

Final Examination

Civil Procedure II

Professors Ramo and Rechtschaffen

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INSTRUCTIONS

1. You will have a total of two **(2) hours, 15 minutes** to complete this exam.
2. This is a **closed book** exam.
3. This exam consists of two parts, divided as follows:
 - a. **Part I** is twenty-five (25) multiple choice questions. You will have **one hour** to complete Part I, the multiple choice questions. If you finish early, please double check your answers. You will **not** be permitted to move on to Part II of the exam until the end of the one hour period. Once the one hour period is over, please put the multiple choice questions and answer sheet in your exam envelope. You are **not permitted** to go back to Part I once the one hour period is over and the essay portion of the exam has started.
 - b. **Part II** is one essay question. You will have a total of **one (1) hour, 15 minutes** for the essay question. Please be sure to fully answer *all parts* of the essay question.
4. Please answer the essay question in the blue books provided to you. Write only on the right hand side of the page (skipping a page each time) and double-space your work. Please write legibly.
5. Write your exam number on your exam envelope. Put your student **exam #** at the top of this page, each page of questions, each blue book and your ParScore answer form. **Do not** use your name, student ID number or Social Security Number on any exam materials.
6. At the conclusion of the exam, return all exam materials to the exam envelope and submit it to the proctor. **Do not** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

GOOD LUCK!

Part II: Essay Question

One Hour, 15 minutes

Plaintiff is a Mexican-American employee who works for Fine Clothes Garment Company, a company with many factories across the country employing 1000 workers in total. Plaintiff and other employees in the company believe that Company has paid them lower wages than other, non Mexican-American workers, and has failed to pay them overtime, because they are Mexican-American. Plaintiff has worked many hours for wages that he believes are lower than what other, comparably qualified workers receive. He has never worked overtime, but has witnessed numerous co-workers working overtime, has talked to them about their pay and wants to do right by them.

Plaintiff files a class action complaint in federal district court on behalf of Mexican-American employees working at Company. The complaint alleges a claim that the class has not been paid time and a half for overtime, as required by federal law, and that Mexican-American workers have been paid less than white workers in the same job classifications. The complaint alleges a claim that this treatment results from company policy and violates federal civil rights laws, in particular Title VII. The complaint requests money damages based upon the amount of wages owed to each employee, and punitive damages resulting from defendant's wrongful conduct. Defendant answers, denying all allegations. The company, upon hearing of the lawsuit, immediately promotes plaintiff to a managerial supervisory position.

Plaintiff moves to have the case certified as a class action. In support of his motion, plaintiff submits evidence that the average wage of Mexican-American workers at the company is 30% lower than white workers in the same job classifications, after controlling for all other factors. Plaintiff also submits evidence that the Company ignored a report by the director of human relations at the company warning that it might be vulnerable to a lawsuit because of the lower wages earned by Mexican-American workers, and that the Company's policy is to have no written criteria for wage and overtime determinations, leaving this to the subjective discretion of individual factory managers who act on biases against Mexican-Americans. Defendant opposes the motion. It submits evidence about its company-wide policy of non-discrimination in all employment matters, including wage and overtime determinations, as well as the deposition testimony of several Mexican-American workers who have been promoted to managers and testify that the company's policies are not discriminatory. The Judge grants certification for a nationwide class as alleged, ruling that plaintiffs have met the requirements under Rule 23(a) and (b), and requires the plaintiff to send notice to all of the class members.

Three employees opt out of the class action and file individual claims against Company for failure to pay overtime as required by federal law. Their case comes to trial before a jury. The employees testify that they worked 14 hours a day at various times over a several month period but were not paid overtime. They also testify that the managers who gave them their paychecks said that if they ever complained about their wages they would

be fired and deported. Defendants submit hand-written notations from store managers about the hours worked by the employees, which show that the employees worked no more than 40 hours per week, and pay checks issued to the employees, reflecting payment based on work for these number of hours. Two factory managers also testify that the employees lied about the hours they worked and what the managers told them.

At the close of all the evidence, defendants move for judgment as a matter of law (directed verdict). The Court tells counsel outside the presence of the jury I believe that the employer records speak for themselves and that the plaintiffs falsely testified, but I will leave this question to the jury, and denies the motion. The jury returns a verdict for the plaintiffs. Defendants renew their motion for a judgment as a matter of law (judgment notwithstanding the verdict) and the court grants the motion, with the condition that if that holding is reversed on appeal, the defendant would then be entitled to a new trial.

Please discuss whether the court is correct in ruling that:

1. The class should be certified because it meets the requirements of Rule 23(a) and 23(b), and notice should be given to all class members;
2. The motion for judgment as a matter of law (directed verdict) should not be granted;
3. The motion for judgment as a matter of law (judgment notwithstanding the verdict) should be granted, with the condition that defendant is entitled to a new trial if the judgment is overturned on appeal.

END OF ESSAY QUESTTON

END OF EXAM