

FINAL EXAMINATION

Civil Procedure B
Essay Questions
Spring 2007
Prof. Brill

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| 1. | a) Question 1 is worth 10 points. | 10 points |
| | b) Question 2 is worth 10 points. | 10 points |
| | c) Question 3 is worth 10 points. | 10 points |
| | d) The multiple choice questions are worth 40. | 40 points |
| | e) <u>Morton v. Dillard's</u> | 30 points |
| <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

Litco, a Texas corporation, manufactures long-lasting light bulbs. Carl Customer purchases one light bulb; when Carl screws in the first light bulb, it explodes, causing serious personal injuries to Customer and extensive property damage to Customer's home.

Carl sues Litco in Arkansas federal court based on diversity jurisdiction. No disputes exist concerning personal or subject matter jurisdiction.

After commencing the suit, Customer learned that two other purchasers of Litco light bulbs previously had filed suits against Litco, claiming that the bulbs were in a defective condition unreasonably dangerous to the user and that Litco was strictly liable for their injuries. Both of these cases involved the same design defect as that alleged in Customer's suit. In the first of these suits, filed in federal court in Missouri, judgment was entered on a jury verdict in the plaintiff's favor for \$750,000. The jury also answered a special interrogatory stating that Litco light bulbs were defectively designed.

In the second suit, in a federal court in Tennessee, judgment was entered on a jury verdict in the defendant's favor, and the jury answered a special interrogatory stating that Litco light bulbs were not defectively designed. Both of these cases involved the same design defect as that alleged in Customer's suit. Neither of these two judgments was appealed.

May Carl Customer estop Litco from relitigating the issue of the defective nature of the light bulb? Discuss.

NOTE: this question comes from the July 1993 Arkansas bar examination.

Essay Question Two

After an unpleasant dispute with local authorities gave her an interest in the law, Hester Prynne went to law school. While in school she married Holgrave, a fellow student, who also adopted Hester's daughter Pearl. After graduation, both began practice in Massachusetts. Both parents doted on Pearl, and both reduced their billable hours in order to spend more time with her. Concerned about quality child care, Prynne contacted Nanny Nation, Inc., a respected national agency that trains and recruits child care providers from throughout the United States and the world, with its main office in New York. Through Nanny Nation, Prynne and Holgrave hired Hibbins, a twenty-two-year-old British citizen, to live in their home, do light housework and cooking, and care for Pearl while they were at work.

About a month later, tragedy struck, Hibbins picked up Pearl from piano lessons and was driving her home. Unfortunately, Hibbins had succumbed to homesickness for the local pub and had three beers before getting Pearl. On the way home they were involved in a serious traffic accident. Hibbins suffered only superficial injuries, but Pearl received significant head and neck injuries. Prynne fired Hibbins, and she returned home to England.

Pearl has recovered from most of her injuries, although the doctors continue to watch for signs of permanent brain damage. Prynne and Holgrave had paid substantial medical bills for her treatment and have lost income while tending to her psychological and medical needs. They have suffered from mental anguish, watching Pearl struggle with her injuries. Prynne and Holgrave no longer feel comfortable leaving Pearl with anyone other than a family member, and so Holgrave has retired from practice and takes care of Pearl full time.

Prynne and Holgrave sued Nanny Nation for damages in federal district court in Massachusetts. Their theories of recovery are negligence (in hiring and training Hibbins), gross negligence (for a pattern of ignoring serious psychological and behavioral problems of potential nannies), and fraud (for representing that their nannies are highly responsible and well qualified to care for young children), and they seek both actual and punitive damages.

Each of the following parts is worth 2 points. One or two paragraphs should suffice for an answer for each:

- a) Defendant Nanny Nation is skeptical of the lost income amounts claimed by Holgrave. It doubts that his practice was ever as successful as he claims, and it therefore doubts that Holgrave's lost future income is as great as he claims. To determine his law office income, Nanny Nation has sent a request for production of documents to Holgrave. The request asks for every piece of paper related to Holgrave's practice. Are these documents discoverable?
- b) Prynne's lawyer hired a private investigator to look into Hibbins's background. This investigator interviewed Prynne's neighbors about Hibbins's habits and took notes on those interviews. Nanny Nation wants to discover those notes. Are they discoverable?

- c) Prynne has hired a child care expert, Nate Hawthorne, to consult in the preparation of her case against Nanny Nation. Hawthorne will not be testifying when the case goes to trial. Nanny Nation wants to discover Hawthorne's identity and take his deposition. Discuss.
- d) Nanny Nation is skeptical of Holgrave's lost income claims. It has requested copies of his tax returns from two years prior to Pearl's accident to the present. Holgrave has refused to produce them, saying he does not keep copies of the returns and Nanny Nation will have to get them from his accountant. Discuss.
- e) Prynne sent a request for production of documents to Nanny Nation. Nanny Nation produced a handful of documents, objecting that the remaining requests called for material that was not relevant to the claims and defenses in the lawsuit. Prynne disagrees. She believes that the requested documents are discoverable. What steps should she take to obtain the remaining documents?

Note: This question comes from Dorsaneo and Thornburg, Questions and Answers: Civil Procedure.

Essay Question Three

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 law.

Relying on such a statute, Peter Plaintiff brings an action in federal court against Wilson Weapons Company (WWC) seeking \$8800. Plaintiff files a timely demand for a jury trial under the Seventh Amendment. Defendant objects.

The federal trial judge has just made the following comment in open Court: “I am inclined to agree with the counsel for defendant. In light of cases such as Atlas Roofing, I do not believe that the Seventh Amendment grants a jury trial in this case. In addition, the case law is clear that restitutionary claims (such as back pay) are not triable by a jury. Counsel for the plaintiff, would you care to respond?”

You represent the plaintiff. Respond to the judge.

