

MASSACHUSETTS SCHOOL OF LAW

PROFESSOR COYNE
FINAL EXAM -- FALL 2006

CIVIL PROCEDURE
AND CONFLICT RESOLUTION

SS# _____

The secret of success in life is to be ready for the opportunity when it comes.

Benjamin Disraeli

Use your social security number on the exam and blue book. Write legibly and coherently.

You will be graded on your knowledge of the law, ability to analyze the issues and your treatment of the issues.

Please take the time to think about and organize your answer. Please do not just define the issue of law, but think about how it applies to the facts and what the ramifications of your conclusion are. Please limit your answer to six pages and write on only one side of each page.

QUESTION ONE

While using www.ilearn.com, a well known internet website, John Lisas of Petersburg, Maine saw a notice for a Bluetooth eyeglass computer made by Bluetooth Eyeglass Computer, Inc., a Delaware corporation with a principal place of business in Roanoke, Virginia. Lisas had also read about the Bluetooth eyeglass computer that serves as a mini computer, TV and cell phone in an advertisement in *The New York Times* when the company first began manufacturing the Bluetooth eyeglass computer. While it looks like a simple pair of eyeglasses, the Bluetooth eyeglass computer allows the user to have complete access to the system through voice command with the requested information then shown on the eyeglass lens.

He then further investigated it at Bluetooth Eyeglass Computer.Com, a website owned and operated by the retail distributor of the Bluetooth eyeglass computer, BTU.Com, Inc., a corporation headquartered and incorporated under New York law. He also researched Fung Wa Products Inc. through their website as well. The Bluetooth eyeglass computer had a

component piece manufactured in China by Fung Wa Products Inc., a Chinese corporate citizen. The advertisement described the Bluetooth headset as being the finest such device available in the world and was guaranteed to be safe at all times. John called the telephone number listed in the New York Times ad and ordered the Bluetooth headset from his home in Petersburg. He sent a check for \$2100 directly to the company as specified at the website.

It arrived a little more than one month later, and Lisas was the envy of everyone in his college classes and at work at the 99. John decided to take his wife, Jen, to work with him so they could celebrate the end of the semester. However, tragedy struck at the 99 when they were eating some boneless buffalo wings. The Bluetooth headset exploded sending shards of glass and hot sauce throughout the dining room seriously injuring John and Jen and injuring all of the patrons at the 99. Many of the 99's employees were seriously injured, including the bartender Tom who died from his injuries. John is now blind as a result of this incident while Jen suffered only minor injuries.

A permanently injured John Lisas returned home and then spent the next six months in Arizona receiving treatment at Arizona General Hospital and Arizona Rehabilitation Center. The Lisas fell in love with the area and learned that Arizona laws are extremely beneficial to injured parties in that they provide for awards of punitive damages. They hired an attorney and decided to stay in Arizona.

Based upon a complaint by John Q. Citizen to the Kentucky Attorney General it was determined that the Bluetooth headset was defective in that the piece manufactured by Fung Wa overheated after use. The administrative proceeding fined both BTU Inc. and Bluetooth headset \$100,000 when it determined that the companies failed to meet safety standards.

The Lisas consult you regarding these issues. How would you advise them to proceed and why?

QUESTION TWO

Bob Bankerz, a resident of Salem, Massachusetts, attended a conference at Neck Inn in Portland, Maine. Bob was injured when he was assaulted at the hotel.

Neck Inn was a corporation wholly owned and operated by IHospitality, Inc. ("Hospitality"), a Delaware corporation with its principal place of business in Delaware. Neck Inn had a website on the internet linked to IHospitality's website, which described Neck's amenities, rates and services. Reservations at Neck could be made over the internet

and, in fact, Bob's accommodations at Neck were made over his internet and paid for by his employer, the Massachusetts School of Law. On January 10, 2006, Bob sued IHospitality and Neck in the Suffolk Superior Court. In the complaint, Bob alleged that his severe injuries were caused by the negligence of Neck's agents, employees and servants in maintaining security. He claimed damages for his injuries, lost wages and permanent disability.

Please define fully each concept below and explain how each of the following concepts affects Question Two. Please appropriately tie that concept to the facts of the case or explain why the concept is not applicable to the fact pattern contained in Question Two.

Federal Court Jurisdiction:

The Three Testing Motions:

Erie and the Outcome Determinative Test:

Res Judicata and Collateral Estoppel:

Equitable Remedies:

Well Pled Complaint Rule:

Amending Pleadings:

Counterclaims:

Alternative Dispute Resolution:

Discovery:
