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Elon Law School
Fall 2017

Civil Procedure: Final Exam

Instructions

This is a **closed-book** examination. You may not use any books, notes, or other materials during the exam, except for the Federal Rules & Statutes compilation provided to you by the proctor.

You have **three hours** to complete the exam.

The exam is organized into two parts. You must answer each question in each part. There is no limit on the length of your answers.

In the space below, you must write out the Elon Law School Honor Pledge and sign with your Final Exam ID number. **Do not write your name anywhere on the exam.**

Honor Pledge

"On my honor, I will uphold the values of Elon University School of Law: honesty, integrity, responsibility, and respect."

Exam ID Number:

Facts¹

Randy Craig Wolf, known professionally as Randy California, was a songwriter and guitarist who performed with the band Spirit. The band's self-titled debut album, released in 1968, included an instrumental song, *Taurus*, composed by Wolf.

On December 26, 1968, Spirit played a concert in Denver, Colorado. The opening act, making their first U.S. appearance, was a recently-formed British group called Led Zeppelin. The following summer, Spirit and Led Zeppelin again appeared together at two music festivals.

In 1971, Led Zeppelin released an untitled album, commonly known as Led Zeppelin IV. The album featured a song that would become one of the most famous anthems in rock music history, *Stairway to Heaven*. The familiar opening of *Stairway to Heaven*—a Renaissance-style contrapuntal melody played on finger-picked acoustic guitar—resembles a passage in *Taurus*. Shortly before his death in 1997, Wolf commented on the similarity:

People always ask me why Stairway to Heaven sounds exactly like Taurus which was released two years earlier. I know Led Zeppelin also played Fresh Garbage² in their live set. They opened up for us on their first American tour.

The Randy Craig Wolf Trust, established after Wolf's death, holds the rights to his work. Michael Skidmore is the sole Trustee and in that capacity he administers the Trust's affairs.

Part I

In an interview about Randy Wolf's musical career, Skidmore commented on Led Zeppelin members Jimmy Page & Robert Plant (who co-wrote *Stairway to Heaven*), "Those guys got rich and famous stealing from other songwriters like Randy California. The opening of *Stairway to Heaven* was definitely copied from *Taurus*. If Page and Plant had any decency, they'd donate the millions they've made off *Stairway to Heaven* to the Trust."

Page & Plant (both citizens of the United Kingdom) file a suit in federal court against Skidmore (a citizen of Massachusetts) for defamation, with each plaintiff seeking \$1 million in damages.³

Questions

- 1) Is joinder of Page and Plant as co-plaintiffs proper?
- 2) For each of the following additional claims, identify the applicable joinder rule, explain whether joinder would be proper, *and* indicate whether the federal court would have subject matter jurisdiction over the claim.⁴
 - a. A claim by Skidmore against Page for defamation, based on an interview in which, responding to Skidmore's statements, Page said "These accusations that we plagiarized our songs are complete BS. We never even heard *Taurus* before we wrote *Stairway to Heaven*, and the two songs sound nothing alike. Skidmore knows this and he's just trying to pressure us into donating to his scam charity."

¹Based on a true story. Some facts have been changed or invented for exam purposes.

²Another song written by Wolf for Spirit.

³Assume that the court has personal jurisdiction over Skidmore and subject matter jurisdiction over the defamation claim under 28 U.S.C. § 1332.

⁴Assume that the court would have personal jurisdiction over all parties.

- b. A claim by Skidmore against the Trust (a citizen of Massachusetts), asserting that he made his statement in his capacity as Trustee and that the Trust is obligated to indemnify him for any civil liability he incurs in that capacity.
- c. A claim by Skidmore against the Trust, seeking reimbursement for \$5000 in expenses Skidmore incurred for Trust business unrelated to the dispute with Page and Plant.
- d. A claim by Page and Plant against the Trust (assuming the Trust has been properly joined as a third-party defendant) for defamation based on Skidmore's statements.
- e. A claim by the Trust (assuming the Trust has been properly joined as a third-party defendant) against Page for replevin⁵, seeking the return of a guitar (worth \$10,000) that Page allegedly pilfered from Wolf during the December 1968 Spirit/Led Zeppelin concert.

Part II

Regardless of your answers to the previous questions, assume that Skidmore asserted his defamation claim against Page, but that the Trust was not joined as a third-party defendant.

Skidmore moved for summary judgment on both the defamation claim against him and his defamation claim against Page. Ruling on the motion, the court made these findings:

- Wolf composed *Taurus* and recorded it with Spirit in 1967.
- Page and Plant wrote *Stairway to Heaven* in 1970, and recorded it with Led Zeppelin in 1971.
- In 1968 and 1969, before writing and recording *Stairway to Heaven*, Page and Plant were present at concerts where Spirit played *Taurus*.
- The opening acoustic guitar passage of *Stairway to Heaven* and a passage in *Taurus* are very similar.
- Giving the chronology and the similarity of the two songs, Skidmore had a good faith basis for believing that his statement that Page & Plant copied from Wolf's song was true.
- Because Skidmore did not make his statement with "actual malice" (i.e. knowledge that it was false, or reckless disregard for whether it was false),⁶ he is entitled to judgment as a matter of law on the defamation claim by Page & Plant fails.
- Page's statement that Skidmore was "just trying to pressure us into donating to his scam charity" was made with actual malice, because Page had no basis for believing it was true, particularly since he knew or should have known that his prefatory statement ("We never even heard *Taurus* before we wrote *Stairway to Heaven*, and the two songs sound nothing alike.") was false.
- Page's statement about Skidmore was false and defamatory, and Skidmore is entitled to judgment as a matter of law on his defamation claim.

Based on its findings, the court entered judgment in favor of Skidmore on both claims.

Determined to establish, once and for all, that Page and Plant stole the iconic passage of *Stairway to Heaven* from Wolf's *Taurus*, Skidmore, in his capacity as Trustee, files a suit in federal court on behalf of the Trust (which holds the copyrights to Wolf's songs) against Page and Plant for copyright infringement⁷

⁵A state law claim seeking the return of personal property belonging to the plaintiff and wrongfully taken by or in the possession of the defendant.

⁶The "actual malice" standard applies to defamation claims by "public figures".

⁷This is a claim arising under federal law, and federal courts have exclusive subject matter jurisdiction. Assume that the court has personal jurisdiction over the defendants.

The defendants file an answer denying the allegations concerning copyright infringement. They also assert a counterclaim against Skidmore for extortion based on Skidmore's statement that, "If they had any decency, they'd donate the millions they've made off *Stairway to Heaven* to the Trust."

Questions

- 1) Is the copyright infringement claim precluded by the judgment in the prior suit?
- 2) Is the extortion counterclaim precluded by the judgment in the prior suit?
- 3) Regardless of your answer to the first question, assume the copyright infringement claim is not precluded. Can the Trust assert issue preclusion, based on the judgment in the prior case, against Page and Plant on the issues of whether they heard *Taurus* before writing *Stairway to Heaven* and whether the relevant passages of the two songs are similar?⁸

⁸These facts would be relevant to proving that the defendants actually copied the plaintiff's copyrighted work, which is one of the elements of a copyright infringement claim.