GENERAL FACTS

Lala Palooza, a native of Tulsa, Oklahoma, has worked at the Tulsa Teen Crisis Center for the last 10 years. The Crisis Center is a for-profit corporation incorporated in Oklahoma. The Crisis Center has just started small operations in California, and Dallas, Texas. It's primary offices are located in Muskogee, Oklahoma, which is part of the Eastern District of Oklahoma; Tulsa is part of the Northern District of Oklahoma.

The mission of the Crisis Center is to help teens in distress. It advertises in the local papers in Northeast Oklahoma, including the Tulsa World, which circulates throughout Northeast Oklahoma, Southeast Kansas, Southwest Missouri, and Northwest Arkansas. The Tulsa World is also available on the INTERNET (the Tulsa World maintains a home page in which it posts a daily special internet edition, complete with the advertisements appearing in the hard copy), as well as on legal databases such as LEXIS and WESTLAW. For an extra fee, which the Crisis Center pays, its advertising can appear on all of the electronic media on which the Tulsa World appears as well as on the Tulsa World's regular paper editions.

A Federal Statute, 56 U.S.C. § 123, provides that it is unlawful for any entity or person offering or providing counseling to advertise their services unless the entity has registered with the Federal Therapy Agency ("FTA"). It permits the FTA to seek fines from entities and persons which fail to register, and the statute also creates a presumption of nonRegistrability for any entity any of whose employees have been convicted of a crime of moral turpitude. The statute is silent with respect to private rights of action, although the preamble of the statute speaks about the remedial nature of the statute. The Oklahoma legislature recently enacted OKLA. STAT. tit. 66 § 66 which permits any person who suffers injury caused by advice given by anyone who holds him or her self out as a provider of advice, and who is not actually registered with Federal Therapy Agency under 56 U.S.C. § 123 at the time the advise is given, to recover damages from the provider of that advise as well as from any employer of such advice-giver, all of whom are jointly and severally liable for such damages.

While the Crisis Center deals with the scandalous lives of teenagers and young adults, the Crisis Center has always worked under the assumption (untested) that any scandal in the personal lives of Crisis Center employees would pose a significant risk to the Crisis Center's income. The Crisis Center has strict rules regarding employee conduct. These include rules prohibiting employees from
engaging in actions which violate the law. Violation of the rules could result in
termination at the discretion of the Crisis Center director, and with the approval of
the Crisis Center Board.

The Center is run by Ina Bugger, who holds the title of Director, and exercises
the authority of a corporate President. Her offices are in Muskogee. Bugger reports
to a Board of Directors. While she normally has authority to hire and fire employees;
she usually, but not always, consults with the Board before she takes action, and the
Board is responsible for all major decisions taken by the Crisis Center. Because most
of the Board members live in Dallas, most Board meetings are held in Dallas. Ina
Bugger and her staff will usually participate either by phone or will fly down to
Dallas for the meetings. The Crisis Center Board just recently entered into an
"indemnification Agreement" with Bugger under which the Crisis Center is obligated
to take up the defense of any and all claims asserted against Bugger in connection
with her employment at the Center -- the Center will hire and pay for legal counsel
and reserves the right to direct her defense. Bugger remains free to hire independent
counsel at her own expense in addition to the counsel hired by the Crisis Center. The
Crisis Center has applied for registration under the federal statute, but has not
received either yet, in large part because agencies of both governments are still
considering the applications.

While Palooza normally mans the Crisis Center hotline, she occasionally does
administrative work. Palooza is somewhat unique in the organization because
unlike the other Crisis hotline workers, Palooza usually, but not always, works from
her apartment in Tulsa. Since 1991, Palooza has received a salary of $15,000 per year
for her work. Prior to 1991, Palooza worked as a volunteer. Palooza's duties with the
Crisis Center did not change when she began receiving a salary for her work.

