

**Final Examination
Civil Procedure II
Professor Rechtschaffen
Spring 2007**

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-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 minute 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 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.
7. Good luck, and have a great summer!

**Part II: Essay Question
(One Hour)**

Company owns property next to the New River, on which it stores fertilizer material that Company mixes and sells to landscapers. Plaintiff, an environmental group, files a lawsuit in federal court alleging that Company has violated the federal water act. The act requires companies to obtain a federal permit if they operate a “fertilizer yard” that discharges pollutants into a river. Plaintiff alleges that defendant is operating a fertilizer yard on its property, that the fertilizer yard is discharging four pollutants into the New River, and that defendant does not have a federal permit for the discharges.

In a prior federal case, the County Department of Public Works had filed suit against Company, seeking penalties on the ground that Company had failed to obtain a special sales permit when it started selling fertilizer material from the property last year, as required for “fertilizer yards.” In that case, Company had argued that it was not operating a fertilizer yard. The court ruled that a permit was required, and assessed a \$40,000 penalty against Company. Company did not appeal the court’s decision. In the instant action, plaintiff moves the court for an order that Company is barred from litigating whether it is a “fertilizer yard” based on the prior County action. The court grants the motion.

After the close of discovery, both sides move for summary judgment. Plaintiff argues that it has established both elements necessary to prove a violation of the water act: (1) that Company is discharging pollutants into the New River; and (2) that Company does not have a federal permit for the discharges. Company argues that plaintiff has failed to prove its case, and that it has proven its affirmative defense, described below.

In support of its motion, plaintiff submits the results of water sampling in the New River which shows that the water just downstream from Company’s property contains greatly elevated levels of four pollutants used by fertilizer yards. In response, Company argues that if any discharge to the river is occurring, it is coming from the waste of a herd of cows grazing on the neighboring property, which also borders the New River. Company submits the affidavit of a chemist who testifies that the pollutants found in the sample submitted by plaintiff often are found in the waste of cows.

Also in support of the motion, plaintiff submits a copy of Company’s answer to the complaint. In the answer, Company admits paragraph 7 of the complaint, which alleges that defendant has no federal permit.

It is an affirmative defense to any action brought for violating the statute that a company currently has fewer than 10 employees. Company, having timely pled this defense, raises it in opposition to plaintiff’s summary judgment motion. In support of this defense, Company submits its official “articles of incorporation” that it filed with the State two months ago, indicating that Company currently has eight employees. In response, plaintiff submits an affidavit from an employee of a fertilizer yard owned by another company in the area, who testifies that his company has twenty employees working for it.

The court denies both motions for summary judgment.

Please answer and discuss whether the court correctly ruled on:

- (1) Plaintiff's request for an order that Company is barred from litigating whether it is a "fertilizer yard" based on the prior action; and
- (2) Each party's motion for summary judgment.

END OF EXAM