

Spring 1997 Final Exam (Civil Procedure B)

FINAL EXAMINATION
Civil Procedure B
Spring 1997
Mr. Brill

1. a) Questions 1, 2 and 3 are worth 20 points.
Answer 2 of them. 40 points
b) The multiple choice questions are worth 40. 40 points
c) Moore v. Dillard'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.

1. 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.

April 20, 1997

The clerk of the court showed him how to properly fill in a summons and instructed him how to properly serve it on Ace Trucking. He followed those instructions.

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.

In August 1996 plaintiff Paula Powell, a resident of Fort Smith, Arkansas, was injured when a weedeater exploded as she was trimming grass in her back yard. The only witness to the accident was John Taylor, who lives and works in Henryetta, Oklahoma, 50 miles from Fort Smith. The action, which was filed in federal district court for the Western District of Arkansas in January 1997, under diversity jurisdiction, is against the Kansas corporation that manufactured the weedeater. The headquarters of the Kansas corporation is 150 miles from Fort Smith.

Each of the following petitions, motions or requests is directed to the federal judge in Fort Smith. Each petition is properly brought and is properly opposed by the other side.

You are the federal judge in Fort Smith. You are to rule on each petition with a "for plaintiff" or "for defendant" followed by no more than two sentences of explanation. In ruling you should not assume any unique or unusual facts. (2 points each)

A) Two months before filing the action, the plaintiff files a petition to take the deposition of John Taylor. Defendant objects.

B) Six weeks after filing the action, the plaintiff notifies the defendant's weedeater engineer (a salaried employee) to come to Fort Smith for a deposition. Defendant moves for a protective order.

C) The defendant requests that the judge issue a subpoena to be mailed to John Taylor directing him to appear for an oral deposition in Henryetta. Plaintiff objects.

D) Plaintiff's expert witness, who will testify at trial, is Karen Lynch of Austin, Texas. After discovery of her name and her opinions through interrogatories, defendant sends a written notice to plaintiff's attorney to produce her for a deposition in Austin, which will be videotaped. Plaintiff objects.

Defendant requests plaintiff to produce her homeowner's liability insurance policy, which reimburses plaintiff for claims against her. Plaintiff objects.

F) Plaintiff asks defendant to admit in writing, "for the purpose of this litigation, that you are doing business in Arkansas". Defendant objects to the propriety of such a request for admission.

G) The plaintiff requests documents. The defendant responds in a timely fashion by providing some and objecting to the remainder because the documents are privileged. Plaintiff petitions the court for the imposition of immediate sanctions, including the establishment of certain facts. Defendant objects.

H) A former employee of the defendant now lives and works in the Eastern District of Arkansas, 250 miles from Fort Smith. Plaintiff wishes to have a subpoena issued by the clerk in Fort Smith to compel him to be a witness at the trial. Defendant objects to the issuance of the subpoena.

I) At trial plaintiff wishes to use the deposition of John Taylor instead of his live testimony. Defendant objects because of the crucial importance of Taylor's testimony.

J) At the deposition of Karen Lynch, the defendant did not object to her qualifications as an expert. At trial she does not testify, but the plaintiff offers her deposition. The defendant objects and wishes to bar her entire deposition on the ground that, as a matter of law, she is not competent to testify as an "expert". The plaintiff claims the defendant has waived the objection.

Abe Adams purchased his home in Medford, Oregon in 1939. Since the early 1950's, a large manufacturing plant of the Cascade Paper Company (CPC), which is located one block from his modest home has been in

operation, 24 hours a day, 7 days a week. The smoke, smell, noise and emissions of the plant infuriated Adams for 40 years.

Aware of the change in the environmental mood of the courts and the law in the 1970's and 1980's, Abe Adams sought legal assistance in 1990. In December 1991 a judge in the Oregon District Court (a state court) awarded him \$8,000 for damages for 1988-1991 for the nuisance. The statute of limitations barred damages prior to 1988.

In 1992 Abe died and his daughter Rebecca Adams became the owner of the house under his will. In 1992 all the stock of the Cascade Paper Company was purchased by the National Paper Company (NPC), which continued operations in the same fashion at the Medford plant.

Since moving from California (where she had lived since 1985) back to Medford, Rebecca has become concerned not only about her health and well-being, but that of her neighbors. Therefore, she filed an action in state court seeking 1) damages for herself and for a class of residents within ½ mile of the plant, and 2) an injunction against the continued pollution from the Medford plant.

The defendant moved to dismiss the entire complaint for various reasons. The trial judge ruled that the request for damages would be heard on the merits. But the judge also ruled: (1) the doctrine of res judicata barred Rebecca from seeking an injunction and that count should be dismissed; (2) Rebecca's attorney, Larry Libertore, could no longer represent the plaintiff because Larry's wife, Lucy Libertore, was an attorney in the office of the general counsel of the defendant National Paper Company.

Rebecca Adams has appealed the two (numbered) rulings to the Oregon Court of Appeals. In response NPC contends:

an appeal of (1) is improper at this time; (5 pts.)

the trial judge was correct in ruling that the doctrine of res judicata bars an action for an injunction. (10 pts.)

c) an appeal of (2) is improper at this time; (5 pts.)

You represent the plaintiff Rebecca Adams. You are to make the best arguments you can on all 3 points. (Assume that the Oregon courts have the same organization, statutes and case law as the federal courts. You should primarily present your own argument, but you should also refute the obviously strong arguments of the defendant.)