Like most Crisis Center employees, Lala Palooza has an interesting past. Lala
ran away from home at age 15 and worked as a prostitute, providing a variety of the
"usual" services for a fee to Tulsa area men and women until she was arrested in
1980. Raped in prison while awaiting a hearing, she spent three years in a mental
hospital. Since her release she has been continuing therapy to overcome recurring
strong feelings that people are "out to get her." In order to pay for her therapy
sessions, she still occasionally entertains some of her old clients. While she has a
police record, her last prior arrest, in 1991, resulted in a plea of no contest to a
reduced charge of soliciting an act of lewdness for which she received a verbal
warning and a $250.00 fine.

A ray of sunshine recently dribbled onto Palooza. She found love in the form
of Michael Jack Son, a student of Pop-Psychology at the Touchy Feely University of
Coffeyville, Kansas, and the brother-in-law of Ina Bugger. Though they have been
dating for only 3 weeks, Palooza has decided to move in with him. The problem is
that he lives in Coffeyville, Kansas. What a pain! Two weeks before the events of
April 17, 1995, she decides that she will move in with him. Just in case things don't work out, she will keep her apartment in Tulsa, which is in the Northern District of Oklahoma. She will take the bus in from Coffeyville to Moskogee on the days she has to work in the office, but can stay over in her Tulsa apartment from time to time as the need arises. But, oh, the paperwork associated with this move! She did manage to file her state taxes in Oklahoma using the Non-resident/Part Year resident form, but she has yet to get to the Kansas Voter Registration Office to get her card, but that will have to wait . . . the elections are not until November 1996 anyway. She has changed the address of some of her credit cards, but not all of them, and she still receives mail at the Tulsa address. She also has not changed her address on her employer's records.

On the morning of April 17, 1995, Lala Palooza and Michael Jack Son had a terrific fight over what she thought was his excessive interest in alcohol and young children (he wanted to get pregnant right away but hadn't talked marriage yet -- the nerve!). She fumed about this all day. He threatened to kick her out of his place. And she was so distracted that she didn't even pay much attention to the kind of advice she was giving.

That was too bad, really, because of what happened that day. Among the questionable advice was some she gave to a person named Amstel Light, a student at the University of Kansas. While his parents lived in Kansas City, Missouri, Amstel had lived in an apartment near the University for three years. While he hadn't changed his voter registration from Missouri to Kansas, he had obtained a Kansas driver's license and auto registration and paid taxes in Kansas. He had no plans to stay in Kansas after graduation but might if a job turned up. It seems that Amstel saw an ad for the Crisis center while he was on the internet at school. He wrote down the toll free number included in the ad and called. And it was a good thing, too, because Amstel thought he had a real problem with a girl in his school. He was in love with her, he thought, but she did not seem to reciprocate. When he called he got Palooza. Palooza listened to Amstel and suggested had he go to her room, confess his desire and force her to kiss him. She remarked that the problem was that the girl was playing hard to get and that she would like the "rough treatment." Palooza did not invent this advice. She was merely reading off cards that the Crisis Center provided all people who manned the hot line. She thought the advice was stupid but wasn't "in the mood" to think very hard about it one way or the other; besides her boyfriend had written it.

These cards contained the advice that the hot line operators had to dispense to callers. The only time a hot line operator could render independent advice was when the call related to a matter not covered by the cards. These advice cards were introduced by Ina Bugger, who insisted that all hot line operators use them. She never got approval from the Board for this action but she figured she didn't need it. Besides, she had worked closely on these cards with Michael Jack Son, whom she
had introduced to Palooza. Actually the cards had been Michael Jack Son's brainchild, the product of a school project entitled "How Would You Run a Crisis Intervention Center."

Anyway, after he hung up, Amstel did as directed by the card Palooza read. It turns out, however, that the girl didn't quite like "rough treatment." She called campus police, has Amstel arrested and filed sex harassment charges against Amstel for which he can get expelled from the University. She also told Amstel she will file a complaint with the district attorney. Immediately after his arrest Amstel called Palooza back (on the toll free number) to tell her that he was going to get Palooza for the awful advice she gave. This is the last straw! She decides to tell Michael she will leave him at the end of the month.

