FINAL EXAMINATION ESSAY

Civil Procedure A
Fall 2012
Professor Brill

1. Two Essay Questions - 20 points
   Multiple Choice - 36 points
   Previous Points - 44 points
   100 points for semester

2. This examination is designed for three hours. However, you may have three and one-half hours to answer it. The additional time is to permit better organization, more careful thinking and neater handwriting. (No credit is given for illegible answers.)

3. Read the question carefully. Particularly note whether you are to be a judge, law clerk, advocate, adviser or dispassionate scholar.

4. Your grade on the essay question is based upon the context of your answers and the manner in which you communicate your knowledge. Grades may be lowered for answers that so violate fundamental rules of grammar and style that the reader's ability to comprehend the content is impaired. The questions will be graded on the quality of analysis, thought and conclusions, not on the number of words.

5. The multiple choice questions are to be answered on the scantron. FAILURE TO RETURN THE MULTIPLE CHOICE QUESTIONS WILL RESULT IN FAILURE IN THE COURSE.

6. For the exam, you may use:
   a) the FRCP supplement;
   b) the Arkansas supplement, but you may write only on the front of the pages.
   c) 20 pages of notes or materials: letter size, one side only, any font, any source, any material.

7. Turn your bluebooks, multiple choice questions, scantrons, pencils and qualification sheet in by the time posted at the front of the room. You may keep the essay question.

8. If you have questions about the content or wording of any part of the examination, see me during the examination.
ESSAY QUESTION #1

1. Plaintiff, Rusty Rustic, filed the following document in federal court in Fayetteville against Ace Trucking Co.:

   In Federal Court in this District Rusty Rustic sues Ace Trucking. I cross street in front of Sam Walton's Store, mind my own business. I live here all my life. This truck company, Ace, come here from Texas and its truck knocks me down. Drive couldn't have been looking where he was going. I hit the ground and hurt real bad. I not able to work and had lots of doctor bills. I figure Ace Co., they owe me a couple of hundred thousand dollars for the trouble they caused me.

   November 15, 2012

The clerk of the court showed Rusty how to properly fill in a summons and instructed him how to properly serve it on Ace Trucking. Rusty followed those instructions.

You are a young associate in a defense firm. The senior partner brings you the above document and tells you “We represent Ace Trucking and have for many years. How do we respond to this? Tell me what motions we can file. I also want to know any thoughts you have on whether we should file and whether we are likely to succeed. Be thorough. Be objective. By the way, I’m only interested in preliminary motions. We’ll worry about discovery later. And I don’t need a treatise on every possibility.”

Write the memo to the senior partner.
Essay Question 2

Nuclear Power Plant, Inc. (NPP) owns and operates a nuclear power plant in Utah. For one hour on each of three successive days in 2011, the plant emitted heavy radiation over the surrounding area. Patricia allegedly was injured by the radiation emitted on the third day, and she sued for "damages of more than $100,000" in a proper federal district court against NPP. After describing the relevant facts, the complaint alleged only that NPP was responsible for "wrongful conduct". Jurisdiction was based properly and exclusively on diversity of citizenship.

1. NPP moved to dismiss the complaint for failure to state a claim upon which relief could be granted. The federal district court denied the motion.

2. During discovery, the attorney for Patricia requested that NPP produce a memorandum (#A-62) concerning possible legal liability for nuclear power accidents, prepared by NPP's legal staff prior to the accident. It discussed nuclear accidents at plants in other states and owned by other utility companies. NPP objected to discovery of #A-62 because of the so-called "work product" doctrine and because legal issues relating to accidents at other plants is not relevant.

The Utah legislature abolished the work product doctrine last year and would permit discovery of such a document. However, the Federal Rules of Civil Procedure (as interpreted by federal courts) would not permit the discovery of this type of document.

The federal district court held that the memorandum (#A-62) could be discovered.

Were the court's rulings correct? Discuss. (5 points each).