

Fall 1998 Final Essay (Civil Procedure A)

FINAL EXAMINATION
Civil Procedure A
Fall 1998
Mr. Brill

1. Questions 1-3 are worth 15 points each.

Answer two of them - 30 points

Multiple Choice - 26 points

Previous Points - 44 points

100 points for semester

2. This examination is designed for three hours. However, you may have three and one-half 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.)

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

4. In answering the essay questions:

You may answer the questions in any order you wish.

Begin the answer to each question on a new page of the bluebook.

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.)

On the front of each bluebook, put the number of each question answered within.

5. 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. The questions will be graded on the quality of analysis, thought and conclusions, not on the number of words.

6. 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.**

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

8. Turn your bluebooks, multiple choice questions, scantrons, pencils and qualification sheet in to Room 328 by the time posted at the front of the room. You may keep the essay questions.

1. The state of Iowa passed a statute (Act 4) providing that in medical malpractice cases the award for intangible injuries (pain and suffering) may not exceed \$250,000. Further, the statute provides that the amount of award shall be set by the judge (rather than a jury). Act 4 has not yet been interpreted by the Iowa courts. (The Iowa constitution is not relevant). The Iowa legislature enacted the statute because of its concern with escalating medical malpractice awards, particularly when unsupported by medical expenses or lost wages.

Plaintiff Pete lives in Rock Island, Illinois, just across the Mississippi river from Iowa. He sought medical

treatment from Doctor Diane, who practices in Davenport, Iowa. The treatment was rendered in Iowa. Upset with the results of the treatment, he has brought a medical malpractice lawsuit in federal court in Illinois under diversity jurisdiction, seeking substantial damages, including \$400,000 in intangible damages. Pete has demanded a jury trial under the Seventh Amendment. Illinois has not adopted any limitation or "cap" on damages in medical malpractice cases.

Defendant Diane has waived any objection to jurisdiction or venue. But she has objected to the use of a jury to set damages, and she has raised Act 4 as an affirmative defense to the amount of damages.

The Illinois federal judge has scheduled a hearing on both pending matters. You represent the plaintiff Pete. You are standing in front of the federal judge. Make the best argument you can. Be imaginative, be creative, be comprehensive, be thorough. Be sure to refute the obvious arguments of Defendant Diane.

2. 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 complaint is filed in state court. 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.

Tom sues for \$20,000 and Alberta sues for \$88,000. The action is filed in an Alabama state court. Both claims are based on common law fraud.

Tom sues for \$86,000 and Alberta sues for \$17,000. The action is filed in an Alabama state court. Both claims are based on common law fraud.

Tom sues for \$80,000 and Alberta sues for \$92,000. The action is filed in a Tennessee state court. Both claims are based on common law fraud.

Tom seeks \$10,000 based on common law fraud, but Alberta's claim for \$12,000 is based on a federal securities statute (which permits concurrent jurisdiction). The action is filed in an Alabama state court.

Tom seeks \$6000 based on the federal securities statute (which permits concurrent jurisdiction), but Alberta's claim for \$95,000 is based on common law fraud. The action is filed in an Alabama state court.

3. Plaintiff Patsy sues Defendant Doug for assault in federal court seeking \$25,000 as general damages and \$100,000 for punitive damages. Doug files a timely motion to dismiss for insufficient service of process. Eventually the judge denies the motion and notifies the parties. Answer each of the following questions specifically, followed by two or three sentences of explanation. (2 points each)

May Doug now answer and include within his answer, a motion to dismiss for lack of personal jurisdiction? (Only 1 point)

May Doug now answer and include within his answer, a defense that Patsy has given him a signed release from any liability arising from the assault?

Doug now moves to dismiss the claim for assault under Rule 12(b)(3). While the motion to dismiss is pending before the court, Patsy decides to amend the complaint and add a count for battery. May she do so?

Patsy knows that Doug is only 17 years old, but she does not mention his status as a minor in her complaint. What should the judge do?

Doug answers the complaint and includes in his answer a counterclaim against Patsy, seeking damages against her for insulting and ridiculing words. Patsy wishes to argue that the counterclaim does not state a claim on which relief can be granted. What should Patsy do?

Just prior to trial Patsy asserts that Doug has assaulted her again. She wishes to add the second assault to her complaint. What should she do?

Assume that the judge concludes that second assault was only a figment of Patsy's imagination and an attempt to harass Doug into settlement. What can the judge do?

At trial Patsy proves damages of medical expenses of \$10,000 and lost wages of \$8000. In addition, she argues that her pain and suffering and mental anguish support an award of an additional \$25,000 and defendant Doug should be punished by an award of \$100,000. The federal trial judge is hearing this matter without a jury; the defendant participates in the hearing; liability is not disputed at trial. Under the rules of civil procedure, how much is the judge authorized to award?

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