TOURO COLLEGE
Jacob D. Fuchsberg Law Center

FINAL EXAMINATION

RESTRICTED OPEN BOOK   Spring 2007
RETURN
DAY: THURSDAY         DATE: May 17, 2007
LENGTH: 3 HOURS        TIME: 2:00 p.m.

CIVIL DISPUTE RESOLUTION & PROCEDURE II
SECTIONS CA & BA
PROFESSOR FABIO ARCILA, JR.

INSTRUCTIONS:

DO NOT USE YOUR NAME OR SOCIAL SECURITY NUMBER. IDENTIFY YOURSELF
BY USING THE STUDENT EXAM IDENTIFICATION NUMBER WHICH WAS
DISTRIBUTED BY THE REGISTRAR’S OFFICE.

YOU MUST SIGN OUT AT THE CLOSE OF THE EXAM. PLEASE BRING ALL OF YOUR
TEST PAPERS UP TO THE FRONT OF THE ROOM. PLEASE SIGN YOUR NAME NEXT
TO WHERE IT IS PRINTED ON THE PAGE AND WRITE YOUR STUDENT EXAM I.D.
NUMBER.
Final Exam

This is a 3-hour, restricted open book exam. You are allowed to consult only the following material:

- the required texts for the course as listed in the syllabus (no other commercially prepared materials are allowed, except that students in Section BA may consult the Rule manuals they used during the first semester);
- any material you personally prepared; &,
- print-outs of the PowerPoint presentations given in class.

This exam is comprised of 3 essay questions. I cannot recommend highly enough that you take time to organize your answer; a well-presented answer will necessarily be more cogent and is therefore unavoidably going to be prone to a better grade than a disorganized one. Also, write on only one side of the page! Your answers should demonstrate knowledge of the issues we have discussed in this course, including how they may relate to each other. Concentrate on any approaches or issues that you think are the most important, but do not hesitate to give a short summary of why you have rejected any other approaches or issues. However, if you are pressed for time, err in favor of discussing the most important issues rather than spending time you do not really have on other items.

You must turn in this exam along with your answers. I will not return your exam answers to you.

Before starting the exam, make sure you have 7 pages. Good luck!!
Background Facts For Questions 1-2

X hired Y to build a luxury doghouse for X’s championship-caliber show dog. Y warranted the doghouse for 1 year. Three months after the doghouse was finished, it collapsed in a heap while the dog was inside. X suffered damages amounting to several thousand dollars due to a permanent scratch on the dog’s nose, which rendered it impossible for the dog to win any more prize money in competitions, and the dog’s new unwillingness to breed (which had served as a source of income for X), apparently permanently and due to generalized fear and anxiety the dog now suffers after the accident.

X sued Y in state court (presume the court had personal jurisdiction), alleging a civil violation of a recently enacted federal statute, the Animal Protection Act, as well as a state law breach of contract claim. Y properly removed the case to a federal district court located in the same state, relying upon a federal question as the basis for federal subject matter jurisdiction.

Question 1 (70 points) (corresponds to approximately 2 hours, 6 minutes)

Once in the federal district court, Y answered, and the parties properly and timely exchanged their Rule 26(a) initial disclosures.

After the discovery period began, Y served X with Y’s First Set Of Interrogatories. The interrogatories Y delivered to X are set forth below.

1. Identify the dog’s breed.

2. Identify the dog’s age on the date of the accident.

3. Identify the dog’s sex.

4. Identify whether the dog has sired any puppies at any time.

5. If the dog has sired any puppies, provide the breed, age, and sex for each puppy, and its present owner and location, including address and telephone number.

6. Specify all contractual terms, if any, between X and Y with regard to the doghouse.

7. Apart from the contract in interrogatory 6, if any, specify all warranties, express or implied, that X received with regard to the doghouse, as well as the source of the warranty.

8. To the extent any warranty identified in interrogatory 7 was oral, identity by name, address, and telephone number the person making the warranty.

9. Identify by name, address, and telephone number any person that provided veterinary care of any kind to the dog since the accident, as well as a specific description of the type of care provided, including the date.
10. Identify by name, address, and telephone number any person that provided any kind of health care, other than veterinary, to the dog since the accident, as well as a specific description of the type of care provided, including the date.

11. Identify any medications, veterinary or otherwise, and issued by prescription or otherwise, that the dog has received since the accident.

12. Identify any physical treatments, veterinary or otherwise, the dog has received since the accident.

13. Identify any mental treatments, veterinary or otherwise, the dog has received since the accident.

14. Identify any other health care or other treatments, other than those identified in interrogatories 9, 10, 11, 12, or 13, veterinary or otherwise, the dog has received since the accident.

15. As to interrogatories 11, 12, 13, and 14, identify the names, addresses, and telephone numbers of the issuing or treatment providers involved, as well as the relevant dates the medications or treatments were prescribed and administered.

16. Specify the dates and scope of any inspections X personally performed on the doghouse at any time, including prior to completion, and to the extent persons other than X were involved, specify their names, addresses, and telephone numbers.

17. Specify the dates and scope of any inspections X caused to be performed on the doghouse at any time, including prior to completion, and specify the names, addresses, and telephone numbers of those involved.

