

Oliveri – Civil Procedure I Exam – Fall 2015

ESSAYS

NOTE: This fact pattern is common for the next THREE essay questions. It is based on actual incidents that occurred recently at my undergraduate alma mater. While I have adhered closely to the reported facts of the incidents, I have invented all of the litigation details for purposes of this exam.

FACTS

Paul Johnson is a 20-year old junior at the University of Virginia. He and some friends are out late one night at “The Corner”, a strip of bars and restaurants frequented by students. Paul is African-American, but most of the friends he is out with are white. The group is standing on the sidewalk when the next thing Paul knows he is being slammed to the ground by two uniformed agents of the Alcohol Beverage Control Department (a state law enforcement agency). Paul’s face hits the sidewalk and he starts bleeding profusely from his mouth, nose, and forehead. One agent (Agent Dudley) wrenches Paul’s arms behind his back and handcuffs him while the other (Agent Doright) shackles his ankles, frisks him, and pulls out his wallet. Paul shouts that he hasn’t done anything wrong and curses at the agents. The agents give Paul misdemeanor tickets for “public swearing” and “obstruction of justice without force”.

After the agents leave Paul’s friends take him to the hospital where he receives ten stitches. He later learns that a bouncer at a nearby bar had given a description to the ABC agents of a person who had tried to use a fake ID – a “young black male, wearing jeans” – which had apparently matched Paul’s description. Paul has never had a fake ID, and nothing of the sort was found in his pockets or wallet. After a cell-phone video of the arrest goes viral, the criminal charges against Paul are dropped.

Paul would like to sue the ABC Department and the individual officers involved for violating his civil rights. He files and properly serves a Complaint and summons on all defendants.

ESSAY #1

Part A

In order to assert a civil rights violation against a state law enforcement agency and individual agents, a plaintiff must be able to overcome both qualified immunity (for the agents) and lack of respondeat superior liability (for the agency). This means that the plaintiff must show that the agents intentionally acted to deprive him of his civil rights and that the agency failed to adequately train the agents.

After setting forth the events of the night in question, Paul alleges the following:

26. "Defendant ABC Dept. has not trained its agents how to properly respond in situations where the target of their enforcement activity poses no obvious threat."
27. "Agent Dudley and Agent Doright intentionally deprived Plaintiff of his civil rights by deliberately targeting him because of his race and subjecting him to excessive force during his arrest."

Paul goes on to allege that the defendants' actions violated federal civil rights laws and to assert a claim for compensatory damages (for both his physical injuries and emotional distress) and punitive damages.

You are a lawyer for the defendants. How will you respond to this Complaint? If you decide to challenge it, state the basis for the challenge and set forth all of your arguments and any counterarguments you expect from the plaintiff.

Part B

Assume that the defendants failed to challenge the Complaint. It is now three months after they've served their Answer, and Paul learns about another victim of the ABC. Roughly four weeks before Paul's incident, a white sophomore named Elizabeth Daly had purchased a case of sparkling water from a grocery store. She was followed to the parking lot by six plainclothes ABC agents, all men in their 40s. Once Elizabeth was inside the car the men banged on the windows. Frightened, Elizabeth locked the doors and started to drive away. One of the men then jumped on the hood of her car and pulled out a gun. When Elizabeth finally realized that they were ABC agents she stopped the car. Apparently the agents had thought that the case of water had been beer. She was charged with two felonies for assaulting law enforcement officers and fleeing the police. One of these agents was Agent Dudley, the other five were not involved in Paul's arrest. Elizabeth saw news reports about Paul's case, contacted him, and wants to know if she can join his case.

You are Paul's lawyer. Write a brief memo outlining whether you want her to be part of your case, how you will go about making her part of the case (including the arguments you will need to make), the arguments you expect the defense to make, and a candid assessment of who will likely prevail.

ESSAY #2

Assume that Elizabeth changes her mind and decides not to be part of Paul's case. The agency settles with Paul, but his case against the two agents remains. It is clear that the central issue will come down to whether the ABC agents behaved reasonably under the circumstances.

Part A

Paul's lawyer would like to get the following in discovery: (1) Complete personnel records for Agents Dudley and Dorigt, which will include their psychological screenings, background checks, and disciplinary records; (2) Any complaints, of any kind, made against any ABC agent for the last ten years; (3) Video of the arrest taken from the security camera of a nearby bar.

You are Paul's lawyer. How will you seek to obtain these materials? What response and arguments do you anticipate from the other side? What will your response be?

Part B

The lawyers for the ABC Dept would like to get the following in discovery: (1) Information about Paul's injuries; (2) Information about Paul's medical and psychiatric history; (3) Paul's complete disciplinary record from UVA and his high school.

You are ABC's lawyer. How will you seek to obtain this information? What response and arguments do you anticipate from the other side? What will your response be?

ESSAY #3

The case proceeds to trial. Paul offers unrebutted expert testimony about how the agents failed to adhere to widely accepted law enforcement protocols for arresting nonviolent suspects. The bar's security video shows the events clearly: that Paul is standing quietly on the sidewalk looking down at his phone in the moments before he is tackled. In their defense, the agents both state that, given the lateness of the hour and the fact that "the suspect" was with a large group, they felt it necessary to act quickly and decisively to mitigate any potential threat. The jury is instructed that it must find in favor of Paul if it determines that the agents did not act "reasonably under the circumstances."

Part A

The jury returns with a verdict for the defense.

You are Paul's lawyer. What do you do? What arguments will you make? What outcome do you anticipate?

Part B

A week after the verdict one of the jurors gives an interview to the student newspaper, the Cavalier Daily, in which she says that, as the owner of a home near campus she is sick and tired of underage drinking, and she deliberately voted in favor of ABC in order to "send a message to all UVA students that your irresponsible behavior has consequences." Questions were asked in voir dire about whether people had negative feelings about the ABC Dept or about college students. The juror did not raise her hand either time.

You are Paul's lawyer. What do you do? What arguments will you make, and what arguments do you anticipate from the other side?