

Practice Exam #3

Background

Your client, PDQ, is a grocery store delivery business and a citizen of California that has, until recently, operated exclusively in California. PDQ succeeded where other delivery services failed, thanks to an exceptionally trained delivery staff that procures and delivers groceries with unparalleled speed and reliability. PDQ's method of operation is to enter into an exclusive delivery agreement with one grocery store chain in a given marketing area. Grocery store customers are charged \$5 per delivery, of which \$4 goes to PDQ and \$1 to the grocery store chain. In each of the ten California communities where PDQ entered into exclusive delivery agreements with grocery store chains, the chain became the market leader in a matter of months, or if it was already the market leader, expanded its market share dramatically.

PDQ decided to expand its operations to the mid-west, and began approaching grocery chains in Indiana. The response was poor: the chains had not heard of PDQ, and feared that at \$5 per delivery, if the service was anything less than excellent, customers would blame the chain and shop elsewhere. To generate interest, PDQ wrote a letter to Mr. Sleaze Grocery Stores, Inc. ("Mr. Sleaze"), an Indiana citizen and corporation, and one of the three major grocery store chains in Bloomington. The October 15, 1997 letter stated:

PDQ is pleased to make Mr. Sleaze the following, free trial offer: PDQ promises to deliver groceries exclusively to Mr. Sleaze customers, free of charge, until January 25, 1998.*

*This offer is subject to the limitation that if, between now and January 25, 1998, PDQ enters into an exclusive delivery services agreement with another Bloomington area grocer, pursuant to which PDQ is to be paid on a per-delivery basis, PDQ may discontinue free deliveries for Mr. Sleaze.

On October 20, 1997, Mr. Sleaze took PDQ up on its proposition. PDQ posted signs in Mr. Sleaze stores that stated, in their entirety: "Free delivery: see store manager for details," and began deliveries on October 25. Unbeknown to PDQ, the "details" that Mr. Sleaze managers provided to interested customers, included a flyer advertising "free delivery from now until January 25."

Customers were ecstatic with PDQ's service, and Mr. Sleaze's business began to improve almost immediately. On November 5, however, PDQ was approached by one of Mr. Sleaze's Bloomington competitors--Kroaker Foods--an Indiana corporation and citizen, which entered into an exclusive delivery agreement with PDQ, on a \$5 per delivery basis.

PDQ stopped delivering groceries for Mr. Sleaze and started delivering exclusively for Kroaker. Mr. Sleaze customers became irate when the deliveries stopped, and on November 12, the State department of consumer protection warned Mr. Sleaze that if it did not honor its advertised free delivery until January 25, it would be subject to severe civil and possibly criminal penalties. Accordingly, Mr. Sleaze hired additional staff to complete the three months of free deliveries at an anticipated cost of \$100,000; but some customers have complained that the delivery service was inferior to PDQ's, and have said that they will be shopping at Kroaker--not Mr. Sleaze--from now on.

On December 1, 1997 Mr. Sleaze filed a complaint in federal district court against PDQ, that included a single promissory estoppel claim. A controlling case characterizes the requirements of a promissory estoppel claim as follows:

A plaintiff is entitled to damages and injunctive relief for promissory estoppel, when he relies to his detriment on a promise defendant makes and subsequently breaks to plaintiff, under circumstances in which defendant knew or should have known that plaintiff would rely to his detriment on defendant's promise.

You are to assume that promissory estoppel is the only claim that Mr. Sleaze could make against PDQ, and that the statute of limitations for promissory estoppel claims is not an issue.

What follows is a verbatim reproduction of the properly signed and captioned complaint:

UNITED STATES DISTRICT COURT
FOR THE SOUTHEASTERN DISTRICT OF INDIANA

Mr. Sleaze Grocery Stores, Inc.)
v.) Civil Action No. 97-4533
PDQ, Inc.)

COMPLAINT

1. Plaintiff, Mr. Sleaze, is an Indiana citizen and grocer, that sets industry standards for fair and honest treatment of its customers, and charitable giving to such worthy causes as the United Way and the Federal Judges Association.

