

**CIVIL PROCEDURE II**  
**PROFESSOR NUSSBAUMER**  
**FINAL EXAMINATION**

**MAY 5, 2006**

**INSTRUCTIONS**

1. This examination is scheduled for **three (3) hours**. It consists of **two parts** to which you should give equal attention.
2. This is a **partial-book exam**. You are **not** permitted to consult any materials other than the copy of the Federal Rules of Civil Procedure and the additional legal rules provided you at the beginning of the examination period.
3. There are two parts to this examination, MULTIPLE CHOICE and ESSAY.  

**PART I**, the multiple-choice segment, contains 30 questions. You are advised to read each of the answer choices (time permitting) and to choose the **best** possible answer out of the four choices provided. Indicate the best answer on the ParSCORE test form provided.

**PART II** consists of one essay answer. Remember to take your time; read, think, analyze and organize your answer before you begin to write. Write your answers in the blue books provided. Be sure to write on every other page and every other line. Be sure to **write legibly**, and illegible exams may not be graded.
4. Assume that all litigation occurs in federal court and is governed by the Federal Rules of Civil Procedure (FRCP) unless instructed otherwise. Also, assume that if there is a conflict of legal authority--you are being tested on the majority rule.
5. Write your student exam number on your exam envelope, the ParSCORE test form, every page of this exam, and all used blue books. **DO NOT** use your name, student ID number or Social Security number on any exam materials. Students who put their names on their exam materials will receive a small grade penalty for doing so.
6. At the conclusion of the exam, return all test materials including blue books, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who fail to return all exam materials at the end of the exam may not be graded.

**GOOD LUCK!**

**Part II**

**(one essay question; suggested time allotment of 90 minutes)**

For the past twenty years, Darla has worked as a bartender at Harah's Sports Bar in West Dakota. Three months ago, Harah's introduced a new appearance policy for its employees with the stated purpose of improving the company's professional image. The new policy requires both male and female employees to wear identical black pants, white shirt, bow tie, and comfortable shoes, but the policy also distinguishes between male and female employees in the following grooming requirements: men must keep their faces cleanly shaved and their hair cut short while women must wear powder, red lipstick, and blush on their faces. Darla fully complied with the new policy in the first two weeks after it was announced, purchasing and applying make-up for the first time in her life. However, she found wearing make-up to be so inconsistent with her self-image that she quit her job rather than continue to wear it.

Darla then filed suit in a federal district court in the state of West Dakota, alleging that the women-only make-up requirement in the new policy constitutes sex discrimination under Title VII, and seeking damages for her loss of employment. Under the precedents of the federal court of appeals that encompasses West Dakota, a mere allegation that different grooming standards for men and women are discriminatory because they are *different* fails to state a claim under Title VII. Sex-differentiated grooming standards can only satisfy the discrimination element of Title VII if the different requirements impose an *unequal burden* on women or men. (In one case, for example, it was held that an employer may require its male employees to wear black ties and its female employees to wear white lace scarves because it is no more burdensome to wear a scarf than a tie.)

Darla's complaint includes a second federal claim, a claim for unpaid overtime for which she seeks back pay and alleges that Harah's required her to begin her work-day two hours before the bar's opening and to work during these two hours off the clock without compensation each day for the past twenty years.

Harah's answer to the suit includes a (properly-joined) state-law counter-claim seeking damages for unlawful conversion of funds, alleging that Darla showed up for work a few hours early each day only because she used this time before other people arrived to pilfer from the cash register.

After the discovery period has closed, and two months before the jury trial is scheduled to begin, Harah's moves for summary judgment on both of Darla's claims. For the Title VII claim, Harah's argues that summary judgment should be granted because Darla has yet to produce any evidence that the make-up requirement for women is more burdensome than its requirement that men keep their hair cut short and their faces shaved. Harah's supports this motion by systematically summarizing the evidence in the record, observing that none of it includes any proof that could support a finding of an unequal burden.

Darla opposes this motion for summary judgment by submitting her deposition testimony that wearing make-up is just not me it makes me feel like a fake, and I think it's demeaning. Additionally, in her brief opposing summary judgment, she repeats an argument she made in her complaint that it costs more money and takes more time to buy and apply make-up than it does for a man to keep his hair short and his face cleanly shaved.

In its motion for summary judgment on the claim for unpaid overtime, Harah's contends that Darla has no evidence that she was ever required to work off the clock other than her own interested testimony which must be disregarded as biased. Along with its summary-judgment motion, Harah's has submitted (1) Darla's employment records, all of which indicate that her work day always started at the bar's opening time, and (2) the affidavits of four current and past managers who state that Darla never worked off the clock and that she was never asked to do so. Darla opposes this motion with an affidavit in which she attests that she was ordered by each of her managers to work two hours each day before the bar's opening without pay or else she would lose her job.

Darla decides to file her own motion for summary judgment, arguing that the court should rule against Harah's counter-claim as a matter of law because the company lacks sufficient evidence to link her to any stolen funds. Harah's only evidence that Darla stole money is an uncontested document that shows Darla was one of just two employees who worked in each of the years in which Harah's cash register intake regularly fell short of its receipts.

The district court judge thus now has before her the following pending motions:

- (1) Harah's motion for summary judgment on Darla's Title VII claim;
- (2) Harah's motion for summary judgment on Darla's unpaid overtime claim;
- (3) Darla's motion for summary judgment on Harah's counter-claim for unlawful conversion of funds.

**You are a law clerk to the judge. She asks you now to write a memorandum advising her on how she should rule on each of these three motions.**

**END OF EXAM**

Good luck with the remainder of finals week, and enjoy your summer!