Diamond in federal district court for the Northern District of Illinois. He alleges that DM and Diamond committed common law fraud and seeks

\$90,000 – the amount he would have sold the fully restored car for plus the \$10,000 he had to pay to fix it up – in compensatory damages and the same amount in punitive damages. He also sues Tom’s Transport for the \$5,000 of damage Tom caused when he totaled Peter’s Ford Tempo. Service is properly made on each defendant.

Some pertinent information:

Last year Diamond Motors sold 158 cars, including five over the internet to buyers in Illinois.

The Illinois Long-Arm Statute, S. 209 of the Code of Civil Procedure, reads in relevant part: **“Any person, whether or not a citizen or resident of this State who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person to the jurisdiction of the Courts of this State as to any cause of action arising from the doing of any such acts:**

- (A) The transaction of any business within this state;**
- (B) The commission of a tortious act within this state.”**

After Peter graduates, he must do his residency. To do a residency, med. students go through a competitive process known as “the Match.” Students apply to residency programs, which invite selected candidates for interviews. After the interview period is over, students submit a “rank-order list” to a centralized matching service. Similarly, residency programs submit a list of their preferred applicants in rank order to this same service. The two parties' lists are combined by a computer which matches residents to programs using an algorithm. By entering the Match system, applicants are contractually obligated to go to the residency program at the institution to which they were matched and programs are obligated to take the applicants who matched into them. Peter really wants to go to a program in Minnesota, but there is a program in Chicago that is his second choice (and he is perfectly happy living in Chicago). He applies to several programs, listing the Minnesota program first and Chicago second. In March, right around the time that the car debacle happens, he gets “Matched” to the Minnesota program. Peter’s lawyer files the complaint just before Peter actually moves to Minnesota.

Question: What procedural defenses can the Defendants bring in this case?

- **Organize your answer by defense.**
- **Include the arguments for the defense, arguments against it, and your assessment of who is likely to prevail.**
- **If there are additional facts that would help you make an argument, state what that information is.**

ESSAY NUMBER 2

Facts:

In 1982, a terrible plane crash happened just outside of New Orleans, LA. A Pan-Am flight taking off from the airport hit a wind shear, crashed, exploded, and burned, killing all 153 people on board. Forty-two of those people were foreign nationals from Uruguay who were travelling in the U.S. as part of a package vacation. The survivors of the deceased individuals from Uruguay file wrongful death and survival claims against the airline, the airport, and the airplane's manufacturer in the Eastern District of Louisiana. The plaintiffs are all Uruguayan citizens who live in Uruguay. The defendants are all U.S. companies.

The defendants all immediately conceded liability, meaning they did not contest that they were at fault. The only issue left for litigation was the proper amount of damages. In the U.S. tort system survivors can seek damages for the wrongful death of their loved ones, and also for the pain and suffering that their loved ones may have suffered before they died. Neither of these damage categories has any set limit, and plaintiffs are routinely awarded such damages in the millions of dollars. In the Uruguayan tort system survivors can only seek wrongful death damages, and those are capped at \$100,000 per person.

The defendants moved to have the case dismissed for forum non conveniens, arguing that Uruguay would be a more appropriate place for the damages issue to be decided.

Louisiana is unique among the states in that its legal code derives from the French civil law system, rather than the British common law system. In civil law systems, courts are not able to create common law doctrines, because they are considered an encroachment on the power of the legislature. As a result, because forum non conveniens is a common law doctrine, it does not exist in Louisiana. (And the Louisiana legislature has never chosen to enact a statute allowing for forum non conveniens.) Thus, if the case had been filed in state court, the defendants would not have had that motion available to them.

Question:

You are the judge who heard this (real) case. You must decide two issues:

- (1) Should forum non conveniens even be an option in this situation?**
- (2) If it is an option, should it be granted?**

For each issue, summarize the best arguments on each side and then state which you believe should prevail.