

LAW 222 - FEDERAL COURTS
Instructor in Charge: Professor W. Fletcher

TIME ALLOWED: 3 HOURS

INSTRUCTIONS:

This is a 3 hour exam. There are three questions. I suggest that you allocate your time as follows:

Question 1: 1 hour and 30 minutes

Question 2: 1 hour

Question 3: 30 minutes

I will weight the questions in proportion to the times suggested. Please save enough time for the last question.

The examination is designed to be completed in the time provided, but you will have to move right along to do so. Please keep careful track of your time.

The examination is open book. You may bring into the examination room with you any materials assigned in this course, plus any notes. No commercial outlines or other outside reading.

QUESTION 1

(suggested time: 1 hour and 30 minutes)

Congress has just passed the Sunfarm Location Act (SLA). The SLA defines a sunfarm as a group of electricity generating solar panels with a total area of over 500,000 square feet. The SLA requires that before constructing a sunfarm a company must “consult” with county administrators of at least three different counties concerning its location. The SLA forbids construction of a sunfarm until the three consultations have taken place and a report describing the consultations has been submitted to the federal Department of Energy (DOE). Once a company has performed the three consultations and submitted its report, it may construct the sunfarm wherever it wants, even in a county where no consultation took place.

SolarNation is in the sunfarm business. It consulted at length with the county administrators of two counties in Nevada, and talked briefly with the county administrator of Inyo County, California. It then submitted a report to the DOE in which it characterized all three exchanges with the county administrators as “consultations.” SolarNation then began construction of the sunfarm in San Bernadino County, California.

(1) The county administrator of Inyo County and a contractor headquartered in Inyo County specializing in building sunfarms bring suit under the SLA against SolarNation in federal district court. The two plaintiffs seek an injunction to stop the construction in San Bernadino County. The plaintiffs contend that SolarNation did not “consult,” within the meaning of the SLA, with the Inyo County administrator. They contend that if such a consultation had taken place, Inyo County would have offered such attractive financial incentives to SolarNation that it would have decided to locate its sunfarm in Inyo rather than San Bernadino County. Do the two plaintiffs have standing to bring this suit in federal district court? Please discuss.

(2) Concerned that they might not have standing in federal court, the county administrator and the contractor bring an identical suit in California state court. Do the two plaintiffs have standing to bring this suit in state court? Please discuss.

(3) Assume that the state court holds that the two plaintiffs have standing. After that ruling, the State Attorney General intervenes as an additional plaintiff in the state court suit, contending that if SolarNation’s sunfarm is constructed in the planned location it will interfere with a right-of-way easement owned by the State. Easements are governed by state law. Assume further that the federal district court dismisses the suit for want of subject matter jurisdiction, holding that neither of the two plaintiffs has Article III standing. As soon as the district court dismisses the suit, SolarNation moves in that court for an injunction ordering the county administrator, the contractor, and the Attorney General to cease pursuing their suit in California state court. Should the district court grant the injunction in whole or in part? Please discuss.

(4) Assume that SolarNation settles with the Attorney General by purchasing the easement, and that the Attorney General is dismissed from the state court suit. Assume further

that the district court has declined to grant the injunction against the state court suit. The state court holds that the two plaintiffs now remaining in the suit (the county administrator and the contractor) have standing to enforce the SLA, and it enjoins the construction of the sunfarm in San Bernadino County. This decision is affirmed by the California Supreme Court. May the United States Supreme Court review the decision of the California Supreme Court? Please discuss.

QUESTION 2

(suggested time: 1 hour)

The University of California (UC) and British Petroleum (BP) have jointly patented a machine that produces electrical energy from algae without, at the same time, producing significant amounts of greenhouse gases. UC and BP each own a half-interest in the patent. UC and BP contract with a manufacturer to build the machine for them. They have now sold 50 of the machines and plan to build and sell many more.

The University of Massachusetts (UMass) and Chevron had earlier jointly patented a very similar machine. UMass and Chevron each own a half-interest in the patent. UMass and Chevron have built and sold several of their machines, but their sales have been adversely affected by sales of the competing UC/BP machine. UMass and Chevron believe that the UC/BP machine infringes their patent.

UMass and Chevron bring suit in federal district court in the Northern District of California against UC and BP, as well as against officials of UC and BP, alleging patent infringement in violation of federal law. They also allege in their suit that the sales of UC/BP machine violate California trade secrets law. California characterizes a violation of its trade secrets law as a tortious misappropriation. UMass and Chevron seek damages for reduction in sales of their machine caused by sales of the UC/BP machine, and injunctive relief against future sales of the UC/BP machine.

You may assume that the UC/BP machine does, in fact, infringe the UMass/Chevron patent. You need not know any more about patent law than appears in this question. You may also assume that in producing and selling their machine UC and BP are in violation of California's trade secrets law.

What success do you predict for the UMass and Chevron suit? Please discuss.

QUESTION 3

(suggested time: 30 minutes)

If you were a Justice on the United States Supreme Court and you could rethink and re-decide Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982), Thomas v. Union Carbide Agricultural Products Co., 473 U.S. 568 (1985), and Commodities Futures Trading Comm'n v. Schor, 478 U.S. 833 (1986), would you wish to re-decide these cases? If not, why not? If so, how would you do so? Please discuss.