

Civil Procedure

Midterm Examination

Fall 2008

Professor Davies

N.B. Multiple-choice questions omitted herein;
only the essay and short-answer portions of the exam are included.



EXAMINATION COVER SHEET

Student Examination Number: _____

Law 6040-001
CIVIL PROCEDURE
Professor Davies

Midterm Examination
Autumn 2008

Monday, October 27, 2008

⌚ Time Allowed: 1 hour

Authorized Materials: This examination is open book. You may consult any written materials that you have brought with you and that already exist when the exam begins.

Special Instructions: This exam consists of three parts: a multiple-choice section, a short answer section, and an essay section. The exam is being graded on a 100 point scale. There is also a bonus question at the end worth up to a total of 2 points.

Each section of the exam is worth the following point percentages:

The multiple-choice section includes 4 separate questions. Each question is weighted equally and is worth 7 points. Thus, in its entirety, the multiple-choice section is worth 28 points.

The short answer section includes 1 question that is worth 12 points.

The essay section consists of 1 question that is worth 60 points. In responding to the essay question, you will be graded both on your ability to spot the issues of civil procedure presented and on the quality of your analysis of

those issues. Organize your answer before you begin to write. Concise expression and clarity of analysis will be rewarded in grading.

The essay questions may fail to provide some information that you consider important. Should you find it necessary to make assumptions beyond those stated in the question, clearly explain your assumptions and their significance in your answer.

With respect to the multiple-choice questions, the “perfect” answer may not be among the possible alternatives given. You should select the “best” answer. Also, Scantrons will not be used; you should list the question numbers and your answers to each in your word-processed answer or, if you are using one, your Bluebook. However, credit will be given only for selecting the best answer to the multiple-choice questions; providing additional explanation for why you selected a given answer on a multiple-choice question will not garner any points.

There are 10 pages to the exam, not including this cover sheet. Make sure you have all of them.

When time is called, you must stop working on your exam immediately and turn in your copy of the exam and your answers to the exam questions.

Good luck!

GENERAL INSTRUCTIONS FOR ALL EXAMS:

- 1. Exams do not leave the exam room! Write your exam number on your copy of the examination questions, and return it to the proctor at the end of the exam.**
- 2. Students may NOT take any bluebooks or scratch paper from the examination room, whether blank or used. Return to proctor.**
- 3. If you are using a bluebook print your exam number, the title of the course and the instructor's name on the front of each bluebook.**
- 4. Number each bluebook (1 of 3, 2 of 3, 3 of 3, etc.) and place all bluebooks and examination questions inside the first numbered bluebook.**
- 5. If the examination utilizes a computer answer sheet (Scantron):**
 - You must use BLACK or BLUE INK only; no pencils**
 - You may use CORRECTION TAPE only; no liquid paper**
 - Print your examination number in the box found in the lower left-hand section of the form. Write the number in the first 4 spaces, and zero-fill any remaining spaces.**

For example, if your examination number is 2983:

IDENTIFICATION NUMBER

2	9	8	3	0	0	0	0
---	---	---	---	---	---	---	---

Fill in the bubbles corresponding to the numbers written.

Part II – Short Answer (12 points)

The date is December 1, 2016, and Jesse Ventura, long expected to win the United States presidency in a landslide as an independent candidate, is fuming that he did not. Most political analysts agree that despite his nearly perfect two-and-a-half years of campaigning, Ventura's downfall came when late in the race he announced his vice presidential running mate, Justin Timberlake, who voters quickly found to be unqualified, a poor reflection on Ventura's decisionmaking skills, and, quite frankly, just not that good looking. Ventura thus decided to sue Timberlake for derailing his campaign, and the parties are now in the throes of discovery.

Timberlake's chief defense in the case is that Ventura knew the risk of naming an unproven politician such as Timberlake to so high an office, and that to the extent Timberlake may bear any fault, he should not be liable because Ventura failed to properly vet Timberlake. To this extent, Ventura very much does not want to disclose a memorandum he received from one of his attorneys and political advisers, Hulk Hogan, which concluded thus: "I strongly urge you not to consider Timberlake as a possible running mate any further. His background is shaky, his history of 'costume reveals' and association with Janet Jackson a potential ticking political time bomb, and there are much better, more viable, more helpful possibilities (from an electoral map perspective) currently under consideration. In short, don't do it!"

Timberlake has served the following request for the production of documents upon Ventura:

Produce any and all documents, including electronically stored information, that in any way reference, relate, discuss, or mention your campaign for President of the United States of America.

You are an associate working on the legal team representing Ventura and have been asked by the partner running the case to work up potential responses to all discovery requests. Please do so now for the above document request.

