

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

any American state follow the Federal Rules of Civil Procedure.
and 725-6 of your casebook. You may also assume that the courts of
statute identical to that of Illinois which is printed at pages 723
You may assume, if relevant, that any American state has a long-arm
The Federal Rules of Civil Procedure apply to all questions.
paper along with your blue book or blue books.
all others into the first one. Turn in this white examination
sure that your social security number is on each one, and insert
book, identify each one ("No. 1 of 2," "No. 2 of 2," etc.), make
book and this examination paper. If you use more than one blue
Use only your social security number to identify your blue
leave a margin on the left-hand side of the page.

Please write legibly, begin each question on a new page, and
equally unless you are told otherwise.
within a question, each part within the question will be weighted
of time suggested for each question. If there are individual parts
others. Questions will be weighted in accordance with the amount
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

CIVIL PROCEDURE
Mr. Martin
December 11, 2006

Social security no. _____

QUESTION ONE
(suggested time: thirty minutes)

Read 28 U.S.C. s. 1391(a) through 1391(d). Then answer each of the following questions YES or NO in the space provided below, followed by a BRIEF explanation. Your one-word answer, YES or NO, counts as forty per cent of each question. Your BRIEF explanation counts as sixty per cent. Remember that each New England state constitutes one federal judicial district.

Marianne Miasma, a citizen of Massachusetts, was badly injured in an automobile accident that occurred in Maine. Her bumper sport-utility vehicle was struck head-on by a truck. The truck was owned and driven by Nick Nolocontendere, a citizen of New York whose home is on Long Island in the Eastern District of New York (New York comprises four federal judicial districts). Marianne's claim exceeds \$75,000 and she wants to sue in federal court.

1. Nick is enrolled at Vermont Law School in South Royalton, Vermont, where he lives in a dormitory during the school year. Marianne sues Nick in federal court in Vermont. Nick responds with a motion to dismiss under Rule 12(b)(3). Will the judge dismiss Marianne's complaint?

4. Marianne's injuries were aggravated because the driver's-side airbag in the Bummer did not inflate. The Bummer was

3. Assume for the purposes of this question 3 that Nick is a citizen of France, admitted to the United States on a student visa and not admitted for permanent residence. Marianne sues Nick in federal court in Massachusetts. Nick responds with a motion to dismiss under Rule 12(b)(3). Will the judge dismiss Marianne's complaint?

2. Marianne sues Nick in federal court in Massachusetts, serving Nick with a summons and complaint in Massachusetts on an evening when Nick was playing hockey from law school at Fenway Park. Nick responds with a motion to dismiss under Rule 12(b)(3). Will the judge dismiss Marianne's complaint?

manufactured by Goliath Motor Co. ("Goliath"), a Delaware corporation with a principal place of business in the Western District of Michigan. Although Goliath has no operations in New York, Goliath has qualified to do business in New York ("qualification" includes consent to suit) and has an agent for service of process in New York. The agent is located in the Western District of New York. Marianne sues Goliath in the Eastern District of New York. Goliath responds with a motion to dismiss under Rule 12(b)(3). Will the judge dismiss Marianne's complaint?

5. Marianne sues both Nick and Goliath in one civil action in the Eastern District of New York. Goliath responds with a motion to dismiss the complaint as to it under Rule 12(b)(3). Will the judge dismiss the complaint as to Goliath?

motion? Why?

Humongous, is the real defendant). How should the judge decide the (This is done to make it appear to the jury that Driver, not filed a motion under Federal rule 14(a) seeking to implead Driver. Today, several months after answering the complaint, Humongous against automobile liability.

Pursuant to Federal rule 26(a)(1)(D), Humongous disclosed a policy of insurance protecting both itself and its employees Massachusetts citizen.

Victim filed suit in federal court based on diversity of citizenship. Humongous is a Delaware corporation. Victim is a Humongous corp. ("Humongous"), Driver's employer.

Victim was injured in an automobile accident allegedly caused by the negligence of the driver ("Driver") of a vehicle owned by Humongous corp. ("Humongous"), Driver's employer.

