

FINAL EXAMINATION

Civil Procedure B
Spring 2001
Mr. Brill

1. a) Question 1 and 2 are worth 10 points. 10 points
 Answer one of them.
- b) Questions 3 is worth 20 points. 20 points
 Answer it.
- c) The multiple choice questions are worth 40. 40 points
- d) Dobbins Construction Co. vs Skyway 30 points
 Structures, et al. 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 (or questions) answered within.
8. Turn your bluebooks, multiple choice questions, scantrons, pencils and qualification sheets in at Room 328 by 5:00 p.m.
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, all from Arkansas. The bus was bringing students to visit the University

Museum. Six students were seriously injured, and the other 19 had scrapes and bruises and have been emotionally upset since then. The bus 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 bus driver) from bringing any lawsuits elsewhere against either ESI or Adams. Each of the 26 defendants has been personally notified of the lawsuit.

You represent two of the students. You are standing in front of the federal trial judge. Make the best argument you can that the interpleader action is improper and should be dismissed from federal court.

2. Paul, a resident of Arkansas, went waterskiing in Arkansas with his friend, Dave, a resident of Texas. Dave owned a power boat manufactured by Reliable Boat, Inc. (Reliable), which is incorporated in Arkansas with its principal place of business in Texas. Dave was driving his boat with Paul waterskiing behind him on a tow rope when the boat engine malfunctioned. This caused the boat's speed to increase rapidly. As a result, Paul ran into a large rock near the shore. Paul suffered serious injuries including several broken bones, a concussion, a collapsed lung, and cuts and bruises. Paul had extensive medical expenses and lost two months of work because of the accident.

Paul filed a lawsuit against Dave in federal court in Arkansas. Paul alleged in his complaint that Dave negligently maintained his boat engine and that, as a result, Paul was injured in the waterskiing accident. Paul claimed damages of \$120,000.

Dave filed an answer in which he denied Paul's allegations of negligence and injury. With his answer, Dave also filed a third-party complaint against Reliable. Dave alleged that Reliable would be liable to indemnify Dave for damages that Paul might recover against Dave, because Reliable had defectively manufactured the engine in Dave's boat.

Reliable filed a third-party answer denying Dave's allegations of its liability to Dave. Paul then amended his complaint to join Reliable as a party defendant. Paul alleged that Reliable was also liable for his injuries because it had defectively manufactured Dave's boat engine.

- (1) According to the Federal Rules of Civil Procedure and relevant jurisdictional standards, does the federal district court have authority to hear Dave's claim against Reliable? Explain. (5 points)
- (2) According to the Federal Rules of Civil Procedure on relevant jurisdictional standards, does the federal district court have authority to hear Paul's amended claim against Reliable? Explain. (5 points)

NOTE: This question comes from the February 1994 Arkansas Bar Examination.

3. Peggy Plaintiff brings an action in federal court against Dave Defendant for infringement of a federal copyright Peggy Plaintiff holds on a book. The case is tried to a jury. Note: each of these subparts stands independently, each is

worth 2 or 3 points, each needs only a short answer (probably 2 or 3 sentences).

- (A) Dave Defendant moves for judgment as a matter of law (d.v.) at the close of Peggy Plaintiff's evidence. The motion is denied. Dave Defendant renews the motion after presenting his own evidence. The motion is denied again. The jury is instructed, deliberates, and returns a verdict for Peggy Plaintiff. May Dave Defendant now move again for judgment as a matter of law (j.n.o.v.)? (2 points)
- (B) Dave Defendant moves for judgment as a matter of law (d.v.) at the close of the evidence. The motion is denied. The jury returns a verdict for Dave Defendant. Peggy Plaintiff believes that the jury's verdict is completely unsupported by the evidence.
- (1) May Peggy Plaintiff now move for judgment as a matter of law (j.n.o.v.)? (2 points)
- (2) May she move for a new trial? (2 points)
- (C) Dave Defendant moves for judgment as a matter of law (d.v.) at the close of the evidence. The motion is denied, and the jury returns a verdict for Peggy Plaintiff. Judgment is entered on the verdict. Dave Defendant believes that the verdict is completely unsupported by the evidence. Three days after judgment is entered, Dave renews his motion for judgment as a matter of law, under Rule 50(b). The judge denies the motion five weeks later. Dave Defendant then moves for a new trial, on the ground that the judge improperly excluded important evidence at trial. The judge, after research, agrees on the evidentiary point. What should the judge do? (3 points)
- (D) Peggy Plaintiff's case is tried to a jury, which returns a verdict for Dave Defendant. Peggy Plaintiff moves for a new trial on the ground that the judge improperly instructed the jury on the standard for recovery under the copyright statute. Dave Defendant argues strenuously that the instructions were proper. The judge concludes that Peggy Plaintiff is right and orders a new trial. What happens next? (3 points)
- (E) Dave Defendant moves for judgment as a matter of law at the close of the evidence on the grounds that Peggy Plaintiff's evidence is too weak to support a verdict. The motion is denied, and the jury returns a verdict for Peggy Plaintiff. In frustration, Dave Defendant reviews his notes and recalls that the judge allowed Peggy Plaintiff to introduce hearsay evidence that probably should have been excluded. Although he did

not object at the time, Dave Defendant researches the evidentiary issue and concludes that the evidence was indeed improperly admitted. Within ten days, Dave Defendant makes two motions, one for a new trial on the ground that the evidence should have been excluded, and a second motion for judgment as a matter of law (j.n.o.v.) on the ground that without the inadmissible evidence, Peggy Plaintiff's case was too weak to go to the jury.

- (1) Should the judge grant the motion for a new trial? (2 points)
- (2) Should the judge grant the motion for judgment as a matter of law? (2 points)

(F) Dave Defendant filed a motion for d.v. at the conclusion of all the evidence, but it was denied and the jury ruled for the plaintiff. Now Dave Defendant moves for judgment as a matter of law (j.n.o.v.) and for a new trial on the grounds that the verdict was against the weight of the evidence and that the judge's instructions to the jury were improper. The judge denies both motions. Dave Defendant appeals. What will the court of appeals do if:

- (1) it concludes that judgment as a matter of law (j.n.o.v.) should have been granted? (2 points)
- (2) it concludes that j.n.o.v. was properly denied and that the verdict was not against the weight of the evidence but that the instructions were improper? (2 points)