

## FINAL EXAMINATION ESSAY

Civil Procedure A  
Fall 2011  
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. In response to calls for tort reform, the state of Iowa passed a statute with two significant provisions. Act 4 provides that in medical malpractice cases the award for intangible injuries (pain and suffering) may not exceed \$250,000. Further, Act 4 provides that the amount of award for intangible injuries shall be set by the judge (rather than a jury). Act 4 has not yet been interpreted by the Iowa courts. (The Iowa constitution is not relevant). The Iowa legislature enacted the statute because of its concern with escalating medical malpractice awards, particularly when unsupported by medical expenses or lost wages.

Plaintiff Pete lives in Rock Island, Illinois, just across the Mississippi River from Iowa. He sought medical treatment from Doctor Diane, who practices in Davenport, Iowa. The treatment was rendered in Iowa.

Upset with the results of the treatment, Pete has brought a medical malpractice lawsuit in federal court in Illinois under diversity jurisdiction, seeking substantial damages, including \$400,000 in intangible damages. Pete has demanded a jury trial under the Seventh Amendment to the United States Constitution.

Illinois has not adopted any limitation or "cap" on damages in medical malpractice cases.

Defendant Diane has waived any objection to jurisdiction or venue. But she has objected to the use of a jury to set damages, and further she has raised Act 4 as an affirmative defense to the amount of intangible damages.

Plaintiff Pete's position is that Iowa Act 4 is not applicable. He demands that a jury determine the amount of intangible damages, and he does not believe any limit is appropriate.

You are the law clerk to the Illinois federal judge. Judge Janet has directed you: "Write a memo discussing both issues; analyze them; recommend a conclusion for me, and indicate your reasons. Be as concise as possible. I do not care what format you use for your memo." (10 points)

## ESSAY QUESTION #2

2. Tom (a citizen of Tennessee) and Alberta (a citizen of Alabama) are not relatives, but are now close friends. They met while attending a seminar at the Birmingham, Alabama office of a regional brokerage house. The brokerage house is incorporated in Tennessee and has its principal place of business in Tennessee. Following the presentation, Tom purchased XYZ stock and Alberta (in a separate transaction) purchased XYZ stock.

XYZ has now declined in value. Both Tom and Alberta are discouraged and they are convinced the brokerage house was engaged in fraudulent activities. On their behalf an attorney files a lawsuit in a state trial court, seeking compensation for Tom in Count I and compensation for Alberta in Count II. (Such a joint lawsuit is permitted by the Rule 20 of the Federal Rules of Civil Procedure.)

The claims of Tom and Alberta arise out of a series of similar transactions and are therefore related to each other.

The complaint is filed in state court. The Tennessee defendant has filed a petition to remove to federal court.

Each of the following 4 subparts is to be answered separately. The question for each is the same: is the action removable? [in whole or in part? Must the federal court take the case? Does the federal court have discretion?]

Do not be alarmed: you should be able to answer each subpart with two, perhaps three, clear and precise sentences. You should indicate the reason for your conclusion.

- A) Tom sues for \$82,000 and Alberta sues for \$18,000. The action is filed in an Alabama state court. Both claims are based on common law fraud. (2 points)
- B) Tom sues for \$80,000 and Alberta sues for \$92,000. The action is filed in a Tennessee state court. Both claims are based on common law fraud. (3 points)
- C) Tom seeks \$10,000 based on common law fraud, but Alberta's claim for \$12,000 is based on a federal securities statute (which permits concurrent jurisdiction). The action is filed in a Tennessee state court. (3 points)
- D) Tom seeks \$6000 based on the federal securities statute (which permits concurrent jurisdiction), but Alberta's claim for \$95,000 is based on common law fraud. The action is filed in an Alabama state court. (2 points)