(suggested time: fifteen minutes)

QUESTION TWO

ANSWER THE REMAINING QUESTIONS IN A BLUE BOOK OR BLUE BOOKS

6. Assume for the purposes of this question 6 that there is federal question jurisdiction for Marianne's claims against Nick and against Goliath. Would this change any of your YES or NO answers to questions 1 through 5?

arranged for his own doctor, Dr. DeFaulito, to appear and testify as disabled. Bandbox testified on his own behalf. Bandbox also had the hearing she testified that, in her opinion, Bandbox was not heard the Board's physician's testimony for the first time when at findings or opinions of the Board's physician. Therefore Bandbox employed by the Board. There is no pre-hearing discovery of the applicant to submit to a pre-hearing examination by a physician. The procedure at the workers' Compensation Board is to require the Assume that Grinchco's preclusion argument did not succeed.

workers' compensation hearing officer rule on this argument? the earlier judgment in favor of Icarus Co. How should the Bandbox should be precluded from presenting proof of disability by disabled by it. Grinchco argued in its pre-hearing submission that injury, if any, was work-related, but denied that Bandbox was Grinchco, opposed Bandbox's claim. Grinchco conceded that the only a work-related disabling injury. Bandbox's employer, Under state law, a worker seeking disability benefits need show Bandbox then sought workers' compensation disability payments. Icarus Co., and the judge entered judgment based on the verdict. back injury. The jury returned a general verdict for the defendant, the machine was defective in design and that its defect caused his Icarus Co., the manufacturer of the lifting platform, claiming that Bandbox claims that he injured his back and is disabled. He sued injured when a motorized lifting platform toppled and fell over. Bardolph Bandbox, an assembler in a plastics factory, was

QUESTION THREE
 (suggested time: forty-five minutes)

to Bandbox's disability. Dr. Defaulto, however, failed to show up for the hearing. When Bandbox asked the hearing officer to continue the hearing to another date the hearing officer replied, "You snooze, you lose," and denied the request. The hearing officer then denied workers' compensation disability benefits on the grounds that there was insufficient proof of disability.

One year later Bandbox brought a timely and jurisdictionally proper diversity action in a federal court against Old Faithful Insurance Co. ("Old Faithful"), with which Bandbox had a disability insurance policy. Under the policy Bandbox was entitled to benefits if he became disabled for any reason. Bandbox demanded a jury trial. Old Faithful moved for summary judgment under federal rule 56(b) on the grounds that Bandbox's failure to prevail at the workers' compensation hearing should preclude him from recovering against Old Faithful. How should the federal judge rule on Old Faithful's summary judgment motion?

Assume that Old Faithful's summary judgment was denied and the case went to trial. The jury returned a general verdict against Bandbox. The judge entered judgment on the verdict for Old Faithful.

One year later, Bandbox has reapplied for workers' compensation benefits. He claims that X-rays now show clear evidence of bone degeneration in his spinal column. He claims that his back condition has worsened, that the X-rays show damage that had not been detectable before, and that what earlier had been a mild disability is now a serious disability. Grinchco again opposes

Massachusetts is one of the exceptions.

as follows:

In Florida's Tort Reform and Insurance Act of 1996, the provisions regarding punitive damages were only one feature of a broad statutory scheme addressing tort liability and damages in general. The Act amended or created seventy different provisions of Florida law. With regard to punitive damages, the Act provides

these jurisdictions is Florida.

legislation in recent years restricting punitive damages. One of are. Several American jurisdictions have enacted tort reform damages, although it hasn't said exactly what those limitations Due Process limitations on the states' laws authorizing punitive United States Supreme Court has found that there are constitutional Economists argue that punitive damages are dysfunctional. The two decades by American business and insurance interests. high on the tort reform agenda that has been promoted for the past American states. Abolition or curtailment of punitive damages is Punitive damages in tort are available in all but four or five

QUESTION FOUR
(suggested time: forty-five minutes)

Workers' Compensation Board rule on Grinchco's argument? the result in Bandbox's case against Old Faithful. How should the of the earlier administrative hearing before the Board, and also by from recovering workers' compensation benefits both by the result Bandbox's claim. Grinchco argues that Bandbox should be precluded

Cohen filed a complaint in federal district court in Florida on behalf of herself and a proposed nationwide class of 39,000 Office Depot customers, alleging that Office Depot had made deceptive statements regarding the pricing of its merchandise in violation of Florida laws governing unfair and deceptive trade practices. In addition to compensatory damages, the complaint

their prices in the catalogue. Cohen went into an Office Depot store and saw the same cartridge priced at \$2.00 less and the same labels priced at \$0.20 less than for \$26.99 and file folder labels for \$1.99. A few days later, representations when she purchased by telephone a color cartridge The complaint recites that Cohen relied on Office Depot's price of the same item at the Office Depot stores."

Depot's catalogue prices are often significantly higher than the Depot's own stores. In fact, according to the complaint, "Office purchased at retail from any office supply store including Office be as low as, if not lower than, prices for identical merchandise that Office Depot's prices for merchandise in its catalogues would and statements in its catalogues which led customers to believe Cohen's complaint alleged that Office Depot made representations In Cohen v. Office Depot, Inc., 184 F.3d 1292 (1999), Cheryl

In any civil action, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a basis for recovery of such damages. If such evidence is shown to the satisfaction of the court, the claimant may amend his complaint to assert a claim for punitive damages. No discovery of financial worth shall proceed until after the amended pleading concerning punitive damages is permitted.

