

Fall 1993 Final Essay (Civil Procedure A)

Fall 1993
Mr. Brill

1. Questions 1-3 are each worth 15 points. Answer two of them. - 30 points
Multiple choice - 14 points
Quizzes - 6 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 326 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 326 by 4:00 p.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.

Woods (a citizen of Alabama) trips at a railroad crossing located in central Alabama and owned by the Burlington Northern Railroad (a citizen of Iowa). Woods sues BNR in federal district court in Alabama and the jury awards \$55,000 for his personal injuries. BNR is convinced that several mistakes were made in the trial.

BNR appeals, and the trial court decision is affirmed without modification by the Court of Appeals for the 11th Circuit. An Alabama statute (Section 12-22-72) provides that in all instances where a money judgment is unsuccessfully appealed, the amount of the award shall be increased by 10%. The Alabama Supreme Court has interpreted that statute as mandatory in nature, because it implements the state policy of penalizing frivolous appeals and appeals taken for delay. In reliance on Section 72, the 11th Circuit increased the award by \$5500 for penalty damages.

Federal Appellate Rule 38 states that a court of appeals has discretion and may award additional damages and costs if it determines that the appeal is frivolous. (FAR 38 is found on page 350 of your supplement).

You represent BNR. You are standing in front of the United States Supreme Court. You are to make the best argument you can that the action of the Ninth Circuit in awarding penalty damages of \$5500 was erroneous and should be reversed.

2. Rita Moran is a citizen of Louisiana. Her sister and brother-in-law (Lori and Kevin) own and operate a marina in Hot Springs, Arkansas. Lori and Kevin wish to borrow \$50,000 to improve their marina. They make arrangements with Bombardier Credit, Inc. of New York to borrow \$50,000. At the request of BCI, Lori asked her sister to sign a guaranty for the promissory note. BCI refused to make the loan without the guaranty. Rita signed the guaranty form at her home in Louisiana and mailed it to BCI in New York.

Lori and Kevin have now defaulted on the promissory note. BCI has brought a lawsuit on the guaranty against Rita. The lawsuit for \$50,000 has been filed in the Circuit Court of Garland County, Arkansas.

Rita has filed a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction. You are the law clerk to the Arkansas Circuit Judge who will rule on the motion. She asks you to write a memo clarifying and summarizing the issues and the law and to make recommendations to her.

3. The following question has 9 parts. Section A-C are worth 1 point each. Those questions can be answered "Yes" or "No". You do not have to write any explanation. (However, I will read any explanation if you do not have the correct one word answer).

Sections D-I are worth 2 points each. Answer each question "Yes" or "No", and include one or two sentences of explanation. For all the questions, you can assume that the amount in controversy requirements have been satisfied.

A) Earp, from Kansas, sues Dillon, also a Kansan, in a state court in Kansas. His claim is based on violation of the federal civil rights laws. May Dillon remove?

B) Suppose Earp (still from Kansas) sues Carson, from Colorado, in the Colorado state court on a state law assault claim. May Carson remove?

C) Assume the same facts as question (B), but Earp sues a second defendant, Hickok, as well. Hickok is from Missouri. Can the defendants remove?

D) Consider the same facts again, with another twist: Earp, from Kansas, sues Carson (Colorado) and Hickok (Missouri) on the assault claims in a Kansas state court. Can the defendants remove?

E) Chester, from Iowa, sues Carson, a Coloradan, and James, a Kansan, in Kansas state court on a federal civil rights claim. May the defendants remove?

F) Earp (Kansas) has claims against Bean (Texas) and James (Kansas) for abuse of process. Earp deliberately decides to sue them jointly in a single action in state court in order to avoid removal to federal court. Does this prevent removal?

G) Suppose that Earp sues Bean in state court. Anticipating removal, Earp seeks only \$45,000 in damages, leaving out a demand for consequential damages worth \$8,000. May Bean remove?

