

DO NOT TURN THE PAGE UNTIL INSTRUCTED TO DO SO

### INSTRUCTIONS

1. You may have with you your casebook (Cound, Friedenthal, Miller & Sexton, Civil Procedure), the 1994 Civil Procedure Supplement, your notes, any class handouts, and any outlines, which you have prepared. You may not have Glannon, commercial outlines, or other sources. If you have any such items, please stack them in the front of the room.
2. This is a three-hour exam, Answer all questions and all subparts of each question. After each question, I have written a recommended time allotment. You may deviate from this allotment. However, the recommended time reflects the approximate weight accorded to the question.
3. I also recommend that you devote approximately one-third of your time on each essay question to thinking about and/or outlining your answer. This will help assure clarity, organization, and completeness, all of which will count in your favor. Rambling discussions of irrelevant material may count against you and certainly will not help your score. Turn in only your final answer, not any notes or outlines made in thinking about a question.
4. Write legibly. You may wish to print. While I will make every effort to read your writing, if I cannot understand what you are saying you will not get credit. I suggest that you skip every other line in the answer book.
5. This exam consists of 7 pages, including this page. Please be certain that you have the entire exam before starting.
6. Unless otherwise specified, assume for each question that the current Federal Rules of Civil Procedure are in effect.
7. BE SURE TO PLACE YOUR EXAM ID NUMBER ON ALL BLUEBOOKS, AND TO NUMBER AND TURN IN ALL BLUEBOOKS WHICH YOU USE.

**THIS EXAM IS GIVEN PURSUANT TO THE LAW SCHOOL HONOR CODE**

**QUESTION 1. Short Answer (approximately 25 minutes).**

Each of the following statements is false. Explain briefly (i.e. one or two sentences) why each is false. Where relevant, assume that all actions occur in a federal court in April, 1995.

Example:

Statement: A plaintiff in a civil suit may only discover if the defendant is covered by insurance upon a showing of good cause

Explanation: Under Rule 26 (a)(1)(D), defendant must disclose the existence of an insurance policy which may be liable for all or part of the judgment without waiting for a discovery request.

1. Bill sues Newt for slander. Newt knows that the slanderous comments were actually made by Rush. Newt should implead Rush.

2. Johnny, a lawyer, signs an answer denying facts in a complaint. So long as Johnny believes that the denials are accurate when he signs the answer, he has no need to worry about Rule 11 liability.

3. At trial, the jury renders a verdict for the plaintiff. The trial judge admits that there is some evidence to support the plaintiff's case, but thinks that the evidence for the defendant was very strong. So long as the judge thinks that there was any evidence supporting the plaintiff's case, the judge must let the verdict stand.

4. In Upjohn Co. v. United States, the Supreme Court held that the scope of attorney-client privilege in the corporate context would be governed by the "control group" test.

5. Clyde was a desk clerk on duty at the Grand Suites Hotel on the night that it burned down. Shortly thereafter, he quit his job. In a suit against the Grand Suites stemming from the fire, plaintiffs seek to take Clyde's deposition. They may do so, but because Clyde is not a party to the action, plaintiffs must first make a showing of special circumstances.

**QUESTION 2. (Approximately 60 minutes total)**

Question 2 consists of six parts. Each should be answered with a short answer -- you should plan to spend about 60 minutes total. In answering, give your answer and then a brief explanation for your answer.

In December 1994, Jane Teacher received a notice from the School District that in June, 1995, at the close of the school year, she would be terminated from her position as a third grade teacher at Mush Elementary School. In February, 1995, Teacher filed a lawsuit in federal court alleging breach of contract and violation of the Age Discrimination in Employment Act, a federal law. The School District answered by denying the allegations of the complaint.

1. As the school district's principle officer, the Superintendent was immediately notified of the lawsuit and has participated in numerous conferences with the District's lawyers about the lawsuit. After the statute of limitation has run, Teacher seeks to amend her complaint to add Superintendent as a defendant. May she do so?

2. Pursuant to Rule 34, Teacher files a request for production of her personnel file. The School District declines to produce the file, arguing that because such files are often used by the District's lawyers in defending various personnel lawsuits and union grievances, they are protected as trial preparation material. After attempting to reach an agreement on production at two fruitless meetings with the District's attorneys, Teacher files a motion to compel production of the personnel file, and for attorneys' fees incurred in making the motion. How should the Court rule on Teacher's motion?

3. After the close of discovery, School District moves for summary judgment on the age discrimination claim. Attached to the motion are affidavits from each member of the School Board and the Superintendent, denying that age played any role in their decision to terminate Teacher. The motion analyzes the material discovered by Teacher, and argues that none of the depositions, answers to interrogatories, or documents produced support an inference of age discrimination. In response, Teacher does not dispute this analysis, but argues that motive is a subjective factor, and that skillful direct or cross-examination at trial will reveal the defendant's discriminatory motive. Assuming that the judge agrees with the defendant's analysis of the material thus far discovered, how should she rule on the defendant's motion for summary judgment?

4. The jury returned a verdict for the Defendant School District. After interviewing the jurors, Teacher filed a timely motion for a new trial. In support of her motion, she offered affidavits from a majority of jurors showing that they had misunderstood the judge's instructions on breach of contract, believing that Teacher had to show an intentional breach in order to recover. How should the judge rule on

Teacher's motion for a new trial?

