

Fall 1996 Final Essay (Civil Procedure A)

FINAL EXAMINATION

Civil Procedure A

Fall 1996

Mr. Brill

1. Answer Question 1 or 2 - 20 points

Answer Question 3 - 30 points

Multiple choice - 36 points

Quizzes - 14 points

100 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 324, 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. 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.

9. You may keep the essay questions.

10. Turn your bluebooks, multiple choice questions, scantrons, pencils and qualification sheet in to Room 326 by the time posted at the front of the room.

11. Reread paragraph 4.

1. On October 23, Pedro, a citizen of Mexico, fell from the second floor of a building in Texas owned by Don, a citizen of Texas. On October 25 of the following year, Pedro filed a diversity action for negligence in a Texas federal court, seeking to recover \$100,000 for personal injuries and serving Don that same day.

Texas has a statute of limitations allowing one year to file such a claim. However, the normal final day for filing, October 23, fell on a Sunday; and both federal and state courthouses were closed. Monday, October 24, was a federal holiday (Veterans Day), but not a state holiday (Texas observed Veterans Day on November 11); and so the federal courthouse was closed, but the state courthouse was open. Pedro tried to

file at the federal courthouse on October 24, but the courthouse was closed. He returned on October 25 and filed.

Federal Rule 6(a) seems to extend all deadlines falling on a weekend or legal holiday to the next day that is not a Saturday, Sunday, or legal holiday. Texas law (TRCP #101) extends any deadline falling on a weekend or state holiday to the next day that is not a Saturday, Sunday, or state holiday.

Don raises the statute of limitation in his defense and argues that Texas law should apply, thus requiring dismissal of the action. You are the federal trial judge. Write an opinion discussing the issue and ruling.

2. Plaintiff lives in Memphis, which is in the Western District of Tennessee. Plaintiff sues Defendant, who lives (and has an office) in the Eastern District of Virginia, for breach of a contract for architectural work. The negotiations for the contract occurred primarily in Memphis. The contract called for Defendant to design a building to be built in Nashville, Tennessee, which is in the Middle District of Tennessee. Allegedly Defendant refused to follow through and complete the contract. Plaintiff sues in federal court based on diversity jurisdiction.

Part A is worth 2 points; the other parts are worth 3 points each. Answer briefly in 2 or 3 sentences. Each part is to be answered independently.

(A) The action is filed in the Middle District of Tennessee. Is venue proper?

(B) Plaintiff also sues Partner, who resides in the Western District of Virginia. The action is filed in the Western district of Virginia. Is venue proper?

(C) Plaintiff's lawyers reside in Little Rock, Arkansas. Plaintiff sues in the Eastern District of Arkansas. Defendant is served with a summons while attending the dog races at the track in West Memphis (Eastern District). Defendant objects to the action. How should the court rule?

(D) Defendant is a corporation. It is incorporated in Virginia and has its only office in the Eastern District of Virginia. With the exception of the Nashville project, it does no business outside the Eastern District of Virginia. Plaintiff sues in the Middle District of Tennessee. Defendant objects. Is venue proper?

(E) Same as (D), but Plaintiff sues in the Western District of Virginia.

(F) Plaintiff brings the action in the Eastern District of Arkansas. Because the negotiations occurred in Tennessee and Virginia and the witnesses are located in Tennessee and Virginia, the defendant files a Section 1404 motion to transfer the case to Tennessee. Should the court grant the 1404 motion?

(G) The contract between plaintiff and defendant provides that "Any dispute involving this contract shall be litigated in the federal courts of New York." Plaintiff sues in the Western District of Tennessee. Defendant objects. How is the court likely to rule?

3. Patty Plaintiff, a resident of Arkansas, has brought an action in Arkansas State Court for herself and for "all the other residents of Washington County, Arkansas" who have purchased home videos of "The Lion King", "The Fox and the Hound", and "The Little Mermaid." She alleges that the videos or the cases have drawings and animated scenes depicting, in a subliminal fashion, sexual messages or other sexually related material that is unsuitable for young children and for family viewing. Her complaint alleges (1) invasion of privacy; (2) common law fraud; (3) negligence; (4) breach of warranty. The complaint seeks \$1,000 in compensatory damages and \$50,000 in punitive damages for Patty. For the other unnamed plaintiffs, the complaint does not seek a specific award of damages, but requests an award of "all damages that are recoverable at law, including punitive damages."

She sues two defendants: (1) Walt Disney Pictures and Television Company is the corporation that produced the videos. It is incorporated in California and has its principal place of business in California. It is not licensed in Arkansas; it has no agents in Arkansas; it owns no property in Arkansas; it does not distribute motion pictures in any format in Arkansas or anywhere. (2) Buena Vista Home Video is the corporation that markets the videos. It is a California corporation with its principal place of business in Arkansas. It distributes videos nation wide and ships them to wholesalers in Arkansas.

The defendants were served the summons by Federal Express, a private business that delivers documents and packages worldwide. (The documents were delivered to their offices and left with an appropriate officer). The 2 defendants have removed the action to federal court in Arkansas. They have filed the following motions.

You are the law clerk for the federal judge. Write a brief memo to the judge discussing and evaluating each motion. The judge is interested in a statement of the governing law, the relevant arguments of each side, and your conclusions or recommendations.

1) The defendants object to service of process by Federal Express and argue that it is improper under FRCP 4. (5 points)

2) The defendants argue that removal is improper and the entire matter should be remanded to state court. (5 points)

3) The defendants argue that personal jurisdiction does not exist over Walt Disney Company, and that it should be dismissed from the lawsuit. (10 points)

4) In the alternative, defendants argue that even if the case is proper as to Patty Plaintiff, supplemental jurisdiction does not cover the unnamed plaintiffs. (10 points)

Note: This question is based generally on *Gilmer v. Walt Disney Co.*, 915 F. Supp. 1001 (W.D. Ark. 1996); 939 F. Supp. 665 (W.D. Ark. 1996).

