

FINAL EXAMINATION

ESSAY

Civil Procedure A
Fall 2006
Professor Brill

1. Essay Question - 20 points
 Multiple Choice - 36 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 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 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.

Plaintiff Tom Tennessee lives in Memphis, which is in the Western District of Tennessee. Plaintiff Tom sues Defendant Vicki Virginia, who lives (and has an office) in Richmond in the Eastern District of Virginia, for breach of a contract for architectural work. The negotiations for the contract occurred primarily in Nashville, Tennessee. The contract called for Defendant Vicki to design a building to be built in Nashville, which is in the Middle District of Tennessee. The architectural work will be done in Richmond. Allegedly Defendant Vicki refused to follow through and complete the contract, and also committed acts of malpractice. Plaintiff Tom sues in federal court based on diversity jurisdiction and seeks \$500,000.

Answer each part briefly. Each part is to be answered independently.

- A) The action is filed in the Western District of Tennessee. Is venue proper? **(2 points)**
- B) Plaintiff Tom's lawyers reside in Little Rock, Arkansas. Plaintiff Tom sues in the Eastern District of Arkansas. Defendant Vicki is served with a summons while she is attending the dog races at the track in West Memphis, Arkansas (Eastern District). Is venue proper? **(3 points)**
- C) Plaintiff Tom brings the action in the Western District of North Carolina. Defendant Vicki has an office in North Carolina and occasionally does work in North Carolina. 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 or Virginia. Does the court have the power to grant the § 1404 motion? **(3 points)**
- D) Plaintiff Tom sues Defendant Vicki and Pete Partner. Pete Partner resides and works in the District of Maryland. The action is filed in the District of Maryland. Is venue proper? **(2 points)**
- E) The complaint is filed on October 1st. In response to apparent flaws in the commencement of the lawsuit, Vicki files a consolidated motion raising arguments under Rules 12(b) (2), 12(b) (3) and 12(b) (5). Her motion is filed on October 19th.

On November 10, Vicki files a second consolidated motion attacking flaws in the complaint itself. She raises arguments under Rules 12(b) (6), 12(e), and 12(f).

It is now December 14th. How should the judge handle the November 10th consolidated motion? Why? **(2 points)**

- F) In his complaint Tom Tennessee is seeking both compensatory and punitive damages from the defendant. The law of Virginia gives architects immunity from punitive damages for their mistakes; the law of Tennessee and North Carolina does not give such immunity.

The lawsuit is filed in North Carolina. Which law of punitive damages should the federal judge in North Carolina apply? Why? **(3 points)**

- G) Plaintiff sues on October 1st, alleging breach of contract by Vicki. Under the governing law, the statute of limitations for slander expired on November 1st. On December 14th, plaintiff asks the court for permission to file an amended complaint. It will allege in Count II as follows: "Defendant Vicki expressly said to a third party that Plaintiff Tom was "a liar and a thief in many ways involving the building project in Nashville." Defendant Vicki objects to the timeliness of the amendment and moves to strike it. Should the federal trial judge allow the proposed amendment? Discuss. NOTE: Ignore the merits of slander. **(2 points)**

- H) The law suit is filed in a federal court in Tennessee. Tennessee Rule of Civil Procedure 9 provides that malpractice claims must be pleaded with particularity as to the nature of the wrongful acts. Tom's allegations are written in general terms.

Vicki objects and moves to strike or dismiss the malpractice claims. How should the Tennessee federal court rule? Discuss. **(3 points)**