

FINAL EXAMINATION

CIVIL PROCEDURE II

PROFESSOR KEITH WINGATE

SPRING 2006

1. You have **three (3)** hours to complete this exam.
2. This is a **closed** book examination. Students may not use any outside materials and confer with each other during the exam.
3. This examination contains two parts: an essay **and** objective questions.
 - a. **Part I** consists of one 75 -minute essay question. You must begin with the essay section. This essay question is to be answered in the bluebooks provided, using every other line on one side of each page. **Please return this section of the exam, including the questions, your answer sheet and your notes to the envelope once you are done answering the essay.** Once you have placed the essay section in the envelope, you may not go back to it. **NOTE:** You will not have access to Part I during the final two hours of the exam. Also, you may not move onto to Part II even if you finish Part I before time is called.
 - b. **Part II** consists of 48 multiple choice questions to be answered in the last two hours of the exam period. Correct multiple choice answers are to be marked 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. FRCP is a short-hand for the Federal Rules of civil procedure.
4. 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.

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 the ParSCORE TEST FORM. **Do not** use your name, student ID number or Social Security Number on any exam materials.
6. At the conclusion of the exam, all examination papers including the Part II ParSCORE TEST FORM, bluebooks for Part I, the examination questions, these Instructions, and all notes -- must be placed back in the exam envelope at the end of the examination. **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!

QUESTION ONE

(75 minutes)

On March 10, 2005, Steve had a wonderful time at his favorite bar in Key West, South Florida. As he walked home past two police officers, Terry and Mike, who were on patrol, he wished them a good evening. Terry asked him how much he had had to drink, and Steve told him that that was personal information. Terry then told Steve he was under arrest for public drunkenness. Steve was not happy with that decision, and a scuffle ensued between the three of them. Steve ended up with some fairly serious injuries and thought that the police officers had beat him without cause. Consequently, he filed a formal complaint against the two officers with the chief of police. The district attorney's office decided not to prosecute Steve for public drunkenness, and the charges against him were dropped.

One month after his arrest, in April of 2005 Steve again walked past Terry and Mike on his way home from the bar. This time Terry and Mike were off duty and were on their way to a baseball game. Steve asked them if they were out looking for people to beat up. Terry asked Steve if he enjoyed filing frivolous complaints against police officers. The verbal exchange was then followed by another scuffle. This time all three men suffered some injuries in the altercation.

In September of 2005 Steve filed a diversity action against Terry in a North Florida federal court. North Florida and South Florida are mythical states of the United States of America. Steve and Mike are citizens of South Florida, and Terry is a citizen of North Florida. In his complaint Steve alleged that Terry and Mike used excessive force in arresting him the previous March and therefore Terry was liable to him for assault and battery. The complaint requested \$100,000 in damages. Terry's answer denied that excessive force was used. Steve filed his demand for a jury trial too late, and therefore the

case was tried before a judge. After a trial the judge entered a judgment for Terry stating that Steve had not presented sufficient evidence to prove that Terry and Mike used excessive force in arresting him. Steve has filed an appeal of the judgment which is still pending.

Steve has now filed suit against both Terry and Mike in a South Florida state court seeking money damages as relief. Count 1 of the complaint alleges that Terry and Mike used excessive force in arresting him in March 2005 and therefore violated his federal constitutional rights in violation of 42 U.S.C. section 1983, a federal statute. Count 2 of the complaint alleges that Terry and Mike committed an assault and battery upon him in the April 2005 altercation. In their answer Terry and Mike deny that they used excessive force in arresting Steve in March. The answer filed by Terry and Mike also denies that they committed an assault and battery on Steve in April 2005. Additionally, the defendants filed a counterclaim against Steve claiming he committed an assault and battery upon them in April 2005 and seeking damages.

You are a clerk for the South Florida judge before whom Steve's case is now pending. She believes that the parties are likely to make motions based upon the law of preclusion. She asks that you write a memorandum discussing the specific contentions of preclusion likely to be raised by the parties, the related issues, and the impact they should have on the litigation of the claims asserted in the action. She emphasizes that she wants you to be specific about the impact that preclusion should have on the litigation of the claims asserted and the parties involved. She asks that your memorandum discuss reasonable arguments on both sides of the issues raised and indicate how she should resolve them. Write the memorandum.