2. Defendant PDQ is a California citizen and a grocery store delivery service.

3. The amount in controversy exceeds \$75,000. Subject matter jurisdiction is based upon diversity of citizenship, 28 U.S.C. §1332.

Claim for Promissory Estoppel

4. In October, 1997, PDQ promised to deliver groceries to Mr. Sleaze customers until January 25, 1998, at no charge.

5. Mr. Sleaze reasonably relied on that promise by advertising free delivery to its customers until January 25, 1998.

6. PDQ commenced free deliveries on October 25, but broke its promise and discontinued deliveries on November 5, after entering into an exclusive delivery contract with Kroaker Foods, a competitor of Mr. Sleaze.

7. As a consequence of its reliance on defendant's promise, Mr. Sleaze has been obligated to spend \$100,000 on replacement delivery personnel, and has lost considerable business to Kroaker Foods.

8. Throughout the course of its dealings with Mr. Sleaze, PDQ had never gone on until October, 1997.

9. Wherefore Mr. Sleaze demands judgment for injunctive relief and/or damages in the amount of \$100,000.

Respectfully Submitted,

Attorney for Plaintiff

After receiving a copy of the complaint from PDQ, you called plaintiff's counsel to tell her that you would be representing PDQ. She took the opportunity to say that in light of the "compelling" case against PDQ, she hoped that PDQ would spare itself litigation expense and inevitable defeat by resuming free deliveries for Mr. Sleaze immediately. You asked her if she had taken a good look at the October 15 letter from PDQ to Mr. Sleaze, to which she replied: "No, I have neither the time nor need to review every relevant document before suit is filed. Assuming that your client is unwilling to resume deliveries for Mr. Sleaze, I will be filing a motion for a preliminary injunction tomorrow, to prevent PDQ from delivering groceries for anyone except Mr. Sleaze."

Questions

Part I: Essay Question (90 minutes/50%)

Sub-part A: Present PDQ's argument in opposition to plaintiff's anticipated motion for preliminary injunction, and anticipate reasonable counter-arguments, if any, that Mr. Sleaze might make.

Sub-part B: Develop a litigation strategy that responds to the complaint. Limit your discussion to procedures that may be employed *prior to filing an answer*. If a procedure may properly be employed prior to filing an answer, do not neglect to discuss it merely because it is not ordinarily utilized until later in the litigation. Do not discuss settlement. Anticipate reasonable counter-arguments, if any, that Mr. Sleaze might raise.

Part II: Short Answer Questions (90 minutes/50%)

Sub-part A: PDQ filed a pre-answer motion seeking to dismiss the complaint on the grounds that the court lacked personal jurisdiction over the defendant and that the complaint failed to state a claim on which relief could be granted. The court denied PDQ's motion, whereupon PDQ filed an answer that included the defenses that plaintiff had failed to join an indispensable party and that service of process had been defective. Are the defenses PDQ includes in the answer properly raised?

Sub-part B: Mr. Sleaze filed a Rule 34 document discovery request from PDQ for "all correspondence and memoranda generated by PDQ from 1987 to 1996 concerning complaints made by other grocery stores about PDQ." As counsel to PDQ, what objection(s) might you make to this request?

Sub-part C: Assume that the case proceeds to trial. After Mr. Sleaze has completed the presentation of its case, PDQ moves for judgment as a matter of law. The court denies the motion and the jury returns a verdict for Mr. Sleaze. PDQ then renews its motion for judgment as a matter of law, and moves in the alternative for a new trial. The district court grants PDQ's motion for judgment as a matter of law but conditionally denies its motion for a new trial. What procedural option(s) may Mr. Sleaze and PDQ exercise from this point forward?

Sub-part D: Twenty-five patrons of Asian descent complain that Mr. Sleaze has systematically denied them free grocery delivery on account of their race, thereby violating their civil rights, and possibly the civil rights of future Asian

patrons, unless the discrimination is enjoined. May they all sue Mr. Sleaze in a single action? If so, pursuant to what procedural rule or rules? If not, why not?

