

FINAL EXAMINATION
ESSAY

Civil Procedure A
Fall 2008
Professor Brill

1.	One Essay Question	- 20 points
	Multiple Choice	- 36 points
	Previous Points	<u>- 44 points</u>
		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 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. 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.

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

Fall 2008

Essay Question

Factual Background: Mom and seven year old Daughter Diane are both citizens of Fayetteville (Washington County), Arkansas. They made a Thanksgiving trip to see relatives in Rapid City, South Dakota. While there, they visited Mount Rushmore to see the Presidents. They were in an automobile accident with Connie. They both suffered personal injuries.

Connie is a citizen of Calgary, Alberta (Canada); she was legally visiting the United States for a two week vacation in South Dakota and Colorado. She was driving her own vehicle with Alberta license plates.

Each of the following five questions is to be answered separately. Each question is worth 4 points. Each can be answered in two or three paragraphs.

A) Mom sues for \$80,000 for herself, and, as guardian, seeks \$20,000 for Diane. She sues in the Circuit Court of Washington County, Arkansas. The lawsuit is based on common law negligence. Connie is notified of the lawsuit by registered mail pursuant to the Arkansas Rules. Has the lawsuit been properly brought in Arkansas state court?

B) Mom sues for \$60,000 for herself, and, as guardian, seeks \$30,000 for Diane. She sues in state court in South Dakota. The lawsuit is based on common law negligence. Connie is notified of the lawsuit pursuant to the South Dakota Rules. Connie files a motion to remove to federal district court in South Dakota. May the lawsuit be removed?

C) Mom files the lawsuit in the federal court in South Dakota, and she files pro se. It reads as following:

**IN AMERICAN COURT IN SOUTH DAKOTA
NEAR MOUNT RUSHMORE**

MOM AND DIANE

v.

CONNIE

CHARGE

1. I am Mom and live in Arkansas. Baby Diane and me are both true Hogs. Connie is a foreigner.
2. Connie drives too fast on Thanksgiving. She hit me and Diane.
3. We are suffering real badly.
4. I need money for doctors and pills. I cannot work.

Please give me at least \$100,000 in American money; no foreign money because it is no good.

I promise this is all true, so help me God.

Signature _____

Is the complaint proper to commence the lawsuit?

D) Diane retains a major personal injury law firm. It files a lengthy complaint in federal court, seeking \$1.0 million, much of it in punitive damages. Connie is represented by American counsel provided by her insurance company. Within five days after the defendant was served with a summons, Defense counsel files a Rule 12(b)(1)

motion, challenging the good faith nature of the amount in controversy. Concurrently with that motion, the defense counsel files a Rule 12(b)(3) motion. The court has taken those motions under advisement. Now, 9 days later, the defendant has filed a Rule 12(b)(2) motion to challenge personal jurisdiction and a Rule 12(f) motion to strike the request for punitive damages.

Has defense counsel properly raised its objections? Discuss. **NOTE:** You do not need to consider the merits of the objections.

E) Trial is now pending in the federal court in South Dakota. A South Dakota rule provides that jurors cannot hear testimony for more than 60 minutes, and then they must be granted a recess. The policy behind the “60 minute rule” is to prevent jurors from being asleep, particularly in the afternoon. As the state judges said in a public hearing, “do you remember those long, dreary 90 minute classes in law school, when we could hardly keep our eyes open? Such a long time is not fair to judges, lawyers or jurors.”

There is no comparable federal rule. Federal judges have discretion as to when to take a recess. Federal Judge Janet is presiding. She has a reputation for starting court early, going late, and taking infrequent and short recesses.

The defense attorney expects to have complicated and lengthy accident reconstruction testimony to refute the allegations of negligence. The defense attorney properly asks Judge Janet to abide by the South Dakota “60 minute” rule. The defense attorney argues that the defense case will be hampered if Judge Janet does not follow the “60 minute rule”. Plaintiff’s attorney objects; (and without telling the court) the attorney believes that the defense expert will be less credible and persuasive as the testimony continues and therefore prefers longer sessions for tactical reasons.

Is Judge Janet obligated to follow the South Dakota Rule? Discuss.