

Final Examination

Civil Procedure II

Professors Ramo

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INSTRUCTIONS

1. You will have a total of two (2) **hours** 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** (20) multiple choice questions. You will have **fifty minutes** 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, 10 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, 10 minutes

Essay: One hour and 15 minutes

500 members of Alaska's Yupiaq tribe of Eskimos are being threatened with having to relocate from an Alaskan island due to rising waters that scientific experts say is due to global warming heating up nearby glaciers and melting them away. Global warming is caused by the emissions of carbon dioxide and other so-called greenhouse gases from power plants, cars, and other sources. Each of the tribal members live in family units in similarly priced small houses and each family has one member who works at a nearby fish processing facility. As a result of global warming, many of the homes have been damaged due to the rising water and already an additional 100 members of the Yupiaq tribe have had to relocate to other Alaskan communities, having had to pay for new housing and suffering the loss of their jobs.

The tribal leaders contact an attorney in San Francisco who is an environmental lawyer and a sole practitioner with few resources who understands global warming, but has never done a class action or a tort case. The attorney nevertheless recommends filing a class action, given that each individual tribal member could not afford to sue separately, against a major source of greenhouse gases. The attorney recommends suing the American Power Company, also headquartered and having its principal place of business in San Francisco California, which has power plants located throughout the United States. These power plants constitute one of the largest sources of greenhouse gas pollution responsible for global warming. The tribal leaders pick three tribal members who are still living on the island to sue as named plaintiffs on behalf of the 500 members who still live on the island and the 100 members who have already left.

Plaintiffs file their class action in federal district court in San Francisco against the American Power Company alleging that the Company's power plant emissions constitute a nuisance. They request damages based upon the injuries class members have suffered and punitive damages to encourage the company to reduce its emissions. The company answers denying their emissions cause global warming, and if it did contribute, their pollution is only 1% of the world's global warming pollution and therefore is insignificant.

Plaintiffs file two motions 30 days after the defendant answers. The first motion is for Class Certification. Plaintiffs also file a motion for a Preliminary Injunction, asking that the power plants be ordered to cap their emissions at their current level until the case is resolved to minimize further damage to their homes from increased global warming. Defendant contests that this case is appropriate for a class action. It also argues that unless it is allowed to increase its generation of electricity whenever it needs to, the company will lose millions of dollars in profits.

You are the judge. Your law clerk has no recommendation on the Class Certification motion. Assume your law clerk on the injunction motion accurately tells you that plaintiffs are likely to succeed on liability in the nuisance case. Also assume that the law clerk correctly tells you that each party's claim of hardship is supported by the available evidence the plaintiffs' claims of harm in the event the injunction is not granted, and the defendants' claims of harm in the event the injunction is granted.

How should you rule on: 1)the Class Certification motion, including what notice if any to provide; and 2) how should you rule on the Preliminary Injunction?

BE SURE TO GIVE GREATER CONSIDERATION TO THE CLASS CERTIFICATION MOTION AS THAT WILL BE WEIGHED MORE HEAVILY THAN THE INJUNCTION MOTION IN GRADING THE ESSAY.

END OF ESSAY QUESTTON

END OF EXAM