

**FINAL EXAMINATION
CIVIL PROCEDURE II
PROFESSOR WINGATE
SPRING 2005**

1. You have **three (3) hours** to complete this exam.
2. This is a **closed** book exam. You may not consult any notes, books, or other materials, nor may you discuss the questions among yourselves or with any other persons.
3. This exam consists of two (2) parts. The first part consists of forty multiple-choice questions. The second part consists of one essay question. The first part will count for two-thirds of your grade, and the second part will count for one-third of your grade. **The first part will be collected after the first two hours of the exam.** If you finish part one (1), the multiple-choice, before two hours have elapsed, you are welcome to continue on to part two (2), the essay. If the two hours have not elapsed, you may return to part one even after starting part two.
4. Multiple-choice questions are to be answered on the separate ParSCORE TEST FORM, using pen or pencil and following the instructions on that form. If you change your answer, place a clear **X** through the wrong answer and mark the correct answer. A machine will score the exam and any ambiguities will be counted as a wrong answer. Select the best answer for each question. If a general rule governs the question, and the facts do not indicate the basis for an exception, answer the question in accordance with the general rule.
5. If you are handwriting your essay answer, please write in the blue book(s) provided. **Please write on one side of each page, and on every other line. Please write legibly.** No credit will be given for an answer or a portion thereof which cannot be read by the grader. In analyzing the essay question, please address each issue reasonably raised by the facts presented, even if not rendered moot by your analysis of some other issue. Credit will only be given for analysis that is set forth; unexplained conclusions will not suffice. If you find it necessary to make any assumptions of fact or law to answer the question, state what they are and how they affect your answer.
6. Write your **exam number** on this exam envelope, all used blue books, at the top of this exam packet, and on the ParScore answer sheet. **Do not** use your name, student ID number, or Social Security Number on any exam materials.
7. At the conclusion of the exam, return all test materials, including blue books, ParScore answer sheet, scratch paper, and this exam packet to the 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.

Part 2: Essay (1 hour)

QUESTION I
(Suggested time: 60 minutes)

Terry filed suit against Marvin Construction Company (Marvin), his former employer, and Roger, his supervisor while employed by Marvin, in a South Oregon state court in March 2005. South Oregon is a mythical state of the United States of America. Terry worked for Marvin on the expansion of a major state highway in South Oregon. His employment with Marvin commenced in February 2003 and ended with his termination in April of 2004. Roger was in charge of the Marvin employees working on the project and made the decision to terminate Terry. Terry's complaint asserts a tort claim of wrongful termination against Roger and seeks damages. The South Oregon courts have recognized such claims against supervisors who wrongfully fire employees who work under them. Additionally, the complaint asserts a prevailing wage claim against Marvin. The South Oregon prevailing wage statute mandates that companies contracting with the state pay their employees working on projects within its provisions not less than the prevailing rate of wages determined by the State Employment Department for work of a similar character. Terry's complaint alleges that South Oregon law required Marvin to pay its employees working on state highway projects the specified prevailing wage and seeks to recover from Marvin the difference between the wages he received and what he would have received if he had been paid the prevailing wage and the statutorily prescribed penalty for each week of work an employee is improperly denied the prevailing wage. While working for Marvin, Terry often complained about its failure to pay the prevailing wage. However, at that time Roger repeatedly insisted that the prevailing wage law did not apply to highway construction projects, and Marvin asserts that same position in the answer filed to Terry's complaint. The answer also denies Terry's allegations regarding his wrongful termination by Roger. Additionally, Marvin filed a counterclaim seeking to recover damages for the value of equipment it alleges Terry stole while he worked for the company.

Back in June of 2004 Terry filed suit against Marvin in a North Nevada state court. North Nevada is a mythical state of the United States of America. Terry sought \$200,000 in compensatory damages for Marvin's alleged breach of his employment contract by terminating him without good cause. Terry's complaint in that action alleged that Roger fired him because of his complaints about the applicability of the prevailing wage law and that action constituted a breach of his employment contract. Marvin filed an answer denying that Terry's termination had anything to do with the dispute about whether the prevailing wage law was applicable. The answer alleged that Terry stole equipment belonging to the company during his employment and that he was fired for that reason. In September of 2004 following a bench trial the judge entered a judgment for Marvin. In her findings of fact and conclusions of law the judge specifically noted that she had concluded that Terry had stolen equipment from Marvin during his employment and had been fired for that reason. The judge also noted that she concluded that the prevailing wage law did not apply to highway construction projects, even though she did not have to

reach that issue to resolve Terry's breach of contract claim. Terry filed an appeal, and that appeal is still pending.

A few weeks after the North Nevada court entered judgment against him, Terry was informed that a Marvin employee who worked on another state highway construction project had brought suit in a South Oregon state court against Marvin to establish that the state prevailing wage statute did apply to its employees working on such projects. In that suit the state court issued a declaratory judgment asserting that the state prevailing wage law did apply to state highway construction projects and the plaintiff in that action therefore was entitled to a salary based upon it. That judgment was issued the day after the judgment against Terry the North Nevada state court. Marvin elected not to appeal, and the time to appeal has now expired.

You are a clerk for the judge before whom Terry's suit is pending. She anticipates motions asserting that the litigation of certain claims and issues is precluded as a result of earlier litigation. She asks that you write a memorandum discussing the contentions regarding preclusion likely to be raised by the parties and indicating how they should be resolved. She asks that you thoroughly discuss the arguments on both sides of the issues raised. Write the memorandum.

END OF EXAM