Palooza was quite shaken by the call from Amstel. Just before she left, Palooza fielded another call, this time from some woman named "Viki." Viki claimed to have developed "feelings" for her best girlfriend and wanted to know what to do. Palooza read the card entitled "Lesbian Feelings" Your thoughts are depraved. What you need is a real man to turn you around. Why don't you go to a biker bar and sleep with the biggest guy you find. That will cure these disgusting longings." Unknown to Palooza, Viki was actually Viki Lake, a notorious talk show host, who was taping the conversation during for a show to be shown that evening called: "How Crisis Center advise-givers ruin people's lives." At the end of Palooza's advice Viki Lake identified herself and tried to interview Palooza, but Palooza, in shock, hung up on Lake. After Palooza hung up, Viki Lake identified Palooza as the author of the advice Lake was given. The "Viki Lake Show" is produced in New York City, and owned by Universal Television, Inc., a Delaware corporation with principal offices in Burbank, California. The show is sold by Universal Television, Inc. to local broadcasters nationwide, including the ABC affiliate in Tulsa, Oklahoma.

On her way to the bus to get back to Coffeyville, Palooza collapsed and was taken to the hospital. As a result, Palooza will miss three months of work. She called the Crisis Center to let them know. The Director of the Crisis Center, Ina Bugger, told her that she would be missed but "not to worry." However, things changed when Ina Bugger turned on the TV to the 6 O'Clock News in time to see a clip from the Viki Lake Show in which Palooza was heard giving the "Lesbian Feelings" Advice. Bugger went ballistic, especially after the local director of the Federal Therapy Agency was interviewed as saying that he was going to start an investigation of the Crisis Center. She went to the Crisis Center Office that night to do some "damage control." While there she went to over Palooza's phone messages and she discovered Palooza's "sideline."

She decided then and there to fire Palooza. But how was she to do it. The next morning she called the county district attorney and had described the notes and Bugger' suspicions of Palooza's activities. The district attorney, however, was not
very helpful. He said that his office would only prosecute that kind of activity if Palooza were caught in the act. In any case, a couple of phone messages were too flimsy a basis for prosecution or conviction. And anyway, the district attorney wasn't sure Palooza was doing anything illegal.

Bugger determined to look elsewhere for a reason to fire Palooza. The solicitation conviction was no good because Bugger knew about it at the time Palooza started working (although now Bugger realized that Palooza's record could affect the Center's federal registration -- even more reason to get rid of her). After examining the Center's procedures, she discovered a policy on which she thought she could rely, one which permits the Center to terminate employees absent from work, for any reason whatsoever, for more than 8 weeks. This 8 week policy has never been used by the Crisis Center, even though it has been "on the books" for the last 10 years.

On April 27, 1995, while Palooza was still in the hospital, Bugger sent Palooza a notice which contained a reminder of the policy of the Crisis Center that "all employees who miss eight (8) consecutive weeks of work will be terminated." At the time the note was sent Bugger had not sought to officially terminate Palooza, nor had she informed the Board of her actions. However, Bugger has told Palooza's friend, in confidence, that Palooza's days "are numbered." Upon reading the note, Lala suffered a nervous breakdown which the doctor's opinion might require extended visits to the psychiatrist for a number of years to determine whether she has become severely paranoid.

Oklahoma Statutes, title 42, § 25400, provides in part, that "other than in connection with a termination based solely on a conviction for a crime of moral turpitude, no employer may terminate an employee employed by the employer for five (5) or more years. Any Employee of an Employer or the Secretary of Labor of the State of Oklahoma may, within 60 days of a termination, enforce this provision." "Employee" is defined as "a person performing services for an Employer." "Employer" is defined as corporation or other income generating enterprise which engages the services of Employees." A "termination" is defined as a "termination, demotion, or other detrimental change in the conditions of employment, or the notice thereof which an Employee receives." A "crime of moral turpitude" is defined as "any act made criminal under the laws of this state or any other state or federal authority which touches on lewdness, dishonesty, or corruption of morals." The Oklahoma appellate courts have held that the term "performing services for an Employer" includes the performance of service without pay. However, in the context of the workers compensation laws, of which tit. 42, § 25400 is NOT a part, the Oklahoma Supreme Court has held that only persons receiving some sort of compensation for their services were employees for purposes of the workers compensation statutes. The Supreme Court has not yet considered any question dealing with tit. 42 § 25400. Okla. Const. art. 36, § 2 provides that the Oklahoma Supreme Court may render advisory opinions with respect to any case or controversy...
before the federal courts at the request of said court.

