LABEL ANY SCRAP BLUE BOOK WITH THE WORD "SCRAP".
ALL BLUE BOOKS MUST BE RETURNED AT THE END OF THE EXAMINATION.


The Federal Rules of Civil Procedure apply to all questions.

The number is on each one, and insert all others into the first one.

Leaves a margin on the left-hand side of the page.

Please write legibly, begin each question on a new page, and

equals unless you are told otherwise.

Within a question, each part within the question will be weighted.

Within a question, each part within the question will be weighted.

If there are mandatory parts of time suggested for each question, the amount

Otherwise, questions will be weighted in accordance with the amount

Within which you have brought with you whether prepared by you or By

This is an open book examination. You may use any materials

FINAL EXAMINATION

December 12, 2005
Mr. Martin
CIVIL PROCEDURE
manufactured: American Skyhook Co. ("Skyhook") claiming to be
hopes of securing substantial money damages Leo sued the crane's
workers' compensation awards are inadequate. Leo was one. In the
Many people who are seriously injured at work think that their
law (known as "wage compensation"). He has not returned to work.
workers' compensation benefits to which he is entitled under state
Leo received, and continues to receive from Old Pathtuit, the
Leo received, and continued to receive from Old Pathtuit, the
over to the investigator.
prepared a statement written statement which Leo signed and turned
The investigator also interviewed Leo in his hospital bed and
The investigator also interviewed Leo in his hospital bed and
investigator.
both written and read these statements and turned them over to the
statements for the signature of each interviewee. Harry, Mary,
the basis of these interviews, the investigator prepared written
Leo, who had been on the scene and had witnessed the accident, on
interviewed Harry, Mary, both written and read, all fellow-employees of
interviewed two days after it occurred the investigator
also promptly, Old Pathtuit sent an investigator to the scene
computation of insurance, Old Pathtuit Insurance Co. ("Old Pathtuit").
"Big Steet" (promptly reported the accident to his workers,
forty feet to the ground. Leo's employer, Big Steet Direction Co.
operating became disengaged from the pedestal mounts and toppled
Boston. He was injured when the cap of the crane which he was
Leo Ford was an operating engineer on the Big Steet project in
(Suggested time: Forty-Five Minutes)
Question One
to old Patrick’s investigator.

1. Leo seeks production of the signed statement which he gave to the appropriate Federal Rule counts as twenty per cent, your correct statement that supports your answer and explanation, your one-word answer, with a brief explanation. In each case, after the Federal Rule DENY the motion to compel? Answer each question "ALLOW" or "DENY" or "ALLOW or DENY" or in the following instances, should the judge ALLOW or DENY the motion to compel? Answer with a brief explanation. In each case, after the Federal Rule DENY the motion to compel? Answer each question "ALLOW" or "DENY" or "ALLOW or DENY" or

action.

Skyhook in an attempt to secure the disclosures without court
the certification by Leo’s lawyer that she has concerned with
All necessary conditions for the motions are satisfied, including
brought appropriate motions to compel discovery under Rule 37(a).
Skyhook has refused to furnish the information. Leo has therefore,
certain information from Skyhook. In each case detailed below,
by means of appropriate discovery requests, Leo demanded
at the request of Skyhook’s lawyer, old Patrick turned over
dovery grounds.

suit was filed in federal district court in Massachusetts on
after the accident occurred before he started suit against Skyhook.
of the pedestrian’s MSNBC reports on the case. Leo waited almost two years
Leo’s complaint alleged was caused by Skyhook’s defective design
totally and permanently disabled on account of the accident which,'
to disclose or impeach Leo’s claim that he is totally and
and dashing the china. Skyhook will use the photographs at trial.
investigator photographed Leo showing them, patting his house.
private investigator to conduct surveillancce of Leo. The
6. After Leo filled suit against Skyhook, Skyhook hired a
Skyhook.
communications that have taken place between Old Patthun and
and written payments to Leo, Leo asks for production of all written
payments to Leo. Leo asks for production of all written
compensation to Skyhook to disclose Leo’s claim of total and permanent disability.
Skyhook to disclose Leo’s claim of total and permanent disability.
expresses that Old Patthun believes Leo to be malingerling. He urges
that Old Patthun can terminate its workers’ compensation
to Skyhook’s lawyer. In the letter Old Patthun’s general counsel
accompanied by a cover letter from Old Patthun’s general counsel
5. The file which Old Patthun sent to Skyhook was
photographs.
these photographs of the
been repeated. Leo seeks production of these
out the crane in its damaged condition. The
accident scene showing the crane in its damaged condition. The
Old Patthun’s investigator took photographs of the
United States and their whereabouts is not known.
moved on to other major construction projects elsewhere in the
and Ruth gave to Old Patthun’s investigator. Both and Ruth have
3. Leo seeks production of the signed statements which both
all directed to Skyhook, that the statements be released to Leo.
still working for Big Steel. Each has requested, by a writing