Sub-part E: The following events occur in the context of a single civil action filed by plaintiff A against defendant B: 1) A's complaint includes three unrelated claims against B; 2) The court grants a motion by C to add himself to the litigation as a co-defendant; 3) B files a claim against A that is unrelated to A's claims against B; 4) Co-defendant C files a claim against B; and 5) B adds D, E, F and G to the litigation on the grounds B's liability exposure is limited to \$250,000, and that A, D, E, F and G have each claimed that they are entitled to the entire \$250,000. What procedural rules authorize the actions taken in each of these situations? Indicate the applicable rules by number and name.

-END-

I.A.

- XX Rule 65 Preliminary Injunction
- X Probable success on merits
- X plaintiff will lose--no reasonable reliance/defendant couldn't reasonably anticipate reliance
- X Irreparable injury (if injunction denied)
- X replacements available and in place
- X contra--replacements inadequate
- X Balance of hardships
- X injunction would force PDQ to breach k w/Sleaze

I.B.

- XX 12(g)/consolidated pre-answer motion
- XX 12(f) motion to strike
- X strike ¶1 reference to plaintiff's honesty/charity
- X immaterial/impertinent
- XX 12(e) motion for more definite statement
- X applies where complaint is **so** vague responsive pleading is impossible
- X Paragraph 8 is unintelligible
- XX 12(b)(6)--failure to state a claim
- X essential element: defendant knew or should know plaintiff would rely
- X complaint is silent as to what defendant knew/should know
- X contra: allegation that plaintiff relied by advertizing free delivery permits inference that defendant should know it
- XXX 12(b)(7)/19 failure to join Kroaker as indispensable party
- XX joinder necessary 19(a): PDQ may incur inconsistent obligations if Kroaker not added; Kroaker's contractual interest in PDQ's services impaired
- X joinder not feasible: Kroaker nondiverse
- XX joinder indispensable; serious impairment to Kroaker/PDQ; state action still available
- XX 56--Summary Judgment
- XX Standard: no genuine issue/defendant entitled to judgment
- X Critical issue: Sleaze reasonably relied on promise
- X Introduce promise letter showing that no reliance was reasonable
- XX Rule 11 Sanctions
- X No reasonable pre-filing inquiry: plaintiff should have seen letter
- X Complaint lacks evidentiary support per (b)(3)
- X sanctions appropriate.
- X Prefiling investigation should have disclosed letter proving that reliance was unjustified.

II.A.

- X yes as to failure to join an indispensable party
- X 12(h)2) says that failure to join may be raised in the answer
- X No as to service of process
- XX 12(g)/12(h)(1) says service defenses are waived if omitted from a pre-answer motion
- X preanswer motion filed/service of process omitted

II.B.

- XX 26(b)(1): relevance is unclear
- XXX 26(b)(2)/26(c)protective order:burden outweighs benefits; limit burdensome discovery
- XX 26(b)(3) work product included
- X some internal correspondence responding to complaints may be in anticipation of litigation
- X info can be obtained by other means
- X some issue as to whether previous litigation protected

II.C.

- XX Rule 50(c) jmol/new trial issue
- X Mr. Sleaze may move for new trial
- X Mr. Sleaze may appeal
- X PDQ, as appellee, may challenge the denial of new trial on appeal

II.D.

- XX Rule 20 joinder
- XX Same transaction/occurrence/series: plaintiffs systematically denied service on account of race
- XX common question of fact/law: fact of exclusion; legality of exclusion under civil rights laws
- X one problem here is that future patrons aren't parties
- XX Rule 23 Class action
- XX numerosity: low number, but future patrons at issue
- XX commonality: all excluded in the same way
- XX typicality: no info suggesting any non-typical
- XX adequacy of representation: no antagonistic interests; no info as to counsel
- XX 23(b)(1) or (b)(2) satisfied

II.E.

- XX 1) rule 18 joinder of claims
- XX 2) Rule 24 Intervention
- XX 3) Rule 13(b) permissive counterclaim
- XX 4) Rule 13(g) cross-claim
- XX 5) Rule 22/§1335 interpleader