

This is an open book examination. You may use any materials which you have brought with you whether prepared by you or by others. The four questions will be weighted equally for grading purposes and you should spend equal amounts of time on each question. If there are individual parts within a question, each part within the question will be weighted equally unless you are told otherwise.

Please write legibly, begin each question on a new page, and leave a margin on the left-hand side of the page.

Use only your social security number to identify your blue book. If you use more than one blue book, identify each one ("No. 1 of 2," "No. 2 of 2," etc.), make sure that your social security number is on each one, and insert all others into the first one. The Federal Rules of Civil Procedure apply to all questions. You may assume, if relevant, that any American state has a long-arm statute identical to that of Illinois which is printed at pages 697 and 703 of your casebook. You may also assume that the courts of any American state follow the Federal Rules of Civil Procedure.

FINAL EXAMINATION

CIVIL PROCEDURE
 Mr. Martin
 December 13, 2004

(5) In a contract action, the genuineness of the copy of the contract in your client's possession, a fact which you wish to establish for trial.

(4) Records maintained by an automobile repair shop, which is not a party to the suit, concerning the condition of the brakes on the automobile driven by the opposing party.

(3) In a suit over an automobile accident, the opposing party's version of facts surrounding the accident.

(2) The cancelled checks or credit card statements of the plaintiff for these expenditures.

(1) In a suit for personal injuries, information related to the plaintiff's medical expenses including such matters as the doctors she consulted, the amount of money she paid, and the treatment she underwent. You represent the defendant.

explain your choice.

What discovery device would be best to enable you to obtain each of the following items of information? ("Best" means "most likely to yield the desired result at reasonable cost"). Briefly

Part B.

each.

Explain the differences between impleader, interpleader and intervention. Illustrate your explanation with one example of

Part A.

QUESTION ONE
(suggested time: forty-five minutes)

QUESTION TWO BEGINS ON THE NEXT PAGE

(e) **Supplementation of Responses.** A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

Mass. R. Civ. P. Rule 26(e) is printed below. Compare it to federal rule 26(e). Identify three important differences between Massachusetts practice and federal practice under Rule 26(e).

Part C.

QUESTION ONE continued

1. A "vegan" diet, as opposed to a vegetarian diet, eschews not only meat but also all food products of animal origin such as milk, eggs and cheese.

Amanda Marinara's Veganburger restaurant was cited by her town's health inspector for unsanitary conditions. Veganburger thereupon terminated her franchise in accordance with the franchise agreement notwithstanding Amanda's protest that the violations were trivial and soon corrected. Amanda brought a class action suit in a Vermont state court on behalf of the class of all Veganburger franchisees. The suit sought an injunction against enforcement of the termination clause on the grounds that its unlimited grant of discretion to Veganburger was unconscionable.

Veganburger Corp. ("Veganburger") of Vermont is in the business of franchising fast food restaurants in Vermont that specialize in vegan cuisine such as carrot burgers, soy cheese pizza, vegan chili, salads, and the like.¹ A franchise agreement with Veganburger entitles a restaurant owner (the franchisee) to use, for a fee, the "Veganburger" name and logo, and to purvey food products supplied by Veganburger. Veganburger's franchise agreements all contain termination clauses which provide that any franchise may be cancelled at will by Veganburger if, in its sole judgment, the franchisee is not operating the restaurant satisfactorily.

chances of success.

Discuss the issues raised by this motion, and assess the motion's that it is precluded by the judgment in Amanda's earlier case. Veganburger now moves to dismiss Emily's suit on the ground

of, and was unaware of, Amanda's earlier lawsuit. except for "just cause." Emily had not received personal notice statute prohibiting the termination of any franchise agreement against Emily on the ground that the clause violated a Vermont sought an injunction against enforcement of the termination clause brought suit against Veganburger in Vermont state court. This suit with mozzarella. Insisting that this charge was false, Emily Emily Chutney, another franchisee, for adulterating the soy cheese A few months later Veganburger terminated the franchise of Veganburger. Amanda, lacking funds, did not appeal.

termination clause was not unconscionable and entered judgment for 23(b)(2). Following a bench trial, the court ruled that the certification, however, and certified the class under Rule it didn't like. The court rejected these arguments against use other and more punitive measures to get rid of franchisees that franchise agreement might fall with it or that Veganburger might that, if the termination clause were invalidated, the entire certification on the ground that they (and others like them) feared to Federal Rule 23. At the hearing, several franchisees opposed pursuant to Vermont Rule of Civil Procedure 23, which is identical determine if the suit should be certified as a class action Upon filing of the suit, the trial judge held a hearing to

The Reverend Jerry Falwell is a resident and domiciliary of Lynchburg, Virginia. Because of his activities as the pastor of a very large church and leader of a church-affiliated university in Virginia, as well as his numerous television appearances, the Rev. Falwell is a well-known public figure both locally and nationally. The defendant, Gary Campbell, is a resident and domiciliary of Alexandria, Virginia. Campbell registered the domain name "jerryfalwell.com" in 1999 and maintains a website with that name. The website, which is accessible from computers worldwide, is devoted to anti-Falwell propaganda including cartoons, photographs and written information. Information may be accessed under such titles as "Faith Based" and "Profits of the prophets." Campbell has never lived anywhere but Virginia. The content of Campbell's website is stored on a server in Illinois. Campbell does not sell anything on the website, although it is possible to send him a message by pressing a "contact us" button when viewing the website. According to the Rev. Falwell's complaint, Campbell hacked into Falwell's "falwell.com" website and extracted a list of 125,000 contributors to the Rev. Falwell's church, university and other charitable activities. Campbell then mailed or e-mailed this group of contributors urging them to look at the materials on his "jerryfalwell.com" website in order to get the "truth about Jerry Falwell." The contributors live in all states of the United States

