

Spring 1999 Final Exam (Civil Procedure B)

FINAL EXAMINATION
Civil Procedure B
Spring 1999
Mr. Brill

1. a) Question 1 is worth 20 points. 20 points
 - b) Questions 2 and 3 are worth 10 points. 10 points
- Answer one of them.
- c) The multiple choice questions are worth 40. 40 points
 - d) Sherwood v. Douglas and Owens 30 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.

1. The following question has 5 parts. Each is worth 4 points. Answer each part with a conclusion and a brief paragraph of explanation. Each question is independent of the others. However, to avoid rewriting, you may (if you wish) refer in one answer to material contained in a prior answer.

(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 DNA 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? Why?

(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 (with minimal reliance on scientific testing) 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? Why?

(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? Why?

(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? Why?

(5) 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 later, after Mike has died, Margie tells Thomas for the first time that his real father is Zeus, a famous rock musician. Thomas is shocked, but tells no one. When his mother dies, Thomas (now 14 years old), acting through a guardian ad litem, 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? Why?

2. Peggy Plaintiff is a citizen of Oklahoma. But she frequently travels to Fayetteville to shop at the Wal-Mart Supercenter. (Wal-Mart is a Delaware corporation with its principle place of business in Arkansas.) On the day in issue, she was shopping in the store and slipped and fell. She has sued in federal court, seeking compensation for her injuries.

She offers the following evidence at trial. 1) She was in the stationery section looking for a Mother's Day card when she slipped on a pen lying on the floor. She had not seen the pen prior to the fall. 2) Sally Shopper was in the next aisle, heard the fall, came to the rescue, and observed the red pen nearby. 3) Larry Looker was in the store at the same time and testified to the general overcrowded conditions of the aisles and the clutter on the floor. 4) Frank the former employee testified that he had stopped working at Wal-Mart one month earlier, and that during his two years in the store it had plenty of cashiers but was always short of janitorial staff. 5) Wal-Mart admitted that the pen on the floor was in its original package and that the same item was hanging on the rack in the stationery aisle.

Wal-Mart offered one witness, Morris the maintenance supervisor testified that he had been in the store that day, that his staff pursuant to company policy checked every aisle every hour, and that no one had complained of clutter in the stationery section that day.

At the close of all the evidence, Wal-Mart moved for a judgment as a matter of law. It was denied.

The parties agreed on a statement of the governing legal principles. The Arkansas law is that:

"An invitee enters the property with the permission of the owner, for a purpose connected with an activity of the owner, and for the mutual benefit of both parties. ... To the invitee the owner owes the higher duty of using ordinary care to keep the premises in a reasonably safe condition. To recover from the owner because of a failure to use ordinary care, the invitee must show that (1) the premises were defective; (2) the owner created the defect, or the defect was apparent to a reasonable owner who should have then warned the

invitee; and (3) the defect caused the injury. The owner's increased duty to an invitee does not mean that the owner is absolutely liable for any injury to the invitee. For example, in the typical 'slip and fall' case, the mere accident does not create an inference of negligence. ... The plaintiff must offer evidence demonstrating the probable cause of the accident, not merely possible causes. The customer/invitee has the burden of showing that the presence of the substance or object on the floor was the result of the negligence of the defendant. In the alternative, the customer must establish that the substance has been on the floor for such a period of time that the defendant knew or should have known of its presence and that the defendant failed to use ordinary care to remove the substance."

Brill, Arkansas Law of Damages, Section 30-7 (3rd ed. 1996).

At the close of all the evidence, Wal-Mart moved for a judgment as a matter of law. It was denied. After the jury verdict of \$25,000, Wal-Mart filed a renewed motion of judgment as a matter of law. It was granted by the trial judge. Peggy Plaintiff has appealed to the 8th Circuit.

You represent Peggy Plaintiff. You are standing in front of the 8th Circuit Court of Appeals. Make the best argument you can to reverse the ruling of the trial court. Don't forget to refute the obvious arguments of the other side.

3. Jim Bob clipped a coupon from his Springdale newspaper that said "Buy a dozen doughnuts, get another dozen free." He went to Ralph's Doughnuts, the local outlet of a regional chain of 30 doughnut shops spread across Arkansas, Missouri, Oklahoma and Kansas. Ralph's is incorporated in Missouri and has its principal place of business in Kansas City.

The doughnuts looked scrumptious -- creamy, jelly, fruity, powdery, buttery, fudgy, nutty and fluffy. He bought a dozen for \$3.50 and asked for his free dozen. But in `return` he received a coupon that entitled him to a dozen the next time he came in. The manager refused to honor the coupon "today". The manager stated it was "company policy to require the customer to `return` on another day to get the free dozen."

Jim Bob sought help from a local law firm, Adams, Baker and Carr. With his approval, they have brought a class action law suit, in the name of "Jim Bob, individually, and as a representative of a class of customers of Ralph's Doughnuts who purchased or would have purchased a dozen doughnuts in response to the advertisement." The theory of the law suit is common law fraud.

The law suit has been filed in Arkansas state court, which you should assume (for exam purposes) has a rule identical to FRCP 23. In addition, no issues of jurisdiction or venue exist. Further, ABC is an experienced and established firm, with expertise in class action litigation and with the necessary financial resources. ABC has asked the state court to certify the class under Rule 23(b)(3) as the most efficient means of resolving this dispute, consistent with both fairness and judicial economy.

You represent Ralph's Doughnuts. You are at the class certification hearing before the state judge. Make the best argument you can that class certification should be denied. Don't forget to refute the obvious arguments of the other side.