2. Leo seeks production of the signed statements which Harry

4. Old Patthun’s investigator took photographs of the
citizen and resident of New Hampshire who was driving towards New

occurred within the territorial limits of Vermont. In other words, the collision

Vermont. One night, a three-car collision occurred on the bridge

spanning the river between Strafford, New Hampshire, and Madison, the

boundary between the two states. There is a two-lane bridge

connecticut river. The middle of the river constitutes the

the states of New Hampshire and Vermont are separated by the

(5)

suggested time: one hour

QUESTION TWO

his air fare, hotel and meals.

the deposition even though promised an advance of money to cover

now retired and living in Arizona, refuses to come to Boston for

crane. Leo's lawyer calls for this deposition in Boston. Dente,

who when an employee of skyhook designd the pedestal mounts of the

9. Leo seeks to take the deposition of Al Dente, an engineer,

called to testify at trial.

is defense of Leo's lawsuit, whether or not the expert will be

and addresses, every expert that he has consulted in connection with

8. By an interrogatory Leo asks skyhook to identify, by name

cranes during the period January 1, 1985, through the present date.

possession relating to any and all accidents involving skyhook's

7. Leo seeks production of all records in skyhook's

surveillance photographs of him taken by the private investigator.

permanently disabled. Leo seeks production of any and all
GO ON TO THE NEXT PAGE

motions? Why?

and Rule 12(b)(6). How should the federal court judge rule on each
of the three grounds set out in Rule 12(b)(6)? Rule 12(b)(6) (2).
Each party moves to dismiss all claims against him or her on
forty percent of this question

Part A

caused Terry’s injuries. Permitted by Rule 14(a), attaching that Peter’s negligence had
exceed $75,000.

three drivers were severely injured. Each suffered damages that

three towards Vermont, he was going to Vermont for a ski vacation. All

thirdparty, a citizen and resident of New Hampshire who was driving

New Hampshire. The third car was owned and operated by Terry

defendant, a citizen and resident of Vermont who was also driving
towards Vermont. Another of the cars was owned and operated by Defendant

Hampshire. He was returning home from a business meeting in

Hampshire, a citizen and resident of New Hampshire who was driving

towards Vermont, she was on her way to visit her aunt in New

Hampshire. The third party was owned and operated by Terry

Hampshire. She was on her way to visit her aunt in New

Hampshire.
deported’s claims are barred by the judgment in the earlier federal
decision. The state court action is barred by the earlier federal
decision. Peter moves to dismiss the personal injury action that they sustained in the accident. Terry moves
in a New Hampshire state court, seeking to recover damages for the
accident. Peter and Terry jointly bring suit against Terry.

Afterwards, Peter and Terry recover damages from Terry.

The judgment is entered and no appeal is taken. Because Peter had
judgment is entered and no appeal is taken. Because Peter had
the accident was caused exclusively by Terry’s negligence.

July. The jury returns a special verdict in which it finds that
After the completion of discovery, the case is tried to a

(20% per cent of this question)

Part C.

Should the judge rule on this motion? Why?

How requires Peter to disclose her automobile liability policy. How
before the federal district court judge, seeking an order that
by Rule 26(a)(1)(D). Peter brings a motion to compel discovery
in the liability insurance policy. In her initial discovery response, as is required
coverage. For this reason, Peter did not disclose her automobile
information in initial discovery about his or her insurance
information in his or her insurance policy. The New Hampshire
statute passed by the New Hampshire Legislature protects anyone
proceeds to discovery. The New Hampshire Prunental Protection Act, a

(20% per cent of this question)
retriterator each year in the hopes of stimulating repeat sales.