This statute was meant to provide a new right for employees in the state. The legislative history of this section indicates that the Legislature, in enacting this statute, wished to augment an employee's power to retain his job. In this sense, the Legislature meant to change the common law relationship between employer and employee. On the other hand, the Legislature also made clear that the basis for recovery by an employee under this section ought to be no different than the recovery available traditionally in unjust termination cases -- generally based on the notion that the employee ought to be made whole. In this sense, the Legislature meant to create a minimum statutory "employment contract" for every worker in the state, whether or not the worker otherwise had a written employment contract. In Oklahoma as at common law in England, contract claims are tried to a judge, while unjust termination cases are normally determined by a jury.

QUESTION 1
(60 minutes; 33%)

You are an associate at Workem, Killem, and Terminatem in Kansas City, Kansas. Amstel has been expelled from the university and is facing possible criminal charges. His life and reputation are in ruins. He figures $5,000,000 ought to compensate him for his injuries. A partner at the firm is best friends with Amstel's dad. After some conversation, Amstel agreed to permit the firm to represent him. Amstel is quite anxious to obtain as much compensation from as many people or entities as quickly as possible. Amstel would like to bring suit against all possible defendants in one action in federal court in Missouri. Your boss calls you into his office and gives you the following assignment:

Part A
(30 MINUTES; 15%)

PREPARE A MEMORANDUM EXPLAINING SUCCINCTLY, WITH APPROPRIATE REASONING, WHETHER AMSTEL CAN FILE SUIT IN FEDERAL COURT IN MISSOURI AND AGAINST WHOM, IDENTIFYING WITH APPROPRIATE REASONING ALL OF THE BASES UPON WHICH SUCH FEDERAL COURT MIGHT ENTERTAIN AMSTEL'S SUIT. IDENTIFY ANY OTHER FEDERAL COURT DISTRICT IN WHICH IT MIGHT BE BETTER TO BRING THE SUIT.

Part B
(20 MINUTES; 12%)
A week after amstel files his suit, the Federal Therapy Agency ("FTA") files an action in federal court against the Crisis Center alleging violation of the registration requirements of the 56 U.S.C. § 123, seeking a fine of $5,000, and agreement to cease hiring people convicted of crimes of moral turpitude. Assume that a judgment was rendered in the FTA's favor.

PREPARE A MEMORANDUM EXPLAINING SUCCINCTLY, WITH APPROPRIATE REASONING, WHETHER CAN AMSTEL SUCCESSFULLY PRECLUDE BUGGER FROM LITIGATING THE ISSUE OF VIOLATION OF THE REGISTRATION REQUIREMENT IN THE SUIT ASSERTED BY AMSTEL.

Part C
(10 MINUTES; 5%)

ASSUME THAT THE COURT DETERMINES THAT BUGGER WAS LIABLE TO AMSTEL PURSUANT TO OKLA. STAT. tit. 66 § 66, BECAUSE GIVING ADVICE FROM THE ADVICE CARDS WAS RECKLESS OR NEGLIGENT: (I) COULD BUGGER, IN A SUBSEQUENT SUIT, SEEK DAMAGES FROM MICHAEL JACK SON ON THE BASIS OF HIS ROLE IN FASHIONING THE ADVICE CARDS? AND (II) COULD BUGGER, IN THAT SUBSEQUENT SUIT AGAINST MICHAEL JACK SON, PRECLUDE THE RELITIGATION OF THE ISSUE OF THE RECKLESSNESS OR NEGLIGENCE OF PROVIDING ADVICE THROUGH THESE CARDS?