5. Assume that Teacher made timely motions for judgment, as a matter of law (jnov) and new trial (based on the weight of the evidence), that these motions were denied by the trial judge, and that Teacher appealed. After reviewing the record and hearing argument, the appellate judges all concluded that though the case was close, they would have found in Teacher's favor had they been on the jury. How should they rule on appeal?

6. After the conclusion of the first case, Teacher filed a second lawsuit, alleging that the School District had failed to pay her vacation and sick pay to which she was entitled when she was fired in June, 1995. In its answer, the School District contended that the basis for paying vacation and sick pay is the same contract on which plaintiff relied in the first suit, and set up *res judicata* as a defense. How should the court rule on the defense of *res judicata*?

**QUESTION 3. (30 MINUTES)**

Bruce sued XYZ Service Co. alleging violations of 15 USC Sec. 1692, the Fair Debt Collections Practices Act. The parties thereafter engaged in discovery and settlement negotiations. Bruce's counsel made clear to XYZ's lawyers that no settlement could be reached if XYZ had placed Bruce's account with any credit reporting service. Defendant's counsel assured Bruce's lawyers that it had not done so, and XYZ also stated in answer to interrogatories that it had not placed Bruce's account with any credit reporting service. The parties then signed a settlement agreement in which Bruce received \$7000 in exchange for release of all claims. As part of the settlement agreement, Bruce also dismissed his lawsuit with prejudice pursuant to Rule 41(a).

Ten months after the dismissal of his suit, Bruce filed a motion under Rule 60(b) to set aside the previous dismissal with prejudice. Attached to his motion was his own affidavit, claiming that he had learned that his account had been placed with a credit reporting service before the settlement and that he would not have settled the case and dismissed the lawsuit had he known that fact beforehand. He did not attach any credit report or offer any fact showing that it was the XYZ Service Co. that had reported him to a credit bureau. In his brief, Bruce argued that if relief from the judgment were granted, discovery in the case would probably show that XYZ had placed the credit report.

How should the Court rule on Bruce's Rule 60(b) motion?

**QUESTION 4. (30 Minutes)**

Imaginary Dialogue:

CONGRESSMAN BOB: Aide, I am concerned about the "crisis" in products liability. I would like to propose legislation to lower the cost of litigation.

AIDE: Really? How will you do that, Congressman Bob?

BOB: We will use our Congressional power over interstate commerce to create a new, national regime of substantive law which will preempt existing state-tort law. This law will limit the amounts available for pain and suffering. And to streamline litigation, all products liability suits will be tried before a U.S. Magistrate Judge, without a jury. Magistrate Judges, you will recall, are court employees appointed by federal district judges pursuant to 28 USC Section 631 et.seq.

AIDE: Gee, sounds great Congressman Bob. Doing away with juries will put an end to all those frivolous lawsuits.

BOB: Yes Aide. There's just one thing bothering me.

AIDE: What's that, Congressman Bob?

BOB: I'm concerned, Aide, that trying cases before a Magistrate Judge with no right to a jury may violate the Seventh Amendment guarantee of a jury trial.

AIDE: (picking self off floor) Gee, Congressman Bob, we've never worried about limits on congressional power before. The only things prohibited by the Constitution are term limits and religion.

BOB: Nevertheless, Aide, I want you to write me a short memo on this Seventh Amendment thing. Would this bill violate the Constitution by having cases tried before the Magistrate Judge without a jury? I need your memo within 30 minutes, because I'm going to announce this at a press conference later today.

**QUESTION 5. (30 Minutes)**

Question 5 consists of five subparts. Give a short answer to each.

A truck driven by Ralph and a car driven by Donna collide. Boris, a passenger in Donna's car, is seriously injured and sues the trucking company. The state is a comparative negligence state, so a defendant is only liable for the percentage of damages caused by its own negligence.

1. Pursuant to company policy, immediately after the accident, the trucking company's Vice-President for Safety Management went to the scene and made a full investigation of the accident. He then made a written report to the company's Board of Directors. Can Boris obtain the report?

2. Through the expenditure of some \$5000 in legal and private detective's fees, the trucking company uncovers the name of another eyewitness to the accident. Boris serves an interrogatory on the company asking the names of all eyewitnesses to the accident. Must the company disclose the name of the witness?

3. The trucking company moves to dismiss Boris' suit for failure to join a necessary party (Donna) under Rule 19. What should be the result?

4. The company believes that the cause of the accident may have been poor maintenance of Donna's car. The company has reason to believe that Donna's car was recently serviced at Greasy Al's Auto Garage, but doubts that Greasy Al's will voluntarily provide the service record. What can the company do to get the service record?

5. Convinced that Greasy Al's shoddy service is the real cause of the accident, the Trucking Company now seeks to implead Greasy Al's. Can it do so?

END OF EXAM

BE CERTAIN THAT YOUR EXAM NUMBER IS ON EACH BLUE BOOK AND THAT  
EACH BLUE BOOK IS NUMBERED

Go Home

No animals were harmed in the writing of this examination.