Vacation lodges, Potter introduced a "new, improved" model of
bought small retriterators for use in local hunting, fishing and
golfing. Potter, "Florida, South Carolina and Mississippi. The customers
bought through stores that sold hunting and fishing equipment in Alabama,
southern states which it had developed by marketing retriterators
in Potter was a profitable company that had a good reputation in
end of a year of production which it could not sell.

article said that Potter usually had retriterators left over at the
article had seen an article in a national trade magazine about
bustler had a plant in Alabama. The
trier would enjoy buying retriterators in winter too.

thought that
decorations in January and winter boost in April. He thought that
liked to shop for out-of-season bargains such as Christmas
January through March. He observed that his fellow Maine citizens
make a lot of money selling retriterators during the months of
hunting. During the months of
bustler decided that he might

exclusively. He had an idea for a new line of business
the largest retail store in Maine selling hunting and fishing

(estimated time: forty-five minutes)

QUESTION THREE

Should the judge decelerate these motions? Why?

established in the earlier case and cannot be retriterated. How
guestion of Terry's liability, asserting that Terry's liability was
court action. Peter and Betty move for summary judgment on the
citizens liked to use the refrigerators when they did their cold problems, however, soon arose. It turned out that Maine
into New Hampshire word spread that Buster had something special. 
Maine customers loved the bargain price. All over Maine and even
at first the small refrigerators got a good reception in
that went back and forth, the understanding was oral.
deals without formal written contracts so, except for a few letters
sent from the i-phone, there was nothing to sell. After 60 days after
credit references, which were good, and agreed to sell with the
so the deal was made. Buster checked our bus-ter's credit
settling surplus refrigerators which would otherwise be scrapped.
y would pay, even at a reduced price; if he could make money by
would pay, even at a reduced price; if he could make money by
a reduced price. Because there were none; prices were below his own shipping cost.
where he would take title to the
refrigerators. "P.S., B."
which meant that he would buy the
details of his plan to Buster. He insisted that he would buy the
officers were interested. Buster was careful not to explain the
when Buster approached his company (by telephone) the company's
little below the price of competing models.
offer them to his hunting and fishing customers in Maine at a
discount from their normal wholesale price, ship them to Maine, and
Buster's plan was to buy the surplus refrigerators at a heavy
model were disposed of for their scrap metal value alone.
the end of the year in December, unused refrigerators of the old
Altered Explan.

What is the likelihood that Buster’s motion to dismiss will be allowed? Explain.

If the facts are as set out in the complaint, what are the likely outcomes of the case?

Two days after service of process upon Buster, Buster retained two lawyers. The complaint alleged that Buster failed to pay for the groceries and services provided by a potato supplier. The plaintiff sought damages of $10,000. The case was tried in a small claims court.

The exchanges between Buster and Potter became more and more hostile. Potter refused to accept any returns from Buster. Potter’s representatives told him orally and in writing that the refrigerators were not returned. Potter demanded returns and комплаентed to the retailer refrigerators to it. But the refrigerators were not designed to resist extreme weather conditions without freezing. They wanted a small weather "snowproofing" and "ice staunching."
the default entered by the clerk on July 15, 2000, an affidavit
pleadings from Plume. The only other documents in the file are the
summons is in the correct form. There are no responsive
personally served with the summons and complaint on June 1,
complainant, and a return of service showing that the sheriff
the court may deem just. "The file contains a copy of the summons,
damages asking for $35,000 plus such other and further damages as
landlord sued Plaintiff for back rent and property
allowed breach of a commercial lease retaining to an earlier
Judgment was entered, you find a complaint against Plaintiff for an
When you go to the clerk’s office to check out the case in which
ago in the amount of $35,000.
SBA furnished her. They show a default Judgment entered five years
show a default Judgment entered. Five years
knows nothing about any Judgment, but she has some papers that the
Mrs. Says she because of the Judgment outstanding against her. Because of the
Judgment, they could not underwrite any loan to her
ordered for the loan to be approved, but at the last minute the SBA
Business Administration ("SBA") loan. Everything was in
come. She needs legal help because she is having trouble getting
restaurant next door. Two days later the first
December 1, 2005, you meet Diane Samosa who is planning to open a
deck are a new lawyer opening a storefront office in the town
Suggested time: thirty minutes

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QUESTION FOUR
END OF EXAMINATION

What options are open to you? What will you do, and why?

Up so she can get the loan and go ahead with her new restaurant. She retains you to help her clear this enterprise judgment against her. She retains you to help her clear this going ahead and she certainly got no notice that he intended to go her ahead. She had been served that the landlord was another complaint in a drawer and forget about it. Further, she says that because everything had been taken care of, she just put the lawsuit says she though she didn't need to do anything about the lawsuit to the landlord and she has the canceled checks to prove it. She remembers some dispute with her landlord which caused her to close her first restaurant perpetually and to move out of the building and the judgment entered by the judge on July 30, 2000, in the amount of $35,000. In the sworn by the plaintiff claiming an actual amount due of $42,000.