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# ALTERNATE CASE PROBLEM ANSWERS

## CHAPTER 3

### COURT PROCEDURES

#### **3-1A.      *Jury selection***

*(Chapter 3—Pages 64–65)*

The court of appeals held that the prosecutor's statement indicating that he exercised peremptory challenges against two unmarried female prospective jurors because he was concerned they would be attracted to the defendant was an admission of purposeful gender discrimination, in violation of the defendant's right to equal protection. The court reversed and remanded the case. The court reasoned that the government's stated reason for striking the women was not based on their qualifications to serve as jurors but on "the false assumption that [single women] are unqualified to serve as jurors ... [or] are unable to consider impartially the case" against Omoruyi. Allowing this peremptory challenge, said the court, "would simply affirm an erroneous and unconstitutional presumption that women are less qualified than men to serve as jurors."

#### **3-2A.      *Discovery***

*(Chapter 3—Pages 61–64)*

The appellate court affirmed the trial court's dismissal of Stout's action. The appellate court stated that trial courts are permitted to impose sanctions—ranging from an award of expenses to an entry of dismissal or default judgment—upon parties who fail to comply with requests during discovery. The sanction chosen "is left to the sound discretion of the trial court." The court recognized that the right to be heard is "a litigant's most precious right and should be sparingly denied," but it would not condone Stout's blatant disregard for the trial court's orders. The court concluded that in the circumstances of this case, the sanction of dismissal was appropriate.

#### **3-3A.      *Motion for summary judgment***

*(Chapter 3—Pages 60–61)*

The Florida Supreme Court affirmed the appellate court's decision. The evidence was sufficient to indicate that it was a question of fact whether the bar knew that Hoag was an alcoholic. Therefore, summary judgment was inappropriate, and the case should proceed to trial. The court's one-page opinion in this case was mostly a summary of Hoag's drinking habits. Hoag had testified that over the two-year period prior to the accident, he (1) normally consumed a case of beer during the day while on his construction job; (2) drank hard liquor every evening at various bars; (3) went to Peoples twice a week, becoming overtly intoxicated on each occasion (exhibiting slurred speech, red eyes, and unsteady appearance); and (4) was well known to the bartenders at Peoples, who never

refused to serve him on any occasion. Hoag stated that on the night of the accident, he had been served the equivalent of twenty shots of hard liquor and was so intoxicated that he did not recall leaving the bar, eating dinner, or much about the accident. Given this record, the court concluded that “the circumstantial evidence adduced was sufficient to permit a jury to find that the employees of Peoples knew of Hoag’s addiction, based on his repeated behavior and appearance.”

**3-4A.        *Motion for a new trial***  
(Chapter 3—Page 71)

The state trial court denied the motion, holding that the juror’s “inadvertent” failure to respond to a question during *voir dire* did not “rise to the level of juror misconduct which would require the grant of a new trial.” Hummel appealed. The state intermediate appellate court held that the juror’s failure to hear the question violated the juror’s duty to be attentive during *voir dire* proceedings. The trial court’s decision was thus reversed. The appellate court stressed how important it was for jurors to respond truthfully to questions asked of them during *voir dire*. If a litigant cannot depend on jurors to answer questions truthfully, “then he cannot be certain he is getting a fair, just and impartial trial as guaranteed by the Constitution.” The court went on to state that it is just as important for jurors to tell the truth as it is for trial witnesses to tell the truth and that a “failure to respond is tantamount to giving an untruthful answer.” Noting that the *voir dire* questions regarding cancer filled sixteen pages of the trial transcript, the court concluded that “in view of all the conversation that transpired between counsel and the other jurors” on the issue of cancer, the juror’s claim not to have heard the question “amounts to an admission that he was grossly inattentive to the whole *voir dire* process.”

**3-5A.        *Motion to dismiss***  
(Chapter 3—Page 60)

Yes, because the complaint is insufficient. Basically, a motion to dismiss (or demurrer) is an allegation that there has not been stated a sufficient legal cause to require the defendant to present an answer (defense). A complaint that consists of nothing more than naked assertions and sets forth no facts on which a court could find a violation of the Civil Rights Act fails to state a claim.

**3-6A.        *Jury trials***  
(Chapter 3—Pages 64–65)

Yes, the suspension of civil jury trials for a period of three and a half months for budgetary reasons does violate the Seventh Amendment. The court stated that the Seventh Amendment is violated whenever an individual is not afforded, for a significant period of time, a jury trial that he or she would otherwise receive. Three and a half months were construed to be more than a “significant period of time.” The court further concluded that the availability of constitutional rights does not carry a “price tag” and that individual liberties, as mandated by the Constitution, cannot be affected by budget shortages or other variations in the balance of accounts in the national Treasury. A civil trial can be held without a jury. The Seventh Amendment guarantees the right to a jury trial in a civil suit in federal courts only when the damages sought exceed the amount of \$20. The same basic guaranty applies in state courts, although many states put a higher dollar amount than the federal minimum of \$20.

**3-7A. A QUESTION OF ETHICS**

1. On further appeal, the United States Supreme Court held that the Equal Protection Clause prohibits discrimination in jury selection on the basis of gender, or on the assumption that an individual will be biased in a particular case solely because that person happens to be a woman or a man. The Court concluded that the state's gender-based peremptory challenges could not survive the higher standard of equal-protection scrutiny that the Court affords distinctions based on gender. The Court stated that the state's rationale (that its decision to strike virtually all males in the case may reasonably have been based on the perception, supported by history, that men otherwise totally qualified to serve as jurors might be more sympathetic and receptive to the arguments of a man charged in a paternity action, while women equally qualified might be more sympathetic and receptive to the arguments of the child's mother) was virtually unsupported and was based on "the very stereotypes the law condemns."

2. On the one hand, it can be said that whether a trial is criminal or civil, potential jurors, as well as litigants, have an equal protection right to jury selection procedures that are fair and free from discrimination. On the other hand, some agree, with Justice Scalia in his dissent in this case, that the two sexes differ, both biologically and in experience. In that case, it is not merely stereotyping to say that these differences may produce a difference in outlook that is brought to the jury room. Thus, the use of peremptory challenges on the basis of sex is not the sort of derogatory and invidious act that peremptory challenges directed at black jurors may be. Because all groups are subject to the peremptory challenge (and will be made the object of it, depending on the nature of a particular case), it can be hard to see how any group is denied equal protection. Women were categorically excluded from juries because of doubt that they were competent; women are stricken from juries by peremptory challenge because of doubt that they are well disposed to the striking party's case. This is not discrimination.

3. It can be argued, as the Supreme Court held in this case, that the conclusion that litigants may not strike potential jurors solely on the basis of gender does not imply the elimination of all peremptory challenges. So long as gender does not serve as a proxy for bias, unacceptable jurors may still be removed, including those who are members of a group or class that is normally subject to a lesser standard of review ("rational basis") under the equal protection clause and those who exhibit characteristics that are disproportionately associated with one gender. As Justice Scalia, citing Blackstone, noted in his dissent in this case, "Wise observers have long understood that the appearance of justice is as important as its reality. If the system of peremptory strikes affects the actual impartiality of the jury not a bit, but gives litigants a greater belief in that impartiality, it serves a most important function. In point of fact, that may well be its greater value."