

Discussion Problems #4

1. Plaintiff transmission shop brings suit against defendant blender/supplier of transmission fluid. Count III of the suit alleges that the defendant supplied mislabeled transmission fluid in violation of the Tennessee Fraudulent Practices in the Marketing of Petroleum Products statute. The complaint further alleges that the statute creates an implied private cause of action (the language of the law creates only criminal liability).

Attorney for defendant serves interrogatories asking for:

- (1) The basis for your allegation that defendant violated the statute.
- (2) The basis for your contention that the statute creates an implied cause of action.
- (3) Information on any prior convictions of the owner of the shop (a sole proprietorship).

As plaintiff's attorney do you object? Basis?

2. At U.T., Abrams and Braum have an altercation that results in serious injuries to Abrams. The Dean of Student Life recommends that Braum be suspended for a year for violating the Code of Conduct. Braum appeals to the University Hearing Board. At the hearing, the Chairman of the Board states that everyone should testify freely noting that the Code makes all testimony "privileged and confidential." As Braum's attorney, should you permit him to testify?

3. Dillard's is a tenant in the renovated East Towne Mall and has signed a 20 year lease. After one year, it is clear to Dillard's that the mall is in serious financial difficulties and probably will not be able to continue to maintain the mall. Dillard's sues to rescind the lease and collect damages. It seeks to take the deposition of 1st Tennessee Bank concerning the financial condition and prospects of the defendant, and any advice the bank may have rendered in connection with the mall. The bank objects on the ground that the information was confidential and received by the bank in connection with its role as banker for the mall. As judge, how do you rule on the bank's motion for a protective order?

4. Aarons sues King for his injuries arising from an automobile accident with King. Assume that Aarons' attorney notices the deposition of King. The attorney also wants King to bring all relevant documents with him to the deposition, how can he accomplish that goal? See FRCP 30 and 45.

5. In Aarons v. King, King serves interrogatories on Warden, an eye witness, regarding what he saw. How should Warden respond?

6. In Aarons v. King, Aarons claims that since the accident he has been severely depressed and seeks damages for the depression. King wants to have him examined by a psychiatrist. Can he? How? Can King get records of pre-accident psychiatric treatment?

7. In the Arizona Dairy Antitrust litigation, the state was the named representative of a class of consumers suing to recover for damages based on alleged price-fixing of dairy products by state agencies. The defendants requested all documents relating to dairy purchases by agencies during the relevant period (over 15 years). The state responded by stating that the relevant documents were included in the files of all state purchases (not just dairy products) indexed by agency and year only, comprising over 9 million documents. The state stated further that it would make the records available for defendants to examine. The state, however, was unwilling (not surprisingly) to search the files to locate the relevant documents for the defendants.

(a) In drafting a motion to compel for defendants, what would you argue?

(b) How would you respond for the state?

In answering the question, consider Kozlowski v. Sears, 73 F.R.D. 73 (S. Mass 1976) (available online).

8. You represent the plaintiff in the personal injury accident arising out of an automobile accident. During the deposition of plaintiff, the opposing attorney asks your client “Have you ever been a member of the communist party?” What do you do?

9. At a deposition of a friendly witness of your client taken by the opposing party, the attorney asks the deponent if you ever questioned the witness about the accident upon which the case is based. The lawyer then asks the deponent to relate all the questions you asked. Do you have any valid objections?

10. You represent a plaintiff in an action against a trucking company arising out of an accident in which the truck rear-ended your client’s car. In response to your prior discovery requests the defendant acknowledges that they had an accident reconstruction expert examine the scene immediately after the accident. The defendant, however, asserts that any further information is not discoverable because he will not be called to testify. Are they correct? What arguments can you make, or consider, to justify further discovery?

11. Immediately following a major air disaster near Detroit, Boeing sends its “Crash Investigation Unit” -- a group of employees specifically assigned to conduct such investigations. No one in the team will testify at a trial arising out of the crash. Can plaintiff’s discover any information from them?

12. In Aarons v. King, (question 2) Aarons’ attorney talks informally with a doctor friend about Aarons’ medical condition in preparation for trial. The doctor is not paid and will not testify at trial. Can King discover any information about the doctor or his opinions?