

Spring 1996 Final Exam (Civil Procedure B)

FINAL EXAMINATION

Civil Procedure B

Spring 1996

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) Sherwood v. Douglas 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 10 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.

1. In January a vehicle owned and driven by Adams (a citizen of Arkansas) collided with a school bus in Fayetteville. The school bus had 25 children as passengers, 20 were from Oklahoma and 5 from Arkansas. (The bus was bringing students to visit the University Museum.) One student was killed, 5 were seriously injured, and the other 19 had scrapes and bruises and have been emotionally upset since then. The driver (who is from Missouri) suffered a broken arm.

Adams has \$60,000 worth of liability insurance with Every State Insurance (a citizen of Ohio). After its investigation, ESI concluded that Adams was probably driving negligently. Consequently ESI has brought an interpleader action in the federal court for the Western District of Arkansas, has deposited its \$60,000 and has asked the court to enjoin any defendants/claimants (the 25 passengers and the driver) from bringing any lawsuits elsewhere against either ESI or Adams. Each of the 26 defendants has been personally notified of the lawsuit.

The defendants have moved to dismiss the interpleader action. Their arguments are: 1) There is no complete diversity. 2) This action is inappropriate under Federal Rule 22. 3) This action is inappropriate under the Federal Interpleader Act. 4) Even if the first three arguments are not persuasive, *State Farm v. Tashire* is controlling because there are no significant distinctions between this case and that holding.

You represent the plaintiff ESI. You are to make the best argument you can to the federal judge to maintain this action in federal court.

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 grants the jury trial.

The defendant seeks immediate review of the order in the United States Court of Appeals. The defendant argues that both the All Writs Act and the collateral order doctrine authorize immediate review.

You represent Peter Plaintiff. You are in the United States Court of Appeals. You are to argue that (1) defendant is not entitled to immediate review, and (2) the court was correct in granting the jury trial. Make the best argument you can. (10 points per issue).

3. On a bright spring day, Archer and Deacon were hunting in a wooded area in the state of Mississippi.

Suddenly, Deacon thought he saw something out in the bush. He trained his rifle on the spot. All of a sudden, something darted out. Deacon, thinking quickly of winning the "Safari Trophy" and having that nice bear rug, fired. Archer yelled out in pain that he was hit. Deacon ran to Archer, and while attempting to move him to a more secure spot, slipped and fell, which resulted in further injuries to Archer. Archer was eventually taken to a hospital.

Archer brought a pro se action in the United States District Court for the District of Mississippi. The complaint read as follows:

* * *

[Caption]

1. Archer is a citizen of Mississippi, and Deacon is a citizen of Arkansas.
2. While Archer was peaceably hunting in Mississippi, he was shot by Deacon. Archer was injured.
3. Deacon carelessly attempted to move Archer, and further injured him.
4. Archer suffered compensatory damages of \$5000 and punitive damages of \$45,000.

Arthur Archer

* * *

Your firm represents a defendant. The senior partner asks you whether any pre-answer motions could be made, and for your evaluation of the likelihood for success of the motions. Write the memo. You should assume that there are no problems with personal jurisdiction, venue, or service of process. In addition, the caption is proper.

4. Smith was an employee of Zonco, a corporation. A truck owned by Zonco, while driven by Smith on Zonco's business, struck Paul, a pedestrian. The accident happened on a Monday shortly after the lunch hour. In federal district court in Arkansas, Paul sued Zonco for \$100,000 alleging that Zonco's employee was

negligent in his operation of the truck and that Zonco is liable for Paul's injuries. Zonco answered, denying the negligence of Smith and denying that Paul was injured.

A. Plaintiff Paul then served Zonco with a request for the written statement made and signed by a co-worker of Smith who was riding with Smith at the time of the accident. The statement had been obtained by an adjuster for Zonco's insurance carrier at the request of Zonco's attorney. Zonco refused to produce the statement and the trial court sustained that refusal.

B. Attaching an affidavit from a bartender stating that almost every day during the lunch hour Smith visits her establishment for several drinks of whiskey, Paul petitioned the court to require Smith to submit to a physical examination for the purpose of determining whether or not he is an alcoholic. The court denied the motion.

C. Paul took the deposition of Smith at which he testified that Paul was crossing the intersection in the pedestrian crosswalk while the sign said "Do Not Walk" and that he ran into Paul because the truck's brakes failed. Paul attached the deposition, the affidavit of the bartender and his own affidavit stating that the truck was being driven too fast and had run a red light to a motion for summary judgment on the issue of liability, reserving for the jury only the question of damages. An affidavit from Smith was submitted in opposition which stated that he had had no intoxicating beverages for at least twelve hours prior to the accident and that the truck was not being driven at an excessive speed. The motion was denied.

D. The action was tried before a jury. Paul's evidence was his testimony that Smith was driving too fast and had run a red light. Smith and the Zonco employee who was a passenger in the truck testified that the truck was being driven carefully but that the brakes unforeseeably failed. There was uncontradicted testimony that Paul had suffered severe, painful, and permanent injury, and that his special damages for medical and hospital bills and loss of earnings were \$10,000. When it had finished presenting its case, Zonco moved for a directed verdict. The motion was denied.

E. It turned out that Zonco was without insurance and insolvent; thus it was unable to satisfy Paul's judgment. Paul then brought an action against Smith (who had recently inherited a fortune), alleging negligence, etc. After Smith filed an answer denying his negligence and Paul's injuries, Paul moved for a summary judgment on these two issues, attaching affidavits and judicial documents to show the issues which had been decided in the first action. The motion was denied and the case was set for trial.

QUESTION: Was the court correct in each of these five rulings? Discuss briefly. (4 points each)