QUESTION THREE
(suggested time: forty-five minutes)

QUESTION FOUR BEGINS ON THE NEXT PAGE

motions.

estimate how the federal district court is likely to rule on the that the Rev. Falwell's lawyers will make in opposition. Finally, can bring in response to this complaint. Indicate the arguments you represent Campbell. Analyze what procedural motions he

in New York but not in Virginia.

intentional interference with prospective advantage, is recognized Falwell's charitable causes ever again. This tort law claim, with the intent of dissuading them from giving money to the Rev. because (the complaint alleges) Campbell contacted contributors tort claim of intentional interference with prospective advantage, "jerryfalwell.com." The Rev. Falwell has also alleged a state law copyright act because Campbell registered the name Albany, N.Y.), alleging copyright infringement under the federal thinly-populated Northern District of New York (headquartered in The Rev. Falwell has filed suit against Campbell in the

in Albany, N.Y.

the Rev. Falwell's website is stored on a computer server located of New York, primarily in the New York City area. The content of and many foreign countries. About 1,500 of them live in the state

At present, Mississippi is the only state in the United States which does not protect residential tenants from eviction in retaliation for making lawful demands upon their landlords for repairs. In the mid-1990's the housing law clinic at the University of Mississippi Law School launched a law reform campaign with the goal of getting the Mississippi Supreme Court to recognize retaliatory eviction as an intentional tort and as an affirmative defense to eviction under the state's common law. By the fall of 2003 one of the state's courts of appeal had recognized these rights, but no case on the issue had been decided by the state supreme court. Court-watchers at the University cannot predict how the justices will come down on this hotly-disputed issue when they

workers in twenty American states.

Judge Solomon Wisdom of the United States District Court for the District of Massachusetts has drawn the case of Rickets v. Barnstable Companies, Inc. The plaintiff, Quiana Rickets, is a citizen of Mississippi. She was a resident of the Pellagra Valley plantation where, until she was evicted, she lived as a tenant at will and worked as an agricultural laborer. The defendant ("Barnstable") is a Delaware corporation with its principal place of business in Boston, Massachusetts. The defendant is in the business of building and managing rental housing for agricultural

2. Landlord interests, opposing recognition of retaliatory eviction, point out that a tenancy at will offers both landlord and also tenant the freedom to terminate for any reason, good or bad, or for no reason at all. Therefore, they say, it is illogical to single out one reason for special treatment.

Barnstable files motions to dismiss under Federal Rules 12(b)(1), (3) and (6). Barnstable's 12(b)(1) motion says that Ms. Ricketts earned only \$8,000 in 2003 and paid \$200 per month in rent. the damage occurs.

Massachusetts statute holds businesses liable for unfair business practices, including retaliatory evictions, irrespective of where Massachusetts Unfair Business Practices Act, G. L. c. 93A. The in Massachusetts) and triple damages for violations of the \$100,000 for the tort of retaliatory eviction (which is recognized and to fix leaks in her roof. She seeks damages in the amount of children after she asked a Barnstable employee to unclog her toilet She claims that her landlord, Barnstable, evicted her and her three Guyana Ricketts claims jurisdiction under 28 U.S.C. s. 1332.

housing are a lot lower than they are in Massachusetts. transferred to Mississippi where public expectations about rural like to kill the lawsuit at an early stage or, failing that, get it in its home territory. For analogous reasons, Barnstable would being brought in Boston for the purpose of embarrassing Barnstable Assistance Project at a Boston-area law school, Guyana's case is School, the Southern Poverty Law Center, and the Tenants' Through cooperation between the University of Mississippi Law

come to decide it.²

Given these sums, says Barnstable, there is no way in which her damages can reach the jurisdictional amount of \$75,000. Barnstable's 12(b)(3) motion asks the court to transfer the case to the District of Mississippi if it initially finds that venue is proper in the District of Massachusetts. Its 12(b)(6) motion states that Ricketts has failed to state any claim for relief under the applicable substantive law. As an alternative argument, it claims that no landlord-tenant relationship exists between Barnstable and Ricketts because the record owner of Ricketts's rental unit is Bellagra Valley Plantation, Inc., a Mississippi corporation, not Barnstable.

Quiana responds to these with motions with the strongest possible arguments in favor of allowing her case against Barnstable to go forward in the District of Massachusetts. With respect to Barnstable's claim that it is not her landlord, Ricketts demands that a jury, rather than the judge, decide the issue.

Barnstable files a motion to strike the demand for jury finding. In support, it points to Massachusetts case law holding that the question of a landlord-tenant relationship is one of law to be decided by the judge. The Supreme Judicial Court has emphasized the importance of uniform statewide standards for this determination; uniform standards, said the court, can only be achieved if the issue is treated as a ruling of law because only a ruling of law can be appealed.

Quiana's response to the motion to strike states that she is entitled to a jury on the issue whether Barnstable is her landlord

END OF EXAMINATION

because the case is in federal court. She draws the court's attention to Byrd v. Blue Ridge Rural Electric Cooperative as well as to the federal government's own Fair Housing Act which considers evidentiary issues as to the existence of a landlord-tenant relationship to be questions of fact to be decided by a jury upon either party's demand. Finally, Quiana argues that the landlord-tenant law of Mississippi similarly considers the existence vel non of a landlord-tenant relationship to be a question of fact for the jury to decide.

Write a memorandum disposing of all issues presently pending before the court.