

FINAL EXAMINATION

Civil Procedure B  
Essay Questions  
Spring 2005  
Prof. Brill

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| 1.    | a) Question 1 is worth 20 points.              | 20 points        |
|       | b) Question 2 is worth 10 points.              | 10 points        |
|       | c) The multiple choice questions are worth 40. | 40 points        |
|       | d) <u>Scott v. Douglas</u>                     | <u>30 points</u> |
| <hr/> |  | <hr/> 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 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 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 326 by 5:00 p.m.
9. You may keep the essay questions.

### Essay Question One

In August 2004 plaintiff Paula Powell, a resident of Fayetteville, Arkansas, was injured when a weedeater exploded as she was trimming grass in her back yard. Two individuals witnessed the accident: Will Witness, who lives and works in Henryetta, Oklahoma, 75 miles from Fayetteville; and Frances Friend, who lives and works in Springdale, Arkansas.

The product was manufactured by Jayhawk Tractor Corporation (JTC), a Kansas corporation. Its headquarters is located 150 miles from Fayetteville. It regularly sells products in Arkansas.

In January 2005 Paula filed a lawsuit for personal injuries against JTC. The action was filed in the Western District of Arkansas in Fayetteville under diversity jurisdiction. Jurisdiction is not disputed by JTC; nor are there any disputes about witness fees or mileage costs. All motions are filed by attorneys, and opposed by attorneys.

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

You are the federal judge in Fayetteville. You are to rule on each petition with a "for plaintiff" or "for defendant" followed by two or three sentences of explanation. In ruling you should not assume any unique or unusual or unstated facts. (2 points each)

- A) In December 2004, one month before filing the action, the plaintiff files a petition to take the deposition of Frances Friend. Defendant objects.
- B) Six weeks after filing the lawsuit, plaintiff sends a notice to defense counsel. It instructs Ed Engineer, a salaried employee of the defendant, to come to Fayetteville for a deposition. Plaintiff intends to question Ed about the design of the product. No trade secrets are involved. Defendant moves for a protective order.
- C) The defendant requests that the Arkansas judge issue a subpoena to be personally served on Will Witness directing him to appear for an oral deposition in Henryetta. Plaintiff objects and seeks a protective order.
- D) Defendant requests plaintiff to produce her homeowner's liability insurance policy, which reimburses plaintiff for claims against her. Plaintiff objects.
- E) Defendant sends interrogatories to Frances directly, and a copy to the attorney for plaintiff. Plaintiff objects to the entire set of interrogatories.
- F) Defendant reasonably believes that Frances' testimony is questionable because of her poor eyesight. Defendant files a petition with the court for a vision examination of Frances. Plaintiff objects.

- G) 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.
- H) 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 to the imposition of sanctions.
- I) Jeff Gibson, a former employee of the defendant, now lives and works in the Eastern District of Arkansas, 250 miles from Fayetteville. Plaintiff seeks to have a subpoena issued by the clerk in Fayetteville to compel him to be a witness at the trial. Defendant objects to the issuance of the subpoena.
- J) Plaintiff’s expert witness is Professor Karen Lynch of Austin, Texas. She is deposed by the defendant. At the deposition, the defendant did not object to her qualifications as an expert.

At trial Professor Lynch 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.

## Essay Question Two

2. Congress passes a statute that provides that any person who is injured by the illegal use of a gun may bring a lawsuit directly against the gun manufacturer. To carry out the congressional concern about jury sympathy, the statute provides: "the federal trial court shall be the trier of fact." The statute also provides that "the restitutionary award shall be limited to medical bills actually incurred and to be incurred. No recovery shall be allowed for pain and suffering or lost wages". The statute does not bar or forbid any actions available under state laws.

Relying on the statute, Peter Plaintiff brings an action against Wilson Weapons Company (WWC) seeking \$88,000. Plaintiff files a timely demand for a jury trial. Defendant objects to the demand for a jury trial.

You are the federal trial judge. Decide the issue of the jury trial. Rule on the motion filed by the defendant. Discuss all relevant case law and principles. Your logic and discussion is more important than your actual ruling.