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sought \$10,000,000 in punitive damages, attorneys fees and costs. No violation of federal law was alleged.

In an earlier case, Tapscott v. MS Dealer Service Corporation, 77 F.3d 1353 (1996), the Eleventh Circuit (which includes Florida) had held that class action plaintiffs could aggregate their punitive damages claims to satisfy the amount-in-controversy requirement for each class member. Office Depot, however, moved to strike the punitive damages request from the complaint, citing the Florida statute set out above. Office Depot also moved to dismiss the motion to strike the punitive damages request on the grounds that Cohen had failed to comply with the Florida statute which requires a plaintiff to make the required showing and to obtain leave of court before including a prayer for punitive damages in a complaint. The district court then determined that all other relief requested by Cohen failed to meet the \$75,000 amount-in-controversy requirement for diversity jurisdiction. The district court rejected Cohen's argument that the Florida statute conflicts with federal rules 8(a)(2) and 8(a)(3). Accordingly, the district court granted Office Depot's motion to dismiss Cohen's complaint for lack of subject matter jurisdiction.

Cohen appealed to the Eleventh Circuit. How should the Eleventh Circuit decide the appeal? Why?

Lydia Pinkham, a second-year student at Millard Filmore School of Law in New York, has written a book about the trials, tribulations and antics of herself and her first-year law school class. Entitled Filmore Frolics, the book is coming out in the form of monthly installments in the American Journal of Law Gossip. In September, 2006, Gregory Festoon, the author of One-L Hell (a best-selling book about a first-year student's experience in law school that was published in the early 1980's) sued Lydia and the American Journal of Law Gossip for copyright infringement, claiming that her work impermissibly copies Festoon's book.

Lydia has retained you as her lawyer. You have filed an answer denying that Lydia copied any part of Filmore Frolics. Your answer was based in part on the following:

Lydia has never read One-L Hell. However, a friend who read a draft of Filmore Frolics remarked on the similarities between her book and Festoon's. Alarmed, Lydia retained the law firm of Dodson & Fogg to advise her about copyright law before she published the first installment. Phineas Fogg, Esq., sent Lydia a memo advising her that one does not infringe a copyrighted work unless one actually copies the work. Fogg also advised Lydia not to read One-L Hell. Lydia doesn't have this memo in her possession; she recalls that she lent it to another student who was preparing for an exam in copyright law. Rather than try to track down the student, you obtained a copy of the memo directly from Fogg.

QUESTION FIVE

(suggested time: forty-five minutes)

Lydia says that all of the stories told in Filmore Frolics

were based on her own experience or those of classmates. There are four sets of documents relating to those experiences:

1. Ever since her adolescent years Lydia has kept a diary. The diary of her first year in law school recounts events at the school but in addition contains vast amounts of intimate personal information concerning (to touch only on the highlights) her regular sessions with her psychiatrist, her sexual encounters (numerous, and with both sexes), and her attraction (unrequited) to one of her professors. She would be terribly embarrassed if the diary were revealed to anyone. She will not let you see it, saying that her personal thoughts and revelations are so intertwined with events at the school that they can't be separated.

2. Some very rough notes, in an orange notebook, of her conversations with classmates upon which she drew to write the book.

3. After completing the book, but before the first installment appeared, Lydia started systematically reinterviewing her classmates to hear their stories again. Notes of the reinterviews are in a blue notebook. When you ask her why she did the reinterviews, Lydia said she had the impression that it was important to check out the stories "in case someone claimed they were not true."

4. Lydia was still conducting the reinterviews as the installments began to be published, but she stopped when Festoon filed suit. You asked her continue reinterviewing the remainder of

END OF EXAMINATION

Lydia has suggested that you file a motion for summary judgment, attaching to it her affidavit that she has never read One-L Hell, nor ever heard anyone recount anything from it. Assuming that Festoon has no direct evidence to the contrary, what are your chances of prevailing on summary judgment, and why?

Part D. (Ten per cent of this question).

Why is it better?

Can you think of a better strategy, other than "stonewalling?"

Part C. (Ten per cent of this question).

Procedurally, how will you go about raising these arguments?

Part B. (Ten per cent of this question).

Assuming that Lydia will want to disclose none of the materials identified in paragraphs 1 through 4 above, what arguments can you think of to resist disclosure of each? relating to the publication of Filmore Frolics."

You have received a notice of Lydia's deposition, to take place a month from now in Festoon's lawyer's office. Lydia has been subpoenaed to appear and to bring with her "all correspondence, notes, interviews, drafts and all other documents

Part A. (Seventy per cent of this question)

and has given you a yellow notebook with these interview notes. her classmates to get their stories. She has completed the project