## Civil Procedure I Exam ID:

## Fall 2014

## Elon University School of Law

## Professor Fink

## Final Examination

### Instructions:

This is a closed-book examination. You may not use any material other than what is provided to you by the proctor.

You will have three (3) hours to complete this exam. This exam consists of two (2) multi-part questions. You must answer each part of each question. Be sure to read each question carefully.

If your answer depends on any factual assumption(s) beyond what is stated in the question, be sure to identify, and explain the relevance of, your assumption(s).

Your answers will be graded based on (1) your identification of the relevant issues, (2) your identification and explanation of the applicable rules, and (3) your analysis of how those rules apply to the stated facts. You should strive to present concise, well-organized answers that respond to the specific question prompts. As a rough guideline, you should be able to answer each of the questions within about 4-6 typed pages. But there is no formal limit on the length of your answers.

You must write your Exam ID number in the space provided above. You must also write out the Honor Pledge in the space below, and sign with your Exam ID number. Do not write your name anywhere on the exam or in your answers.

#### Honor Pledge

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

Exam ID:

### Question 1

Angelica Sanchez is a citizen of Mexico, where she lives with her boyfriend, Arturo Quiñonez (also a Mexican citizen). Angelica’s two children, Roberto (age 10) & Carmen (age 7) lived with the couple until one year ago, when their aunt, Miriam Lopez (also a Mexican citizen), brought them across the border to El Paso, Texas. Lopez did so without Angelica’s knowledge. When Sanchez learned what had happened, she contacted Lopez and demanded that she bring the children home to Mexico. Lopez brought the children to the Bridge of the Americas in El Paso and instructed them to cross into Mexico, where Sanchez and Quiñonez were waiting for them. As the children were walking across the bridge, they presented themselves to US border control officers and stated that they were afraid to return to Mexico because Quiñonez was involved in drug trafficking and had abused them.

The children were transferred to the custody of the Office of Refugee Resettlement (“ORR”), a federal government agency responsible for the custody and care of unaccompanied alien minors. ORR placed them in the care of Baptist Child and Family Services (a non-profit corporation incorporated and based in Texas), pending the outcome of immigration proceedings to determine whether they should be granted asylum based on their claim that they faced a grave risk of harm if they were returned to Mexico. While the children are under the care of Baptist Services, they remain in the legal custody of ORR.

While the children’s immigration case was still pending, Sanchez filed a lawsuit in the U.S. District Court for the Western District of Texas (the district in which El Paso is located) against Miriam Lopez (who had returned home to Mexico before the suit was filed) and Baptist Services. Sanchez asserted claims against each defendant under the International Child Abduction Remedies Act (“ICARA”). ICARA is a federal statute implementing the Hague Convention on the Civil Aspects of International Child Abduction, a treaty to which both the United States and Mexico are signatories. As provided under ICARA & the Hague Convention, Sanchez sought the children’s return to her in Mexico, and a temporary restraining order prohibiting Lopez and Baptist Services from relocating the children out of Texas pending the outcome of the suit. Sanchez also asserted claims under Texas law against Lopez for tortious interference with parental rights and intentional infliction of emotional distress.

1. Are Lopez and Baptist Services properly joined as co-defendants? May the Texas federal court exercise personal jurisdiction against the defendants (assume that the Texas long-arm statute provides for jurisdiction to the full extent permitted under the Constitution), and subject-matter jurisdiction over the ICARA and state-law tort claims?
2. Is ORR a party required to be joined if feasible under Rule 19(a)? (You may assume that joinder would be feasible, so don’t discuss what the court would do under Rule 19(b) if joinder were not feasible.)
3. May the children (through their attorney as guardian ad litem) intervene as defendants to oppose Sanchez’s ICARA claim?

### Question 2

Weybosset Hotels (a business partnership whose partners are domiciled in Rhode Island and Massachusetts, with its sole place of business in Rhode Island) contracts with Stonestreet Construction (a business partnership whose partners are domiciled in Rhode Island, with its principal place of business in Massachusetts) for the construction of a new hotel in Pawtucket, Rhode Island. The contract provided that Stonestreet was to be paid $800,000 for the job, with $400,000 to be paid at the start of the project, and the remaining $400,000 to be paid upon completion. The contract also provided that, if Weybosset requested changes or was responsible for delays in the project, Weybosset would be obligated to reimburse Stonestreet for any resulting additional expenses.

Stonestreet hired Allstate Interiors (a business partnership whose partners are domiciled in Massachusetts, with its principal place of business in Rhode Island) as a subcontractor on the hotel project. The contract between Stonestreet and Allstate provided for Allstate to receive a total of $200,000 for its work, with $100,000 to be paid when Allstate started its work, and the remainder to be paid upon completion.

While construction was underway, Weybosset requested changes in the design of the hotel. About halfway through the project, work was delayed for several days because of a problem with the power supply at the site (for which Weybosset was responsible under the contract). As a result of the changes and delay, Stonestreet incurred an additional $60,000 in expenses.

When the job was complete, Weybosset made the second $400,000 payment as agreed in the contract (they also made the first payment at the start of project), but refused to pay the additional $60,000 attributed to the changes and delay. Stonestreet in turn refused to pay Allstate the $100,000 balance under their contract, claiming that Allstate had not completed its work as agreed upon.

Allstate sues Stonestreet for breach of contract under state law in the U.S. District Court for the District of Rhode Island, seeking the $100,000 it claims is due under the contract.

1. Does the federal court have subject matter jurisdiction over Allstate’s breach of contract claim?
2. Stonestreet contends that it incurred an additional $50,000 in expenses as a result of Allstate’s unsatisfactory performance. May Stonestreet assert a state-law claim against Allstate for that amount in this suit? If Stonestreet does not assert that claim in this suit, may it do so in a separate suit?
3. Stonestreet contends that, if it is liable to Allstate for breach of contract, it is entitled to indemnification or contribution from Weybosset, because Weybosset’s refusal to pay the additional $60,000 for the project changes and delay caused Stonestreet to breach its contract with Allstate. Stonestreet also contends that it is entitled to the additional $60,000 from Weybosset. May Stonestreet join Weybosset as a third-party defendant for either of these claims?
4. Rhode Island law grants Allstate a mechanic’s lien on the hotel to secure its payment for the work it performed. This means that, if Allstate is unable to collect payment from Stonestreet, it can seek a foreclosure sale of Weybosset’s property and collect its payment from the proceeds of that sale. Assuming Stonestreet joins Weybosset as a third-party defendant in Allstate’s suit, may Allstate then assert a claim against Weybosset to enforce its mechanic’s lien through a foreclosure sale?