

# Spring 2000 Final Exam (Civil Procedure B)

FINAL EXAMINATION  
Civil Procedure B  
Spring 2000  
Mr. Brill

1. a) Question 1 is worth 20 points. 20 points
- b) Questions 2 is worth 10 points. 10 points
- c) The multiple choice questions are worth 40. 40 points
- d) Karen and Tom Morton v. Dillard's  
Department Store, Inc. 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. Jim Bob clipped a coupon from his Springdale newspaper that said "Buy a dozen doughnuts on Sunday, April 9, 2000, 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 ad appeared (for the first and only time) in local papers near all 30 shops. At the Springdale store (and at the other stores) approximately 50 dozen doughnuts are sold each Sunday.

The doughnuts looked scrumptious -- creamy, jelly, fruity, powdery, buttery, fudgey, nutty and fluffy. Jim Bob bought a dozen for \$3.50 and asked for his free dozen (which he planned to take to his Sunday School class). 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 that corporate headquarters had informed him "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 [ABC]. 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 in Washington County. You should assume (for exam purposes) that Arkansas has a rule identical to FRCP 23. No issues of jurisdiction or venue exist, and no other lawsuits are pending. 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.

The attorney for Ralph's Doughnuts argued that class certification should be denied:

"Your honor, in closing, let me repeat some of the primary (but certainly not the only) reasons why certification should be denied: 1) the class is not properly defined; 2) the requirements of commonality and typicality are not satisfied; 3) in light of internal inconsistencies and the requirements of Hansberry, Jim Bob cannot be an adequate representative; 4) the notice requirements of the rule and Eisen cannot be satisfied; 5) the conflicts of law issues raised in Phillips Petroleum are insurmountable; 6) reliance as an element of fraud is an individual element; Castano; 7) the suit cannot be managed; 8) any monetary recovery is impossible; 9) ABC law firm has a personal, mercenary motive in bringing this action; 10) this is a Frankenstein monster posing as a class action. Certification should be denied."

You are an attorney with the firm of ABC and represent Jim Bob individually and as representative of the purported class. Make the best argument that you can that the class should be certified. Be thorough, be analytical, be creative.

2. Zoey Zinger was charged with the murder of her mother Mary. Both were citizens of Arkansas. Zoey was charged with first degree murder, and the jury convicted her of first degree murder. Mary had a life insurance policy with Arkansas Life Association (ALA), which was to pay \$15,000 to her beneficiary. The policy listed Zoey as the primary beneficiary and her daughter Fanny (who is a citizen of Texas) as the secondary beneficiary. ALA is a citizen of Arkansas.

Answer each of the following questions separately. Be precise and brief (usually one paragraph or less). Each question is worth 2 points.

- a) If ALA brings an interpleader action and names Zoey and Fanny as the claimants, does the Arkansas federal court have subject matter jurisdiction? (2 points)
- b) If the action is in federal court, can Zoey require a witness to the murder to answer interrogatories during discovery? (2 points)
- c) Assume the federal trial judge refuses to allow discovery of the mental health records of Zoey, saying the issue is obvious that the records are both irrelevant and privileged. May the disgruntled litigant immediately seek review of the discovery ruling from a higher court? (2 points)
- d) Must the federal court grant a jury trial if requested? (2 points)
- e) Will the federal court give preclusive effect to the conviction in the Arkansas state court? (2 points)