18. Identify by name, address, and telephone number any person who witnessed the doghouse collapse.

19. Identify by name, address, and telephone number any person who was at the scene of the doghouse collapse after the accident and until the dog was removed.

20. Identify what due diligence, if any, X had conducted about Y prior to contracting with Y to build the doghouse, specifying the date(s) of such incidents and the sources investigated, including the name, address, and telephone number of any person involved.

21. Identify what sources X consulted in designing the doghouse, including the name, address, and telephone number if the source was a person.
22. Provide a list of all dog shows in which the dog had competed prior to the accident, specifying the date(s) and locations of the dog shows, as well as the awards and amount of prize money, if any, the dog earned at each show.

23. Identify by name, address, and telephone number any person who had ever offered to purchase the dog, as well as the date and terms of the offer.

24. Identify by name, address, and telephone number any person who had ever offered to purchase the dog’s breeding services, as well as the date(s) and terms of the offer.

25. Identify by name, address, and telephone number any person who had ever actually purchased the dog’s breeding services, as well as the date(s) and terms of the offer.

26. Specify the amount of damages X claims to have suffered and how they were computed, and include all supporting documentation to the extent not already provided through X’s Rule 26(a) disclosures.

Later in the litigation, Y sent X a Rule 30 deposition notice, in which Y demanded to depose V. V was X’s veterinarian, and had treated X’s dog both before and after the accident. X’s attorney communicated with V, who agreed to appear at the deposition. The following interaction occurred at the deposition, during which Y’s attorney was taking the deposition, V was being deposed, and V’s attorney was defending the deposition.

Y’s Attorney: Do you have a criminal record?

V’s Attorney: Objection. Irrelevant and immaterial.

Y’s Attorney: Answer the question. Do you have a criminal record?

V: I’m not sure what you mean.

Y’s Attorney: Have you ever been charged with a crime?

V’s Attorney: Objection. Compound question.

Y’s Attorney: Have you ever been charged with a crime or convicted of a crime?

V’s Attorney: Same objection.

V: I’ve gotten a few speeding tickets, if that’s what you mean . . . .

Y’s Attorney: No, that’s not what I mean! You have got to be one of the most ignorant people I’ve ever come across.

V’s Attorney: Objection!
Y’s Attorney: Are you a pet owner?

V: Yes, have been all my life . . .

Y’s Attorney: Well, I hope you take them to a different veterinarian than yourself, because you’ve got to be the worst veterinarian I’ve ever come across. How many animal deaths have you caused by your incompetence?

V’s Attorney: Objection! Don’t answer that.

Y’s Attorney: How many times in the last 10 years have you beaten or otherwise abused your pets?

V’s Attorney: Don’t answer that.

Y’s Attorney: In preparation for today’s deposition, how often have you spoken with your attorney about that issue?

V’s Attorney: Don’t answer that.

Y’s Attorney: Tell me about the conversations you’ve had with your attorney, in preparation for today’s deposition, about you abusing your pets.

V’s Attorney: Don’t answer that.

Y’s Attorney: How often have you sought or received psychiatric care or anger-management therapy?

V’s Attorney: Objection. Presumes facts not in evidence. Don’t answer that.

Y’s Attorney: Oh, he’s going to answer! This is my deposition and he’ll answer any damn question I want him to answer! So keep your mouth shut!

V’s Attorney: You don’t know who you’re messing with, big boy. You keep it up, and we’ll step outside and settle this like men!

Y’s Attorney: If we were settling this like men, your ass would be on the ground right now! Stop disrupting my deposition. I won’t have you wasting my deposition clock with your frivolous objections.

Now, Mr. V, isn’t it true that you abuse your “patients” by having sex with them?

V’s Attorney: Don’t answer that.

Shortly after the exchange above, V’s Attorney unilaterally called an end to the deposition and walked out with V.
One week after Y’s deposition of V, X received a document production request from Y, which demanded that V produce all documents and records concerning complaints made against V with V’s licensure body, as well as regarding any disciplinary actions taken by the licensure body.

Discuss the discovery conduct engaged in by the attorneys for X, Y, and V and whether they complied with the discovery Rules, and if not whether they engaged in sanctionable conduct, and what they could or should have done differently.

**Question 2** (15 points) (corresponds to approximately 27 minutes)

Later in the litigation, Y decided that it wanted to sue W. According to information X had provided in response to Interrogatory No. 21, W had provided X with advice about how to design the doghouse. Y believed that W’s advice, which X had conveyed to Y when explaining how X wanted the doghouse designed, was either wholly or at least partly responsible for the doghouse’s collapse.

Advise Y about how best to sue W. (Presume that the court would have both personal jurisdiction over W, and subject matter jurisdiction over any claim(s) Y might bring against W.)

**Question 3** (15 points) (corresponds to approximately 27 minutes)

Critique the Supreme Court’s new punitive damages jurisprudence as exemplified in *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513 (2003) (which is presented at page 270 of your casebook). Do you agree or disagree with this jurisprudence? Is it well or poorly formulated? Can you suggest any changes to improve the jurisprudence, or should the Supreme Court abandon this attempt to impose constitutional limits upon punitive damage awards? Explain your position.