

Examination Number _____

UNIVERSITY OF MISSOURI SCHOOL OF LAW

Professor Carl H. Esbeck

Spring Semester 2012

Civil Procedure II, 5015L, Section 1

Directions to Part I - Essay
(1 hour)

Place your examination number in the upper right-hand corner of this examination. When finished, return these essay examination questions and submit your essay answers.

Answer only the questions asked. Do not raise or answer questions not asked.

Arrange your answers in sequential order. That is, put your answer to Question 1 first, then your answer to Question 2, and etc. If you want to skip over a question and come back to it later, leave a page or two blank and begin the next question.

You may use your laptop to complete this Part I.

If you do not use your laptop, write your answer in the bluebook provided. Use a pen with blue or black ink. Write on only one side of each page. Do not write in the left-hand margin. Do not tear pages out of the bluebook.

You may bring with you into the examination room your casebook (including TWEN downloads), your current federal rules supplement, and your own classroom notes (not borrowed notes). You may also bring a course outline provided it is entirely your own work product. It is an Honor Code violation to have any other materials with you during the examination.

* * * Part I begins on the Next Page * * *

PART I (one hour)

Question 1 (15 minutes): Katniss Everdeen, a 21 year-old in excellent health and top physical conditioning, sets out to navigate the perilous and rapid-strewn Nottaway River in a kayak. Katniss is never heard from again, nor is her body recovered. Her kayak and attached paddle are found downstream, the kayak askew with some water inside. One year later, Katniss' parents seek to recover as beneficiaries on an accidental death policy and file a claim in federal court. No jury is requested. Panem Insurance Company defends on the theory that Katniss ditched the kayak and ran away. At trial, both parents are called to testify in plaintiffs' case in chief. They relate the facts set forth above. On cross examination the parents admit that shortly before her disappearance Katniss was unemployed with \$65,000 in student loans, recently had been arrested for possession of illegal drugs, and had just gone through a big breakup with boyfriend Gale. As soon as plaintiffs rest, Panem Insurance Co. moves for judgment as a matter of law.

How should the judge rule? Explain.

Question 2 (10 minutes): Harry, a man in his early thirties, is suing CX System Industries, Inc., for the wrongful death of his wife, a promising surgeon. During the three-day jury trial in federal court, a comely young lady sits in the spectator's section of the courtroom directly behind Harry, leaning over a few times to remark to Harry about the weather. Harry does not know the woman, and she doesn't hang around during breaks in the trial. After a verdict of just \$3,000, two days go by whereupon Harry learns that the young lady works at defendant's law firm. How should Harry proceed? Explain.

Question 3 (20 minutes): The CEO for Hewlett-Packard (HP), Mark Hurd, is in a scandal over his involvement with Ms. Jodie Fisher, an employee of a HP supplier with whom Hurd made several business trips. The General Counsel for HP, Bob Weeks, hires a law firm, Covington & Burling, to investigate whether Hurd demanded sexual favors of Fisher. In just three days Covington & Burling produces a confidential report and gives it to Bob Weeks. In the report, Hurd is not found to have sexually harassed Fisher but he did breach HP's ethical standards and submitted fraudulent travel reimbursement requests. Hurd is immediately fired. Fisher is then fired by her employer because she is no longer a suitable salesperson on the HP account. Fisher now threatens to sue HP. Bob Weeks privately shows the report to Fischer and then negotiates on the spot a settlement paying her \$200,000.

One month later, Ernest Espinoza, an HP shareholder, files in federal court a shareholders' derivative suit against HP and Hurd alleging mismanagement. In the course of

this lawsuit, Espinoza learns of and promptly requests a copy of the Covington & Burling report. HP objects. HP cites both attorney-client privilege and the work-product doctrine. Espinoza files a Rule 37 motion to compel production.

- (A) How should the court rule on the claim of attorney-client privilege? Explain.
- (B) How should the court rule on the claim of work-product doctrine? Explain.

Question 4 (15 minutes): A student sues her public school district in federal court seeking injunctive relief and alleges violations of the Free Speech Clause, Free Exercise Clause, and Equal Protection Clause of the U.S. Constitution. Plaintiff also moves for a temporary restraining order and preliminary injunction pursuant to Rule 65(a) and (b) with respect to the Free Speech Clause claim. Acting on the motion, the District Court first enters a seven-day restraining order against defendant and sets an expedited hearing on the request for a preliminary injunction. Five days go by. Following a three-hour hearing on the motion for a preliminary injunction, the District Court dissolves the TRO and enters a preliminary injunction against defendant as requested by plaintiff. One week later, defendant files an appeal challenging the entry of the preliminary injunction. Fifteen days later a three-judge panel of the Circuit Court of Appeals issues an order remanding the case to the District Court. The Circuit’s instructions to the District Court are as follows: “Proceed to discovery and then a trial on the merits with respect to all three claims. Then, if the defendant still wants to appeal, defendant may appeal with respect to claims on which defendant has an adverse judgment.” The District Court proceeds as instructed.

- (A) Was the appeal proper? Explain.
- (B) Was the order by the Circuit Court of Appeals proper? Explain.

* * * END OF PART I * * *

Turn in both these examination Questions and your Answers.

After a 10-minute break, all students will begin Part II together.