

Fall 1994 Final Essay (Civil Procedure A)

Civil Procedure

Fall 1994

Mr. Brill

1. Questions 1-3 are each worth 14 points. Answer two of them. -28 points

Multiple choice -16 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 4:30 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.

Sooner Office Supplies, Inc. (SOS) sells copier and paper products in Oklahoma, where it is incorporated and has its principal place of business. It signed a contract with Douglas Duplicating, Inc., a Pennsylvania manufacturing corporation, to purchase and market Douglas products in Oklahoma. 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.

SOS brought a lawsuit in the United States District Court in Oklahoma. The complaint alleged that DDI had breached the dealership contract. It sought \$100,000 in damages.

DDI filed a motion in the Oklahoma federal court to transfer the case to New York under Section 1404. SOS opposed the motion on two grounds. First, it argued out that the Oklahoma state law, which should govern this matter, is clear. The Oklahoma 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 01404.

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

2. while visiting Minnesota, Paula Plaintiff (a citizen of Arkansas) was involved in a collision with a Firestone Tire vehicle. She suffered approximately \$10,000 of property damages. The truck had Minnesota license plates. It was owned by the Firestone Tire Co., which is an Ohio corporation and has its principal place of business in Ohio. Firestone is licensed to do business and does business in all 50 states.

Paula sued Firestone (FTC) in circuit court in Arkansas. She served the summons on FTC in two ways: 1) a deputy sheriff served the papers on the registered corporate agent for FTC. (Any corporation licensed to do business in Arkansas is required to designate an agent, and that information is available in the Secretary of State's office). 2) the deputy sheriff served the papers on the Vice-President of Firestone when she came to Hot Springs to attend the races. Both methods of service were accomplished according to the Rules.

You represent FTC. You have filed a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction. You are standing in front of the circuit judge. Make the best argument you can. In addition, in the course of your argument, refute the obvious points that the attorney for Paula will make.

3. Note: In the following question, assume that the governing law is the Rhode Island long arm statute (bottom of page 276 of supplement).

Answer each of the following 6 parts with a "motion granted" or "motion denied," followed by a brief explanation. Each sub-part is to be answered independently of the others).

Facts: In federal court Plaintiff (a citizen of Rhode Island) sues the defendant, who is a Massachusetts governmental employee, alleging that he violated the federal civil rights statute by unauthorized surveillance of her on one occasion at her residence in Rhode Island. She sues in federal court in Rhode Island. She seeks \$10,000 in damages.

- a) The defendant files a Rule 12(b)(1) motion to dismiss. How should the court rule on the motion? (2 points)
- b) The defendant files a Rule 12(b)(2) motion to dismiss. How should the court rule on the motion? (2 points)
- c) The defendant was notified of the lawsuit through facsimile ("fax") transmission of the summons and complaint. The defendant files a Rule 12(b)(5) motion to dismiss. How should the court rule on the motion? (2 points)
- d) She also adds to her complaint a count alleging a common law invasion of her privacy, and seeks \$15,000 in damages. The defendant files a motion to dismiss the invasion of privacy claim. How should the court rule? (2 points)
- e) Assume the court eventually concludes that the federal civil rights statute is not applicable, and dismisses the civil rights claim. The defendant now files a motion to dismiss the invasion of privacy claim. How should the court rule? (3 points)
- f) Assume the law of Massachusetts on invasion of privacy is favorable to the defendant and the law of Rhode Island on invasion of privacy is non-existent. The defendant files a motion to compel the court to use and apply Massachusetts law. How should the court rule? (3 points)

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