**Alternate Case Problem Answers**

*Chapter 3*

**Court Procedures**

**3-1A. *Jury selection***

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***

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***

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***

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***

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***

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. *Jury selection***

The judge refused to strike Leiter for cause, and then collectively asked the jurors who were selected to hear the case, including Leiter, whether they would follow his instruc­tions on the law even if they did not agree with them and whether they would be able to suspend judgment until they had heard all the evidence. All of them nodded their heads or said yes, and Leiter was allowed to remain. When the judge entered a judgment on the jury’s verdict in favor of Altheimer & Gray, Thompson appealed to the U.S. Court of Appeals for the Seventh Circuit. The appellate court reversed and remanded the case for a new trial, holding that the trial judge’s failure to strike Leiter for cause was an abuse of discretion and a violation of Thompson’s constitutional right to an impartial tribunal. The court explained that the trial judge should have pressed Leiter for “unwavering af­firmations” of her ability to follow the law after she stated that her business background might cloud her judgment in hearing the case. This background, coupled with her belief that some people sue their employers because they do not get what they want, might have impeded her “in giving due weight to the evidence and following the judge’s in­struc­tions.” This question “was not adequately explored.” In other words, the trial judge should have asked her individually “whether she would follow his instructions on the law and suspend judgment until she had heard all the evidence.”

**3-8A. *Motion for judgment n.o.v.***

Following a trial, a jury returned a verdict in Adams’s favor and awarded him damages in the amount of $7,500. The court denied Uno’s motion (which, in Rhode Island, is re­ferred to as a motion for judgment as a matter of law). Uno appealed to the Rhode Island Supreme Court. The court upheld the lower court’s decision. The state supreme court ex­plained, “When considering such a motion, the trial justice examines the evidence in the light most favorable to the nonmoving party, without weighing the evidence or evaluat­ing the credibility of witnesses, and draws from the record all reasonable inferences that support the position of the nonmoving party. .  .  . If, after such a review, there remain factual issues upon which reasonable persons might draw different conclusions, the mo­tion for judgment as a matter of law must be denied.” In this case, “[a]fter examining the evidence in the light most favorable to the plaintiff, the trial justice decided that a rea­son­able jury could have found that Badot’s actions in badgering the plaintiff and then having him arrested were a pretext for retaliating against the plaintiff for having called in the Department of Health.”

**3-9A. *Discovery***

A trial court has broad discretion to grant or deny the requests of the parties that appear before it. In this case, the court should deny the plaintiff’s request to lift the protective order. The court granted her first request for a four-month delay to complete discovery. The plaintiff made her second request on the morning of the rescheduled arbitration hearing. Because it would have been unfair to the defendant to postpone the hearing on such short notice for a second time, the court did not abuse its discretion in denying this request. The plaintiff’s third request for a delay to conduct discovery was made five months later, and the court issued a protective order against it, because the time for discovery had run out. The plaintiff’s request to lift this order was made on the day of the trial, when granting it would have meant another postponement, which would have been unfair to the defendant and the court. If Peatie’s counsel had not been aware of the information sought from Wal-Mart, a request for additional time might have been reasonable, but the facts do not indicate that the information had suddenly come to light. There is also no indication that Peatie’s counsel objected to the protective order when it was issued.

**3-10A. 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.”