

Fall 1992 Final Essay (Civil Procedure A)

Fall 1992
Mr. Brill

1. Questions 1-3 are each worth 14 points. Answer two of them.- 28 points
Multiple choice - 15 points
Quizzes - 8 Points
50 points for semester

2. This examination is designed for two and one-half hours. However, you may have three 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.) The questions will be graded on the quality of analysis, thought and conclusions, not on the number of words.

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

4. 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.

5. You may use the Supplement and the Arkansas supplement (with any comments written in them) to complete this examination.

6. You must take this examination in Room 327 or 328, the official typing room, or the official smoking room, but in no other location.

7. In answering the essay questions:

- a) You may answer the questions in any order you wish.
- b) Begin the answer to each question on a new page of the bluebook.
- c) Write on each line, but only on one side of the page. (The other page may be used for corrections and belated additions to your answer.)
- d) on the front of each bluebook, put the number of each question answered within.

8. Turn your bluebooks, multiple choice questions, scantrons, pencils and qualification sheet in to Room 328 by 11:30 a.m.

9. Your grade on the essay questions 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.

10. You may keep the essay questions.

Pilgrim Paper Products, Inc. (PPP) sells copier and paper products in Alabama, where it is incorporated. It signed a contract with Davis Duplicating, Inc., a New Jersey manufacturing corporation, to purchase and market Davis products in Alabama. DDI is a nationwide company and sells products in all 50 states. The contract contained a forum selection clause providing that any dispute arising out of the contract could be brought only in a court located in New York. Business relations between the two corporations soured.

PPP brought a lawsuit in the United States District Court in Alabama. The complaint alleged that DDI had breached the dealership agreement, but PPP also included claims for fraud and breach of warranty. It sought \$100,000 in damages.

DDI filed a motion in the Alabama federal court to transfer the case to New York under Section 1404. PPP opposed the motion on two grounds. First, it argued out that the Alabama state law, which should govern this matter, is clear. The Alabama Supreme Court expressly stated in a 1990 holding: "This state does not look favorably on forum selection clauses in contracts." Second, it argued that the court should not grant the

motion under the principles underlying #1404.

You are the federal trial judge. Rule on the motion.

2. Imogene Investor, a resident of Des Moines, Iowa, purchased a lot in Bella Vista, Arkansas and contemplates retirement there in five years. In connection with its active advertising and promotion campaign, E.F. Raney, a securities brokerage firm located in Bentonville, Arkansas, contacted Imogene Investor by mail (as it did all purchasers of real property in Benton County) and invited her to open a security account. On her next visit to Arkansas, she did open an account.

Since then she has communicated with E.F. Raney by mail and telephone. In January, her account executive called her and urged her to invest in XYZ stock; she orally agreed to purchase 500 shares'. Within the next few days, upon reading of XYZ's financial problems, she attempted to cancel the purchase. That failing, she refused to pay for the 500 shares. E.F. Raney then sold the stock at a loss of \$51,000.

E.F. Raney has sued for breach of contract in federal court for the Western District of Arkansas. Imogene Investor has filed a Rule 12(b)(2) motion to dismiss. E.P. Raney's analogy is that if an Illinois buyer came to Huntsville, Arkansas to purchase a horse, but the buyer's check bounced, Arkansas would have jurisdiction over the buyer. Further, Raney contends that recent decisions such as *Calder v. Jones* support the assertion of jurisdiction.

You represent Imogene Investor. You are to make an organized and comprehensive argument in support of your motion to dismiss. Your argument should include a response to the contentions of the plaintiff. You are standing in front of the federal judge. Make your argument.

3. Answer each of the following 7 questions (worth 2 points each) with a Yes or No, followed by a brief discussion.

a) Barnum, a citizen of Maine, sues Ringling Brothers, Inc., for injuries suffered when Leo, a trained lion, escaped from the circus train near Bangor, Maine. Barnum seeks \$75,000 in damages. Ringling Brothers is incorporated in Wisconsin and has its principal place of business in New York. The circus winters in Florida, has permanent facilities for training performers in Ohio, and performs for three weeks to a month in every state on the Atlantic seaboard. Can the lawsuit be brought in federal district court in Maine?

b) Same as (a), but can the lawsuit be brought in a federal district court in Ohio?

c) Barnum sues Ringling Brothers, Inc. and Kelly, the clown who let the lion escape from the train. Barnum claims that Kelly left Leo's cage unlocked while the train was refueling in Bangor. Kelly is domiciled in Florida. Can Barnum sue in Florida federal district court?

d) Barnum sues Kelly in the Eastern District of Pennsylvania for the injuries Barnum suffered in Maine. Barnum serves the summons and complaint on Kelly while the circus train is stopped just west of Pennsylvania to feed the animals. Is the suit proper?

e) Suppose the circus sues Kelly, from Florida and Rice, a Vermont citizen, for allowing Leo to escape. The circus alleges that Rice was negligent in failing to lock the cage when the train left Rutland, Vermont and that Kelly was negligent in failing to check the lock when the train stopped to refuel in Bangor. The suit is brought in Maine. Will the Maine federal court have personal jurisdiction over both defendants?

f) Betty, an Arizona citizen, sues the Bailey Circus, Inc., for an injury suffered when Elmer, a willing but occasionally clumsy elephant, fell on him while Betty was watching a circus performance in Phoenix, Arizona. The accident took place in 1989. At that time Bailey was incorporated in Delaware and had its principal (and only) place of business in Arizona. Since 1989, the circus has prospered. Now its principal place of business is California. May Betty bring suit in federal district court in Arizona for \$65,000?

g) In 1992 Betty sues the Bailey Circuit and Stenk, Elmer's trainer, for the circus accident. Suit is brought in a state court in New Mexico for \$65,000. Stenk is from New Mexico. May the defendants remove to federal court?