QUESTION 2
(100 minutes; 55%)

You are an associate at Wacky, Tacky, & Tutu in Tulsa, Oklahoma. The firm has agreed to represent Palooza. Palooza is out for revenge and to protect herself to the highest possible degree. She would like to bring suit against all possible defendants in one action in federal court in Tulsa. Your boss calls you into his office and gives you the following assignment:

Part A
(30 MINUTES; 15%)

PREPARE A MEMORANDUM EXPLAINING SUCCINCTLY, WITH APPROPRIATE REASONING, IN WHAT FEDERAL COURT AND AGAINST WHOM, CAN PALOOZA INITIATE SUIT, IDENTIFYING
WITH APPROPRIATE REASONING ALL OF THE BASES UPON WHICH SUCH FEDERAL COURT MIGHT ENTERTAIN PALOOZA'S SUIT.

Part B
(15 MINUTES; 9%)

ASSUME THAT PALOOZA DOES NOT SUE VIKI LAKE IN THE INITIAL LAWSUIT. CAN PALOOZA INITIATE AN ACTION AGAINST VIKI LAKE FOR SLANDER AFTER THE INITIAL SUIT IS REDUCED TO JUDGMENT?

Part C
(20 MINUTES; 12%)

IF THE SUIT AGAINST VIKI LAKE CAN PROCEED, AFTER THE INITIAL SUIT IS CONCLUDED, IN WHAT FEDERAL COURT COULD SUCH AN ACTION BE BROUGHT?

Part D
(10 MINUTES; 5%)

ASSUME THAT PALOOZA SUES INA BUGGER AND THE CRISIS CENTER IN STATE COURT IN DALLAS, TEXAS. THE CRISIS CENTER, WITHOUT CONSULTING BUGGER, REMOVES THE ACTION TO FEDERAL DISTRICT COURT IN DALLAS, TEXAS. IS REMOVAL PROPER?

Part E
(15 MINUTES; 9%)

ASSUME THAT A CRITICAL ISSUE IN THE LITIGATION BETWEEN PALOOZA AND THE CRISIS CENTER INVOLVES THE DETERMINATION OF WHETHER PALOOZA IS AN EMPLOYEE OF THE CRISIS CENTER FOR PURPOSES OF OKLA. STAT., title 42, § 25400. THE CRISIS CENTER HAS MOVED TO DISMISS. PREPARE A MEMORANDUM EXPLAINING SUCCINCTLY, WITH APPROPRIATE REASONING, WHAT THE LIKELIHOOD IS THAT THE COURT WILL GRANT THIS MOTION, DISCUSSING ALL ARGUMENTS IN SUPPORT AND OPPOSITION TO THE MOTION.
SHOULD THE COURT CONSOLIDATE PALOOZA'S SUIT WITH AMSTEL'S SUIT. DISCUSS ALL ARGUMENTS IN SUPPORT AND IN OPPOSITION TO SUCH A CONSOLIDATION.

QUESTION 3  
(20 minutes; 12%)

Assume that Amstel has alleged a cause of action based on violation of the registration requirements of the 56 U.S.C. § 123 in the state courts of Oklahoma against the Crisis Center. Assume that Okla. Rule of Procedure X.8 provides that "affirmative defenses must be pleaded with particularity, setting forth all facts on which the affirmative defense is based." This has been interpreted by the Supreme Court of Oklahoma as shifting the burden of proving every element of an affirmative defense to the party with the burden of pleading the affirmative defense. The federal courts, in prior decisions construing the rights of people under § 123, have held that while a defendant sued for violation of the registration provisions of § 123 had the burden of pleading the application for registration as an affirmative defense, the burden of proving that the registration would/could not have been granted (and therefore, that the application was ineffective) remained with plaintiff.

THE CRISIS CENTER HAS MOVED TO ENJOIN THE APPLICATION OF OKLA. RULE OF PROCEDURE X.8. PREPARE A MEMORANDUM EXPLAINING SUCCINCTLY, WITH APPROPRIATE REASONING, WHAT THE LIKELIHOOD IS THAT THE COURT WILL GRANT THIS MOTION, DISCUSSING ALL ARGUMENTS IN SUPPORT AND OPPOSITION TO THE MOTION.