

CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2006 Mid-Term Question
Professor Coyne

Lawyers cannot remain empty of head and pure of heart...

A lawyer has a duty to investigate or take some steps to inform himself in a situation where he believes that there is client perjury.
Barry S. Alberts

Please answer the short answer questions on page two first.

Please review this question, reflect on it and consider solutions to the problem. Please address the issues and propose a solution to this problem.

Use only your social security number on this examination and blue book. Please answer this problem in no more than five handwritten pages. I will evaluate your answer on your knowledge of the law, ability to recognize issues and your analysis of these issues.

Internet Cellphones, Inc., a corporation headquartered and incorporated under Connecticut law, manufactures Internet Cellphones at its plant in Albany, New York. It calls itself the first manufacturer of Internet Cellphones in the northeast in its advertisements in *USA Today*, a newspaper distributed throughout the country. Internet Cellphones Inc. sells the Cell phones through its retail stores in Andover, Massachusetts, Groton, Connecticut and Providence, Rhode Island and over the internet at www.InternetCellphones.com through a distributor called EInternet Cellphones.com, Inc., a Delaware corporation.

On April 1, 2006, Braxton Kim purchased an Internet Cellphone for \$1,000 at www.InternetCellphones.com. He had it delivered to his home in Salem, New Hampshire. He used the Internet Cellphone at a 75th birthday party for his mother where it exploded sending pieces of glass and plastic throughout the room. Kim was severely injured and his cat, Puffy, who went everywhere with him, was killed instantly in the explosion. His mother, Pearl, suffered permanent disfiguring injuries because of the explosion and was hospitalized for many months.

Through its formal investigation of this incident, the New Hampshire Attorney General's office discovered that the Internet Cellphones were poorly manufactured and a dangerous product. Their investigation also revealed that the phone had never received approval from the Federal Trade Commission as an approved electronic device. It ordered a recall of the product.

Kim visits you to discuss this matter. What is your advice? How would you proceed and why?

