

Spring 1998 Final Exam (Civil Procedure B)

FINAL EXAMINATION
Civil Procedure B
Spring 1998
Mr. Brill

1. a) Questions 1 is worth 20 points. 20 points
b) Mid-term examination 20 points
c) The multiple choice questions are worth 40. 40 points
d) Dobbins v. Skyways 20 points
100 points
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.) The questions will be graded on the quality of analysis, thought and conclusions, not on the number of words.
3. Read the essay question 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 25 pages of written materials to complete this examination.
6. 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.
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 326 by 5:00 p.m.
9. You may keep the essay questions.

Question 1

Facts: Plaintiff Patsy Grieg and her ancestors are long time residents of Long Valley, Montana. As part of her responsibility as owner of the 160 acres, she carefully tends the ancestral graveyard located along the scenic Big Foot River. Four generations of her relatives are buried there. Annually, on Norwegian-American Day, the extended family gathers at the site to reminiscence, to share memories and plans, to fish in the river, to run in the meadows, and to look for elk and bear.

Defendant Big Sky Mining Company (BSM) has been scouring the land looking for valuable minerals to extract. Patsy and her family have thwarted BSM for years. Tensions increased until the outbreak of last summer when employees of BSM drove vehicles onto the Grieg property and entered the family cemetery.

Patsy sued in Montana state court, alleging a tort claim based on the tort of outrage, also known as the intentional infliction of mental distress. She proceeded pro se. Her basic factual allegations were the entry upon the land and the defacement of the cemetery. She did successfully obtain personal jurisdiction over

BSM. However, after she took no further action during the following six months, the Montana state judge dismissed her claim for failure to prosecute.

When Patsy discovered what had happened, she hired a lawyer (Linda), who sued in federal court in Montana, based on diversity jurisdiction. The claim was based upon trespass on the land of Patsy, and sought compensatory and punitive damages.

BSM responded by arguing the affirmative defense of res judicata, and filing motions to dismiss the action. The federal trial judge denied the motion.

At trial Linda offered the following evidence: (1) Patsy was the owner of the land, which had a value of \$100,000. Patsy had given no one authority to come on the property, and in particular authorized no one to come into the cemetery. (2) Patsy's cousin testified that the flower arrangements at the cemetery had been removed. (3) Patsy's brother was emotionally anguished that the memorials in front of old Ludwig's marker had been removed. (4) BSM had a net worth of \$10 million.

BSM's factual testimony was: (1) the property was not marked with a fence or signs; (2) the gate to the cemetery was closed, but not locked; (3) the BSM employees were not aware they were on Patsy's property; (4) in an attempt to improve the appearance of the cemetery, they only removed dead flowers and faded and bleached baskets; (5) they were only in the cemetery 15 minutes and acted with respect.

After the close of all the evidence, BSM moved for a judgment as a matter of law, which was denied. The jury returned a verdict of \$10,000 compensatory damages and \$50,000 punitive damages against BSM.

BSM filed a renewed motion for a judgment as a matter of law; and in addition, filed a motion for a new trial, pointing out (correctly) that two jurors were dozing during the closing argument and during the jury instructions. Even after reminders by the judge, their eyes continued to flicker. However, the trial judge denied both motions. BSM has appealed.

Assignment: You represent BSM. You are standing in front of the appellate court. Make the best argument you can. Be thorough, be organized, be imaginative. Do not rest your client's entire position on one argument, no matter how strong you believe that argument to be. Be aware of the relationship between, and the respective roles of, the trial and appellate courts.

Note: Your argument does not need a lengthy, if any, discussion of tort law. However, to assure an equal basis, you may accept the following as the relevant principles:

According to the common law, a trespass is any entry on land that is in the peaceable possession of another, regardless of the willfulness of the entry, the degree of force used, the duration of the intruding presence, and the absence of damage to the land. For trespass to land, at least nominal damages are usually awarded. The calculation of actual damages reflects in part a determination of whether the trespass is temporary or permanent. If a temporary trespass causes actual damage to the land, the measure of recovery may be based upon the change in market value of the land, the expense of removing debris left by the trespass, or the cost of correcting the damage and restoring the land to its original condition. For a permanent or continuing trespass, damages are measured by the worth of the use of the land, typically its rental value. A trespasser who occupies land or a building without permission is liable for the fair rental value of the property.

To establish the tort of outrage, a plaintiff must demonstrate four elements: (1) the defendant intended to inflict emotional distress, or should have recognized emotional distress as a likely result; (2) the defendant's conduct was extreme, outrageous, and utterly intolerable in a civilized community; (3) the defendant's actions caused anguish or distress to the plaintiff; and (4) the emotional distress suffered was severe and of a type that no reasonable person should be expected to endure.

Source: Brill, Arkansas Law of Damages, chapters 30, 33

(3rd ed. 1996).