

**FINAL EXAMINATION**  
**ESSAY**

Civil Procedure A  
Fall 2007  
Professor Brill

1. Two Essay Questions (each worth 10 points) - 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, 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 essays 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. You may use the Supplement and the Arkansas supplement (with any comments written in them) to complete this examination.
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.

## ESSAY QUESTION #1

1. Paul Peterson, a citizen of Pennsylvania, and David Dobbs, a citizen of Delaware, were involved in a fight in a bar in Pittsburgh on July 20, 2005. On July 1, 2007 Paul Peterson filed a lawsuit in federal district court in Pennsylvania against Doug Dobbs, seeking \$100,000 for personal injuries. The complaint and summons were delivered to the federal marshal in Delaware on July 14, 2007. Doug Dobbs was served on August 1, 2007. Doug was totally mystified by the complaint. Accordingly, he does not respond. Nothing else happens.

His twin brother David has been on a mission trip to an Inca village high in the Andes for six months. When he returns to Delaware on November 10, 2007, Doug asks him: "Do you know a Paul Peterson?" After some discussion, David realized that he was the intended defendant.

The plaintiff's investigator discovered the mistake on December 1, 2007. On December 2, the plaintiff's law firm filed a Rule 15 motion to amend. The plaintiff seeks to substitute David for Doug.

David has filed an objection to any amendment or substitution.

The statute of limitations for assault and battery in Pennsylvania is two (2) years. Pennsylvania has a narrow and restrictive amendment provision. In addition, the Pennsylvania courts have consistently held that amendments to pleadings are not an effective means of avoiding the legislative policy embodied in statutes of limitations.

You are the law clerk for the federal trial judge. She has asked for you a brief memo analyzing the primary issues that she must confront. The format of your memo is unimportant to her. She understands that you may not be able to completely develop all the issues; but she emphasizes that you are to identify them and relevant policy and case law.

## ESSAY QUESTION #2

### FACTUAL BACKGROUND:

Mom and her nine year old daughter Diane are citizens of Arkansas. They are traveling by private automobile to a Thanksgiving holiday in North Dakota. In Nebraska they collide with another vehicle driven by Connie, a citizen of Canada, who is attending the University of Nebraska on a student visa.

Each of the following questions is worth 2 points. Each question stands alone. Each question can be answered in a paragraph.

- 1) Mom sues for herself, and as guardian of Diane, in federal court in Nebraska; the cause of action is based on common law negligence. She seeks \$50,000 in damages for herself, and \$50,000 in damages for Diane. Is the lawsuit properly in the federal court?
- 2) Mom sues for herself, and as guardian of Diane, in federal court in Arkansas; the cause of action is based on common law negligence. She seeks \$90,000 in damages for herself, and \$10,000 in damages for Diane. Is the lawsuit properly in the federal court?
- 3) Mom sues for herself, and as guardian of Diane, in state court in Nebraska; the cause of action is based on common law negligence. She seeks \$90,000 in damages for herself, and \$50,000 in damages for Diane. Connie wishes to remove to the federal court in Nebraska. Is removal proper?
- 4) Mom sues in federal court in Nebraska. In addition to her negligence claim for \$90,000, she has an additional claim, seeking “annoyance” damages for \$10,000. She truthfully states in her pleadings that Connie had a bumper sticker on her car denouncing, in vulgar fashion, people from the South. A life long Arkansan, Mom is insulted, and accordingly adds Count II for the annoyance damages. Connie objects and says there is no “annoyance” claim under the governing law. What should Connie procedurally do?
- 5) Same as (4). Assume Connie prevails. She now asks for sanctions against Mom. Should sanctions be awarded? Discuss.