Part III – Essay (60 points)

McLovin (who goes by one name and one name only) and Paulie Bleeker (“Bleeker”) are best friends who live in Columbus, Ohio. Fresh off high school graduation and unable to gain admittance to even the lowliest of colleges due to various illicit activities they previously engaged in, McLovin and Bleeker decide to try to “make it big in this big world, baby, yeah!” by setting up an internet company that allows visitors to a website, www.mclovin-and-bleeker-make-it-big.com, to answer various personal questions and then, for a nominal fee, receive a suggested playlist of music that can be downloaded to cell phones, handheld musical players, laptops, and other such devices.

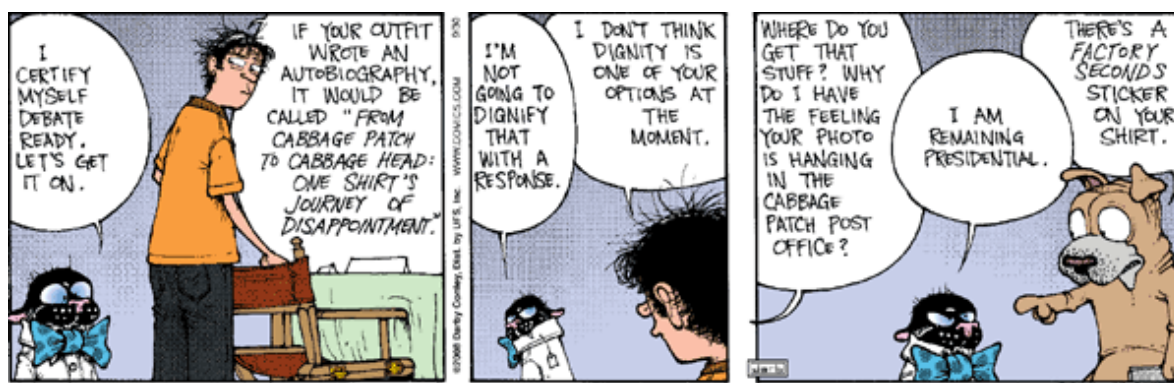
*McLovin**Bleeker*

Two of the artists whose music is most often recommended on McLovin and Bleeker’s website are Madonna and Eminem. They both catch wind of this, visit the website, and learn that McLovin and Bleeker are playing (*i.e.*, streaming) portions of Madonna’s and Eminem’s respective music without first obtaining proper copyright permission.

*Madonna**Eminem*

Accordingly, on December 1, 2011, Madonna and Eminem jointly file suit in federal district court for copyright violation, naming McLovin, Bleeker, and their company, We Are McMakin Money, LLC, as defendants. Specifically, the complaint alleges that by playing Madonna's and Eminem's music on their website without permission, McLovin and Bleeker have violated Madonna's and Eminem's exclusive rights to "reproduce the copyrighted work[s]" in question, to "distribute copies or phonorecords of the copyrighted work[s]," and to "perform the copyrighted work[s] publicly."

On December 31, 2011, the named defendants answer the complaint, admitting and denying the complaint's allegations as appropriate and raising a bevy of defenses. Subsequently, the parties commence the Rule 26(f) discovery conference, and the magistrate assigned to the case enters a scheduling order pursuant to Rule 16. Discovery then commences and, while she is leaving the deposition of McLovin, Madonna accidentally clips McLovin with her car as he is crossing the sidewalk.



Meanwhile, other events unfold. Eminem's and Madonna's attorneys realize that while their complaint alleges copyright violations for Madonna's song "Like a Prayer" and Eminem's song "My Name Is," the McLovin-Bleeker website also has likely been violating Madonna's rights to her song "Like a Virgin" and Eminem's song "The Real Slim Shady." Accordingly, the attorneys immediately file an amendment to the complaint adding counts for copyright violation of these songs. During this same time period, Bleeker and McLovin's attorneys discover that Madonna has posted an entry to her personal blog, which literally dozens of fans read each week, that mocks McLovin for "loping like a lemur across avenues and boulevards" and reproduces a copy of a comic strip that McLovin has begun creating as a side project to the website (see above). Accordingly, McLovin's attorneys promptly file an amendment to their answer adding a counterclaim against Madonna for (a) copyright violations arising from the posting of the comic strip, and (b) negligence arising from the incident in which she struck McLovin with her car as he was leaving his deposition.

Plaintiffs file a motion seeking to strike McLovin's amendment on the grounds that it is out of time, that it would unduly delay prosecution of the ongoing suit, and that it would needlessly complicate the issues now pending before the court. Defendants oppose plaintiffs' motion and

lodge a motion of their own. They argue that Madonna's motion is untimely and thus should not be allowed, and that even if it is allowed, it should be dismissed pursuant to FRCP 12(b)(6) because the applicable statute of limitations ran January 21, 2012, but the amendment was not filed until March 1, 2012.

You are a clerk to the judge assigned to this case, and she has asked you to draft an order ruling on the pending motions.