

**CIVIL PROCEDURE
AND CONFLICT RESOLUTION**

**PROFESSOR COYNE
FINAL EXAM FALL 2007**

SS# _____

A leader is a dealer in hope. Napoleon Bonaparte

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

Your knowledge of the law, ability to analyze the issues and your treatment of the issues will form the basis for your grade.

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

Webtoday.com Magazine, a corporation incorporated and headquartered in Boston, Massachusetts, is the finest online magazine on the web. It first went online in 2005 and has grown steadily since that time. Starki Vietzke of Salem, Maine went online to Webtoday.com's shops which are run by X Corp., a Delaware corporation with a principal place of business in London England to purchase diet drugs ,specifically the diet drug VOXPOPULI, manufactured by Johnson & Johnson of New Jersey. Vietzke had also read about the diet drug in an article in *The Boston Globe* and then further investigated it by googling more information about it at the search engine www.google.com that is headquartered and incorporated under New York law. The drugs were described as wonder drugs and guaranteed to achieve great results. Starki purchased a 6-month supply of the drugs online using his MasterCard.

Vietzke was the envy of everyone in the neighborhood as he started to lose weight immediately. Many of his neighbors were very impressed with the results and asked Vietzke to obtain the drugs for them as well which he agreed to do, becoming a distributor of VOXPOPULI. However, tragedy soon struck when Starki had a heart attack 6 months after starting the drug. He has lost sight in his left eye and now walks with a limp. His wife Tu has quit her job as physician in charge of Maine Medical Center to help nurse him back to health. A few of his neighbors have also suffered adverse side effects.

The Vietzke's moved to Alabama so Starki could get treatment at Alabama General Hospital and Birmingham Rehabilitation Center in Birmingham, Alabama. The Vietzke's learned that Alabama laws are extremely beneficial to injured parties in that they provide for generous awards of punitive damages. Starki and Tu decided to remain in Alabama during treatment.

After a three day administrative hearing held by the Federal Drug Safety Bureau, it recalled VOXPOPULI for failing to meet certain safety standards.

Federal law mandates that all drugs be properly labeled or any injured party may sue the distributor and manufacturer for twice the actual damages plus attorney's fees. Johnson & Johnson denies that the drug was mislabeled.

The Vietzke's consult you regarding these issues. How would you proceed and why?

QUESTION TWO

The Museum of Modern Art and the Solomon R. Guggenheim Foundation filed suit in U.S. District Court in New York asking the court to declare them the rightful owners of two Picasso paintings that a Jewish scholar claims were the rightful property of a relative persecuted in Nazi Germany.

The two institutions took the step to fend off an expected lawsuit from Julius H. Schoeps, a German who has been waging a relentless legal fight to recover artwork and property once owned by his great uncle. Schoeps demanded that the museums hand over both works, "Boy Leading a Horse," which is in MoMA's collection, and "Le Moulin de la Galette," in the Guggenheim's collection.

MoMA director Glenn D. Lowry and Guggenheim Foundation director Thomas Krens in a joint statement said the paintings were not obtained under Nazi duress. Summary Judgment was granted for the defendants in a previous class action filed in state court after lengthy discovery in the United States and Europe.

The Museum of Modern Art and the Guggenheim Museum take the issue of restitution very seriously. They claim that evidence from their extensive research makes clear the museums' ownership of these works and that Mr. Schoeps has no basis for his claim. Both paintings were originally owned by Paul von Mendelssohn-Bartholdy, an aristocratic German banker and descendent of composer Felix Mendelssohn. Mendelssohn-Bartholdy died in 1935, two years after Adolf Hitler came to power.

The family sold the two paintings, now owned by the museums, in 1934 or 1935 to Jewish art dealer Justin Thannhauser, who himself fled Germany and spent much of the war in Switzerland. Thannhauser kept "Le Moulin de la Galette" until 1963, when he gave it to the Solomon R. Guggenheim Museum. He sold "Boy Leading a Horse" to former MoMA chairman William Paley in 1936.

Please address in detail how each of the following concepts affects Question 2, making sure that you properly define each concept first. Then appropriately tie that issue to the facts of the case or explain why the concept is not applicable to the fact pattern contained in Question Two.

Discovery: _____

Erie Doctrine and the Outcome Determinative Test: _____

Motions for a New Trial and To Vacate Judgment: _____

Res Judicata and Collateral Estoppel: _____

Counterclaims: _____

Amending Pleadings: _____

General and Specific Jurisdiction: _____

Well Pled Complaint Rule: _____

Intervention: _____

The Three Testing Motions: _____
