

Spring 1995 Final Exam (Civil Procedure B)

Civil Procedure B
Spring 1995

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) Dobbins v. Skyway-S 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 15 pages of written materials to complete this examination.
6. 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.
7. Turn your bluebooks, multiple choice questions, scantrons, pencils and qualification sheets in at Room 326 by 5:00 p.m.
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.

With the end of the baseball strike, Alice Arkie left her home in Crossett, Arkansas and went to Arlington, Texas to see the Rangers play the Detroit Tigers. While waiting to purchase tickets, she bought a cup of "jumbo gumbo shrimp" at Texas Ted's sidewalk cafe. Delighted with the shrimp, she purchased a giant container of the shrimp. Ted packed them in dry ice and Alice took them home to Crossett to share with her co-workers at the Georgia Pacific Corp. However, when eating the fish, Alice suffered a severe attack of food poisoning and was hospitalized, and missed two weeks of work.

Alice brought an action in Arkansas state court, seeking \$55,000 in damages from Texas Ted's. Ted removed the action to federal district court. Ted filed a third party action against Ozark Gulf Shrimp, Inc. (OGS), a corporation incorporated in Arkansas, seeking indemnity in the amount of \$55,000. Ted had purchased the shrimp from OGS.

Now that Alice Arkie is aware of the supplier of the shrimp, Alice amends her complaint to assert a count directly against OGS for \$55,000 under Rule 14. OGS files a Rule 12(b)(1) motion to dismiss, relying on *Krocier v. Owen Equipment Co.* and arguing a lack of diversity between Alice Arkie and OGS.

You represent Alice Arkie. Make the best argument you can to defeat OGS's motion. Be imaginative. 2. Assume Congress passes a statute that provides that any person who is injured by the illegal use of a gun may bring a lawsuit directly against the gun manufacturer. To carry out the congressional concern about jury sympathy, the statute provides: "the federal trial court shall be the trier of fact." The statute also provides that "the restitutionary award shall be limited to medical bills actually incurred and to be incurred. No recovery shall be allowed for pain and suffering or lost wages".

Relying on such a statute, Peter Plaintiff brings an action against Wilson Weapons Company (WWC) seeking \$8800. Plaintiff files a timely demand for a jury trial under the Seventh Amendment. Defendant objects. The trial judge denies the jury trial. Plaintiff seeks immediate review by the appellate court of the trial court's denial of the jury trial.

You represent the Wilson Weapons Company. You are in the United States Court of Appeals. You are to argue that (1) plaintiff is not entitled to immediate review, and (2) the court was correct in denying the jury trial. Make the best argument you can. You should refute the obvious arguments that the plaintiff will make. Be creative and innovative. (10 points per issue).

3. The following question has 5 parts. Each is worth 4 points. Answer each part with a conclusion and a brief paragraph of explanation.

(1) Patty is unmarried and pregnant. She brings a paternity action against Adam, and despite Adam's vigorous defense, the court finds that he is the father. Two years later (after Adam has died), with new evidence, she brings a lawsuit against Bob, alleging Bob was the father. Bob replies that the lawsuit should be barred because of prior adjudication. How should the court rule?

(2) James sues Marian for divorce and seeks custody of two children; but Marian says that daughter Hannah was not the child of James. The other man testified that he had sexual relations with Marian when she could have conceived. However, the court found that both children were born of the marriage and gave custody to James.

Two years later the other man, oral, is now married to Marian. He brings a paternity action, trying to be named the father. He sues Marian (now his wife) and James. James replies that the lawsuit should be barred because of prior adjudication. How should the court rule?

(3) Margie sues Mike for divorce and alleges that one child (Thomas) was born of the marriage. Mike responds that one child was born of the marriage. The court rules that one child was born of the marriage and gives custody to Margie.

Two years later when Mike is denied his visitation rights, he sues Margie for visitation. Her response is that Mike is not the father, but in reality George was the father. (She has re-married and George is now her husband). Mike responds that she should be barred from making this defense. How should the court rule?

(4) Margie sues Mike for divorce and alleges that one child (Thomas) was born of the marriage. Mike responds that one child was born of the marriage. The court rules that one child was born of the marriage and gives custody to Margie.

Three years later (after Mike has died), Margie brings a paternity action against Barry, a rich baseball player, alleging he is the father of Thomas. Barry responds that the paternity action against him should be barred because of prior adjudication. How should the court rule?

Margie sues Mike for divorce and alleges that one child (Thomas) was born of the marriage. Mike responds that one child was born of the marriage. The court rules that one child was born of the marriage and gives custody to Margie.

Ten years have gone by and Mike has died, Margie tells Thomas that his real father is Zeus, a famous rock musician. Through a guardian ad litem, Thomas sues Zeus, seeking to determine paternity and seeking financial support. Zeus responds that the action should be barred because of prior adjudication. How should the court rule?

4. Barbara Mathias owns an advertising agency in Memphis, Tennessee. Richard Ellman was a salaried

employee under a written employment contract. Mathias (a citizen of Tennessee) fired Ellman (a citizen of Arkansas) in April, 1995.

He has filed an action against her in Federal District Court in Memphis, seeking relief in 4 counts: 1) damages of \$40,000 for slanderous comments made in March; 2) damages of \$700 for personal injuries suffered in the course of employment; 3) damages of \$15,000 for breach of the employment agreement; 4) an injunction to bar Mathias from notifying other advertising agencies of his dismissal.

You are the federal trial judge. Rule on each of the following motions with a "Granted" or "Denied",- followed by a sentence or two of explanation. Each subpart stands alone.

- a) Defendant moves to dismiss the entire lawsuit for lack of subject-matter jurisdiction. (2 points)
- b) Defendant moves to dismiss Count I because it does not arise out of the employment relationship. (2 points)
- c) Defendant moves to dismiss Count IV because it seeks equitable relief which the federal court has no power to grant. (2 points)
- d) Defendant answers the lawsuit. A month later, she seeks to amend her answer to allege that the plaintiff had executed a written release, absolving her of all liability. (2 points)
- e) Defendant Mathias files a counterclaim against the plaintiff for \$8000 that was loaned to the plaintiff for the purchase of a personal boat, but has not been repaid. Plaintiff moves to dismiss the counterclaim. (2 points)
- f) Assume that a note for \$70,000 in connection with the advertising agency was signed by Richard Ellman and his brother, Jerry Ellman. Mathias files a counterclaim based on the promissory note in federal court. Mathias also files a third party action based on the promissory note against Jerry in federal court. Jerry moves to dismiss the third party action filed against him. (2 points)
- g) Mary Manager had responsibility for operating the agency. Mathias impleads Manager. Mary Manager then files a complaint against Ellman for \$65,000 for injuries based on the theory that Ellman failed to control his vicious German Shepherd which attacked Mary on the street. Plaintiff Ellman moves to dismiss. (2 points)
- h) The employment agreement was drafted by Attorney Will Volunteer of Memphis. Defendant Barbara Mathias contends that he is an indispensable party and should be added as a party defendant for Count III. (3 points)
- i) Because all advertising agencies in the Memphis area have the same language in their employment agreement, the Memphis Association of Advertisers moves to intervene as of right in the lawsuit as to Count III. (3 points)