

# Spring 1994 Final Exam (Civil Procedure B)

Civil Procedure B

Spring 1994

Mr. Brill

1. a) Question 1 is worth 10 points. Answer it. 10 points
- b) Questions 2, 3 and 4 are worth 20 points.  
Answer 2 of them. 40 points
- c) The multiple choice questions are worth 30. 30 points
- d) Moore v. Dillard 20 points  
100 points

2. This examination is designed for three and one-half hours. However, you may have four 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 ten pages of written materials to complete this examination.

6. You must take this examination in Room 324 or Room 327, 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 sheets in at Room 324 by 5:00 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. The following question comes, unedited, from the July 1990 Multistate Essay Examination. Each part is worth 5 points.

Penn filed a civil action for damages against Foundation and several named individual defendants. The complaint alleged that the defendants published a letter containing certain false and defamatory statements about the plaintiff.

After discovery had been completed, Dill, one of the named individual defendants, filed a motion for summary judgment. His motion was supported by his affidavit, in which he set forth the following facts, based upon his personal knowledge: that his only connection with Foundation was that he had allowed his

name to be listed as an "honorary trustee" to assist in soliciting contributions; that the letter specified in Penn's complaint had been written, signed, and mailed by the president of Foundation; and that Dill had nothing to do with the letter and had no knowledge of the letter or its contents until Penn's complaint was served upon him.

In response to Dill's motion, Penn filed an opposing affidavit stating, "on information and belief, that defendant Dill participated in the publication of the said letter, as alleged in plaintiff's complaint."

1. What is the legal standard for granting motions for summary judgment? Explain.

2. Should the court grant or deny Dill's motion? Explain.

2. on behalf of Client Conrad, Attorney Alice brings a medical malpractice lawsuit in federal court against Hospital. The attorney for the defendant files a motion to disqualify Alice on the ethical basis that she has a conflict of interest because she is currently doing some collection work for the Hospital. The trial court grants the motion, disqualifies Alice from any further participation in the matter, and gives the plaintiff 30 days to find a new lawyer to continue the lawsuit.

Alice does not want to give up this big case. She desires immediate appellate review of the court's order. Each of the following 'S' is worth 5 points. (You should ignore the substantive issue of whether disqualification is proper or not).

- a) Can she seek immediate review under FRCP 54?
- b) Can she seek immediate review under the All-Writs Act?
- c) Can she seek immediate review under the discretionary appeal provision?
- d) Can she seek immediate review under the collateral order exception to the final judgment rule?

3. The following question comes from the July 1987 Arkansas Bar Examination. Each part is worth 5 points.

on March 5, 1993, Harry Hanes was seriously injured when he was struck by a truck as he was walking across the street. In July 1993, Mr. Hanes filed a lawsuit in the circuit court of Pebble County, Arkansas, against Lew Lewis, the driver of the truck, to recover compensatory and punitive damages. Attorneys for both Mr. Hanes and Mr. Lewis used pretrial discovery methods to obtain the following information:

(a) In written interrogatories to Mr. Lewis, Mr. Hanes asked Lewis to state whether Lewis had liability insurance covering injuries such as those sustained by Hanes, and, if so, to state the name of the insurance company and the policy limits.

(b) In written interrogatories to Mr. Lewis, Mr. Hanes asked Lewis to state his net worth and gross earnings each year for the past three years.

(c) In requests for production of documents made to Mr. Lewis, Hanes asked Lewis to produce for inspection all documents, diagrams and drawings of the scene of the accident prepared by Lewis' attorney.

(d) In requests for admission sent by Mr. Lewis to Dr. Hope, Mr. Hanes' physician, Lewis asked that Dr. Hope admit that Hanes was 90% deaf at the time of the accident.

Attorneys for both parties filed timely objections to the discovery sought by the other. How should the court rule with respect to @ objection? (Answer should be given concerning each lettered paragraph and should also give the basis for the court's rulings.)

Plaintiff, Rusty Rustic, filed the following document in federal court in Fayetteville against Ace Trucking Co.:

In Federal Court in this District Rusty Rustic sues Ace Trucking.

I cross street in front of Sam Walton's Store, mind my own business. I live here all my life. This truck company, Ace, come here from Texas and its truck knocks me down. Drive couldn't have been looking where he was going. I hit the ground and hurt real bad. I not able to work and had lots of doctor bills. I figure Ace Co., they owe me a couple of hundred thousand dollars for the trouble they caused me.

You are a young associate in the law firm. The senior partner brings you the above document and tells you "We represent Ace Trucking and have for many years. How do we respond to this? Tell me what motions we can file. I also want to know any thoughts you have on whether we should file and whether we are likely to succeed. Be thorough. Be objective. By the way, I'm only interested in preliminary motions. We'll worry about discovery later."

Write the memo to the senior partner.