

UNIVERSITY OF TENNESSEE
College of Law

Final Examination
Professor Blaze

May 1, 2006
Afternoon Session

CIVIL PROCEDURE II
(3½ Hours)

1. This is an open book examination. You may bring to the examination room, and use during the examination, any of the materials required for the course together with your class notes and any notes you made during your study of the course or fact pattern. You may not, however, bring or use commercial outlines or library books.

2. The examination is divided into two parts.

Part I consists of statements involving basic concepts of civil procedure. Instructions for Part I are set forth in that section. Part I constitutes approximately 25% of the exam. The suggested time allocation is 45 minutes.

Part II consists of eight questions based on the fact pattern. Part II constitutes approximately 75% of the exam. The suggested time allocation for Part II is 135 minutes. The eight questions are further divided into two groups or subparts. The first group consists of seven short answer questions. The suggested time allocation for those seven questions is 105 minutes. The second subpart consists of one question, also based on the fact pattern, that may require a slightly longer answer. The suggested time allocation for the second subpart is 30 minutes.

3. The weight assigned to each part or subpart of the exam corresponds roughly to the suggested time allocations. Note that the time allocations leave an extra 30 minutes.

4. Write legibly and use only one side of each page. Typists should double space.

5. **Code of Academic Conduct: The Code of Academic Conduct forbids any student enrolled in the College of Law from committing an act of academic dishonesty and admonishes that all work should be done in full compliance with both the spirit and letter of the code.**

Good Luck!

PART I (45 minutes)

Each of the following statements concerns a civil action filed in a United States District Court. Indicate whether each statement is “True” or “False” and briefly set forth the reason(s) supporting your conclusion. No credit will be given for answers unsupported by adequate reasons.

1. Notice of the existence of a class action need only be given to class members when the action is maintained as a class action pursuant to Rule 23(b)(3).
2. Anytime a plaintiff asserts both a request for an injunction and a claim for damages in the same action, the damage claim must be tried to a jury before the injunction request can be tried by the judge.
3. The voluntary dismissal of an action accomplished by timely filing of a notice of dismissal by plaintiff is without prejudice.
4. The standard for granting a motion for summary judgment mirrors the standard for granting a motion for judgment as a matter of law.
5. A party may obtain discovery of any matter, not privileged, that is relevant to the subject matter of the action.

PART II (135 minutes)

In answering the following questions, be sure to indicate the precise legal principle(s) upon which you base your answers and conclusions. An answer without an adequate supporting reason, or reasons, is not acceptable.

Subpart A (105 minutes)

1. Did Judge Finch correctly deny the plaintiffs’ motion to dismiss Kumbaya Rafting’s counterclaim [¶¶ 45, 46]?
2. What, if any, rules did Jamail violate by providing and filing the initial disclosure statement described in ¶ 48?
3. Did Judge Finch correctly deny the defendant Kumbaya Rafting’s motion to dismiss under Rule 12(b)(7) [¶¶ 41, 43]?
4. Did Dorian and Lee comply with Rule 11 in drafting and filing the complaint [¶¶ 31-37]?

5. Did Judge Finch correctly deny further discovery with regard to Jim Jameson [¶¶ 56-58]?
6. Did Judge Finch correctly deny Lee's oral motion for a protective order [¶ 62]?
7. How should Judge Finch rule on Reynolds motion to set aside the default judgment [¶ 70]?

Subpart B (30 minutes)

8. Did Judge Finch: 1) correctly deny the motion to compel production of any statements or memos relating to the interviews of Gee, Randers, Reynolds, and Fortenbaugh, and 2) correctly grant the motion to compel and order production of the report submitted by Kumbaya Rafting to the Forest Service [¶¶ 56-58]?

END OF EXAM

Have a great summer!