

FINAL EXAMINATION
ESSAY

Civil Procedure A
Fall 2005
Professor Brill

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| 1. | Essay Question | - 20 points |
| | Multiple Choice | - 36 points |
| | Previous Points | <u>- 44 points</u> |
| | | 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 question carefully. Particularly note whether you are to be a judge, advocate, adviser or dispassionate scholar.
4. In answering the essay question:
- a) You may answer the question in any order you wish.
 - b) Write on each line, but only on one side of the page.
(The other side of the page may be used for corrections and belated additions to your answer.)
 - c) Put the number of your essay question on the front of the blue book.
5. Your grade on the essay question 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 326 by the time posted at the front of the room. You may keep the essay question.

ESSAY QUESTION

This question has 8 subparts, each worth 2 or 3 points. Each subpart is independent of the other seven. A brief paragraph (or two) should be sufficient for each subpart.

John Adams (a citizen of Boston, Massachusetts) travels to Philadelphia, Pennsylvania to see the Army-Navy football game. While in Pennsylvania, he is involved in an accident with a truck owned and operated by the Carolina Cargo Company (CCC). The truck was driven by Driver Dave (a citizen of North Carolina). The corporation is incorporated in North Carolina and has its principal place of business in South Carolina. It operates a major warehouse in Pennsylvania. It does not do business in New England.

- a) John Adams brings a lawsuit for his personal injuries. He sues in Pennsylvania state court. The defendants are Dave and CCC. John Adams claims \$50,000 for his personal injuries from Dave; he claims \$50,000 for his personal injuries from CCC. The defendants wish to remove. Is removal permitted? Discuss. (2 points)

- b) In addition to the injuries claimed by John in (a), his wife Abigail also claims \$30,000 for her loss of consortium from CCC. The governing law permits loss of consortium claims in these type of law suits. The defendants wish to remove. Is removal permitted? Discuss. (3 points)

- c) Believing that Driver Dave has no assets, John elects to sue only the corporation CCC. John sues for \$50,000 for personal injuries, \$20,000 for mental anguish, and \$35,000 for punitive damages based on the allegation that Driver Dave was consuming alcoholic beverages at the time of the accident. The laws of Massachusetts and North Carolina permit punitive damages in these type of lawsuits; the laws of Pennsylvania and South Carolina do not allow punitive damages. The defendant CCC wishes to remove. Is removal permitted? Discuss. (3 points)

- d) John sues the corporation CCC for \$50,000 for personal injuries. But in a separate count of the same lawsuit, John sues the corporation for \$35,000 based on the failure of the corporation to deliver equipment under a contract two years earlier. The defendant CCC wishes to remove. Is removal permitted? Discuss. (2 points)

Parts (E - H): the lawsuit is filed originally in federal court in Philadelphia, Pennsylvania. The only defendant is CCC.

- e) Assume John sues the corporation CCC for \$100,000 for personal injuries in federal court. CCC files a Rule 12(b)(3) motion. How should the court rule? Discuss. (2 points)
- f) Pennsylvania Rule of Civil Procedure 9 provides that personal injury claims must be pleaded with particularity as to the nature of the injuries. John's allegations are written in general terms.
- CCC objects and moves to strike or dismiss the personal injury claims. How should the federal court rule? Discuss. (3 points)
- g) CCC writes to John: "This corporation is disturbed by this lawsuit. Our trucks were 300 miles away in Pittsburgh, Pennsylvania when the accident occurred. I believe that you meant to sue Columbia Container Corporation, which also labels its truck CCC, but with a less distinctive logo than ours. Please check the police report. We are asking you to promptly drop this lawsuit against us. Sincerely, CCC."
- John does nothing. Six months later the federal judge determines that the defendant CCC was not involved in the accident at all and had no trucks in Philadelphia on the day of the accident. Now CCC seeks compensation based on the letter and the subsequent events. How should the federal judge rule? Discuss. (3 points)
- h) CCC files a motion, contending that the four elements of negligence have not been alleged, and that the lawsuit is barred by the statute of limitations. While that motion is pending, CCC files an answer denying that it committed any negligent act and an affirmative defense that the lawsuit was not commenced within a timely fashion. John moves to strike the affirmative defense. How should the court rule? Discuss. (2 points)