

Fall 1995 Final Essay (Civil Procedure A)

Civil Procedure Fall 1995
FINAL EXAMINATION
Civil Procedure A
Fall 1995
Mr. Brill

1. Questions 1-3 are each worth 15 points. Answer two of them. - 30 points

Multiple choice - 23 points

Quizzes - 7 points

60 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.

1. Paul Plaintiff brings a diversity suit in federal court in Utah against Dottie Defendant for negligence. To prove Dottie's negligence, Paul offers two days of testimony by an eminent (and expensive) expert on accident reconstruction. Paul wins at trial, and moves to collect as "costs" a \$10,000 fee he paid to the expert to review the facts, perform experiments, and prepare for trial.

The relevant federal statute, 28 U.S.C. 1920 (page 280 of supplement), provides that the prevailing party may recover certain limited types of costs of suit from the losing party. These costs include a \$40-per-day attendance fee for witnesses who testify at trial, but include no provision for recovering an expert's fee for preparing for trial. By contrast, a Utah statute (#54) provides that the prevailing party in a negligence case may recover the full costs of retaining expert witnesses.

You represent Paul Plaintiff. You are standing in front of the judge. Make the best argument you can that Utah law applies to this issue. Be creative and imaginative.

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. FTC has Arkansas stores and employees, owns property in Arkansas, and generates considerable revenue in Arkansas.

Paula sued Firestone (FTC) in Washington County circuit court in Arkansas on August 1, 1995. The Vice-President of FTC is an enthusiastic Lady Razorback fan and came to Bud Walton Arena on Tuesday, December 12, 1995 to watch the Ladies play Team USA. During half-time, a deputy sheriff served the papers on the Vice-President. (He was aware of her presence because she had been quoted in the morning papers concerning the relative merits of Christy Smith and Jennifer Azzi).

You represent FTC. You have filed Rule 12(b)(2) and 12(b)(5) motions to dismiss. 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. Tom (a citizen of Tennessee) and Alberta (a citizen of Alabama) are not relatives. 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 rules of civil procedure.) The claims of Tom and Alberta are separate and independent of each other. The complaint alleges common law fraud as defined under the common law of Alabama.

The Tennessee defendant has filed a petition to remove to federal court.

Each of the following 5 variations is worth 3 points; each 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 it? Must it remand the entire case? Does it 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 \$20,000 and Alberta sues for \$65,000. The action is filed in an Alabama state court.
- B) Tom sues for \$65,000 and Alberta sues for \$20,000. The action is filed in an Alabama state court.
- C) Tom sues for \$20,000 and Alberta sues for \$65,000. The action is filed in a Tennessee state court.
- D) Tom sues for \$20,000 on common law fraud and Alberta sues for \$65,000 on a federal securities statute. The action is filed in an Alabama state court.
- E) Tom sues for \$20,000 on a federal securities statute and Alberta sues for \$65,000 on common law fraud. The action is filed in an Alabama state court.