

FINAL EXAMINATION ESSAY

Civil Procedure A
Fall 2014
Professor Brill

1. Two Essay Questions - 20 points
Multiple Choice - 50 points
Previous Points - 50 points
120 points for semester
2. This examination is designed for four hours. However, you may have four 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) 30 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 questions.
8. If you have questions about the content or wording of any part of the examination, see me during the examination.

ESSAY Question #1

Plaintiff Patricia, a female employee of Defendant XYZ, Inc., a large manufacturing firm, sued XYZ in federal district court for violating a federal statute that creates a right to be free of sex discrimination in the workplace.

Plaintiff alleged the following: (1) Plaintiff worked for Defendant in a position for which females had seldom been hired in the past. (2) Shortly after Plaintiff was hired, male coworkers began to make sexually charged remarks to Plaintiff. (3) Plaintiff's male supervisor asked her out on dates and became angry each time she refused. (4) There were occasional incidents in which the supervisor or another male worker "accidentally" made contact with various parts of Plaintiff's body. (5) No one from company management ever took steps to monitor or limit behavior of this sort. (6) As a result of this behavior, Plaintiff began to suffer from various physical ailments that were related to stress. (7) Plaintiff made no complaint to management about the situation because the job paid very well and there were, to her knowledge, no comparable opportunities that would be available to her if she lost this particular job.

XYZ's answer to the complaint admitted that Patricia was an employee and that the individual named as her supervisor was her supervisor. Defendant denied all allegations relating to the alleged sex discrimination.

A well-established affirmative defense is available in cases of this sort if the defendant employer proves that (a) the plaintiff employee was not subject to any adverse job action (such as firing, demotion, or loss of promotion opportunity), (b) the employer exercised reasonable care to prevent the promptly correct any sexually harassing behavior, and (c) the plaintiff employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer.

In a pretrial deposition, Patricia admitted that she had suffered no loss of pay or promotion opportunity. Plaintiff also admitted that she was aware of company policies forbidding sex discrimination and sexual harassment, as well as the procedures that employees could use to complain about perceived discrimination. Plaintiff stated that although she was aware of those policies and procedures, she had not seen any effort on the part of Defendant to enforce the policies and was afraid that she would suffer retaliation if she made use of the procedures available to complain of sex discrimination.

After the close of discovery, XYZ moved to amend its answer to add the affirmative defense set forth above. It also moved for summary judgment, claiming that Plaintiff's deposition testimony sufficiently established the elements of the affirmative defense to warrant a judgment in Defendant's favor.

Patricia opposed both motions. The trial judge ruled in Defendant's favor, allowing the amendment and then granting summary judgment to XYZ..

Did the judge err? Explain. (5 points for each motion).

NOTE: this question comes from the July 2012 Arkansas Bar Exam.

ESSAY Question #2

In August 2013 plaintiff Paula Porter, a resident of Fayetteville, Arkansas, was injured by a lawnmower as she was mowing the lawn in her back yard. Three individuals witnessed the accident: Walter Witness, who lives and works in Sallisaw, Oklahoma, 80 miles from Fayetteville; Frances Friend, who lives and works in Marshfield, Missouri, 160 miles away; and Nick Neighbor, from Fayetteville. Arguably they have testimony that Paula was misusing the lawnmower.

The product was manufactured by Jayhawk Tractor Corporation (JTC), a Kansas Corporation. Its corporate headquarters and manufacturing plant is located 250 miles from Fayetteville. It regularly sells products in Arkansas.

In January 2014 Paula filed a lawsuit for personal injuries against JTC. The action was filed in the Western District of Arkansas in Fayetteville under diversity jurisdiction. Jurisdiction is not disputed by JTC; nor are there any disputes about witness fees or mileage costs. All motions are filed by attorneys, and opposed by attorneys.

Each of the following petitions, motions or request is directed to the federal judge in Fayetteville. Each petition is properly brought and is properly opposed by the other side.

You are the federal judge in Fayetteville. You are to rule on each petition with a "for plaintiff" or "for defendant" followed by two or three sentences of explanation. In ruling, you should not assume any unique or unusual or unstated facts.

- A) Six weeks after filing the lawsuit, plaintiff sends a notice to defense counsel. It instructs Ed Engineer, a salaried employee of the defendant, to come to Fayetteville for a deposition. Plaintiff intends to question Ed about the production process of the lawnmower. No trade secrets are involved. Defendant files an objection with the court. (1 point)
- B) Plaintiff Paula requests that the Missouri judge issue a subpoena to be personally served on Frances Friend directing her to appear for an oral deposition at her home in Marshfield, Missouri. Defendant objects. (1 point)
- C) Defendant JTC requests plaintiff to produce her homeowner's liability insurance policy, which reimburses plaintiff for claims against her. Plaintiff objects. (1 point)
- D) Plaintiff Paula reasonably believes that Nick's testimony is questionable because of his poor eyesight. Plaintiff files a petition with the court for a vision examination of Nick. Defendant objects. (1 point)
- E) Plaintiff Paula asks defendant to admit in writing: "JTC's manufacturing process was changed two months after the plaintiff's accident." Defendant objects to the propriety of such a request for admission. (1 point)

- F) The plaintiff files interrogatories on defendant JTC. JTC answers some, but refuses to answer interrogatories #3, #4, and #8. Defense counsel objects to the others: "These interrogatories are burdensome, seek information outside the scope of discovery, and invade trade secrets." Plaintiff petitions the court for the imposition of immediate discovery sanctions. Defendant objects to the imposition of sanctions. (1 point)
- G) Jeff Gibson, a former employee of the defendant, now lives and works in Lake Village, Arkansas; it is in the Eastern District of Arkansas, 315 miles from Fayetteville. Plaintiff seeks to have a subpoena issued by the judge in Fayetteville to compel Jeff to be a witness at the trial. Defendant objects to the issuance of the subpoena. (1 point)
- H) At trial plaintiff wishes to use the deposition of Walter Witness, instead of asking him to come to trial in Fayetteville. His testimony is relatively minor in the overall plaintiff's case. Defendant objects (1 point).
- I) Plaintiff's expert witness is Professor Karen Lynch of Austin, Texas (530 miles from Fayetteville). She is deposed by the defendant in Austin. At the deposition, the defendant did not object to her qualifications as an expert. Defense counsel conducted a thorough deposition of Professor Lynch.

At trial Professor Lynch does not appear, but the plaintiff offers her deposition. The defendant objects and wishes to bar her entire deposition on the ground that, as a matter of law, she is not competent to testify as an "expert". The plaintiff claims the defendant has waived the objection. (2 points)