MOTIONS AND LITIGATION PRACTICE
Professor Wolfe
Fall 2006
Final Exam – 70 points

This is a closed book exam. Follow directions. You are expected to demonstrate that you know the rules and can apply them correctly (including Wolfe’s rules and practice tips). Write in the space provided or on the pages provided. **Read the Situations (s) carefully. Answer the questions asked. Be succinct. Watch your time. Be sure to number your answers. Wrong answers may be subtracted from correct answers.**

**You will be asked to draft documents. Do not sign your name. Use your social security number. Points will be subtracted if you use your name**

*Anywhere Daily News*  
Northwest Suburban Edition  
August 12, 2006

**Explosion Startles Eureka**  
An explosion rocked the small town of Eureka last night. Neighbors within a mile radius of the epicenter were rocked in their beds. Windows were shattered. Car alarms sounded. The explosion appears to have occurred in the downtown Main Street area. The Eastside Market building was destroyed. The building was the address for Steve’s Art Corner, House and Home Realtors and several law offices. The source of the explosion and subsequent fire are unknown at this time.

*Anywhere Daily News*  
Northwest Suburban Edition  
August 13, 2006

**Eureka reels in aftermath of Explosion and Fire**  
The town Fire Department Chief, Perry Mason, reports that the 2:00 A.M. explosion centered in the Eastside Market Place Building located at 160 Main Street. No one was present at the time. The owner of the building, Richard Righteous, reports that he has no idea what caused the blaze, vows to cooperate fully with any investigation, and offers to help relocate his tenants. He says the building has been totaled. He assured this reporter that the building was fully protected by fire safety measures and is inspected by the Fire Department on an annual basis. He stated further, that he could not speak to possible explosion sources that might be found in the spaces occupied by the tenants.

*Anywhere Daily News*  
Northwest Suburban Edition  
August 22, 2006

**Eureka Explosion and Fire blamed on Owner**
Alice Gogetter, of Steve’s Art Corner, charges that Richard Righteous owner of the Eastside Market Place building is responsible for the explosion and fire that destroyed her property on August 11, 2006. She suggests that current investigations will show that the owner of the building had motivation to burn the building. Building tenant lawyers, Fred Friendly and Rosa Dorigo, said they are shocked at the charges. Fire Department Captain, Perry Mason reports that the cause of the explosion and fire are still unknown.

YOUR LAW OFFICE

October 17, 2006
Notes to your file.

Richard Righteous (RR) signed an employment agreement – Need to create a new file. Need to prepare a reply to a complaint forthwith. RR brought in what he got the Complaint and Summons (Complaint and Summons are attached as Exhibit A and B). Service of the complaint was dated Wednesday, October 12th. Needs to be answered by:

TASK A. The date is __________________ (Calendar is Exhibit C)

RR says he found the Complaint and Summons at the site of the destroyed building (160 Main Street, Danvers on Friday, Oct. the 14th. The summons noted that it was left and the “last and usual address.”

RR says that Steve Steadfast was a renter and owner of Steve’s Art Corner. Steve was a great guy. This Alice Gogetter bought the business in 2003 and is a “piece of work.” The store’s business was framing art until Alice bought it. Once she got going she added art classes. Her classes work with oils, glues, pastes, flimsy papers, clays and she has added a small oven like kiln that reaches high temperatures and is fueled with gas. RR has warned her time after time about the hazards of her shop but she takes no notice. Moreover she had not installed fire extinguishers or created safe storage practices for the solvents. RR wouldn’t say “She did it.” And doesn’t want to imply that she started the fire.

RR says she was told that he had liability insurance for the building but each occupant was responsible for the contents of their individual units. If asked, he could produce copies of memos reminding tenants of their obligation.

As to impeding her relocation – she is nuts. At the time of the fire she owed $25,000.00 dollars on her lease. At the time of the fire RR was ready to evict her and sue her for the money. When landlords do reference checks with him, RR reports the money owed.

You think a jury trial is in order.
**TASK B**  On the pages provided draft your response to the Complaint. Be sure to include all of the legitimate issues and matters that will best serve your client’s interest. Be sure your drafting adheres to the Massachusetts’ and Wolfe’s rules.

**TASK C**  
(a) To whom will you send copies of your response?

(b) What would you do differently if the Complaint had been filed in the Superior Court?

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**Time Passes**

You are reviewing the file and developing your Discovery Strategy. You believe that you will want to get information from all of the persons that have information about this case.

**TASK D**  
(a) What purpose(s) do the Litigation Rules governing Discovery intend to accomplish?

(b) What documents must the respondent produce?
(c) How would your answers differ, if the case were in the Superior Court?

**TASK E**
On the chart below indicate with a ✓ mark the forms of Discovery available to use with each person. Wrong answers will be subtracted from correct answers.

<table>
<thead>
<tr>
<th>Name</th>
<th>Interrogatories</th>
<th>Production/Documents</th>
<th>Deposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Steve’s Art Corner Inc.</td>
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<td></td>
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<tr>
<td>Perry Mason</td>
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<tr>
<td>Fred Friendly</td>
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<tr>
<td>Rosa Doright</td>
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<tr>
<td>Alice Gogetter</td>
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</tbody>
</table>

As you are preparing your discovery strategy, you receive discovery requests from Attorney Artful Drafter.

**TASK F**
A truncated version of the Plaintiff’s interrogatory request are setforth as *Exhibit D*. Assume you have conferenced the Discovery requests with your client and are ready to draft responses etc. Basically RR heard about the catastrophe from the Fire Chief, Perry Mason. He has helped the other tenants find new office space. He even went so far as to put out requests at this social clubs. He has not put out any money, however. There are no expert witnesses yet.

On the pages provided draft responses to the interrogatory requests and complete the document.

**TASK G**
It is 10:30 in the morning. You have scheduled the conference room for a deposition to begin at 11:30. You are deposing the Alice Gogetter, the Plaintiff. Alice is here, and so is attorney Drafter.

(a.) What are the usual “Stips”? 

Now it is 11:00 and the court reporter has not arrived. You call the service. Turns out the Court Reporter can’t make it as his car broke down and the Service has no one else to send. You are
desperate to get this deposition taken as the time standards are about to run. Attorney Drafter is anxious to get this over with as well. Can you go forward with the deposition? If so why, if not why not? And even if you can how can you be sure that Alice is telling the truth if you don’t have someone available who can administer an oath?

Extra Credit
1. You have had several conversations at the office with potential witness, Alice Doright. She has asked you for copies of her statements? You wonder if she has now changed her mind about something. Do you have to give her anything? If so, what and why? Does she have any options if you don’t give her anything?

2. RR and Alice have agreed to settle the case and have drafted an agreement and signed it. What do they have to do to get the case marked closed?
Exhibit A
COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss

TRIAL COURT
SALEM DISTRICT COURT
DOCKET NO: 234CV567

STEVE’S ART CORNER INC, )
Plaintiff 
)

v. )
COMPLAINT
)
EASTSIDE MARKET PLACE, L.L.C.
Defendant,
)

____________________________

Now comes Steve’s Art Corner Inc. and complains as follows:

1. Steve’s Art Corner Inc, (hereinafter Steve’s) is a corporation registered and doing business in Massachusetts.

2. Eastside Market Place L.L.C. (hereinafter Eastside) is a real estate business with an office located at 432 River Street, Danvers, Massachusetts.

FACTS

3. Up to and including August 11, 2006, Steve’s was a renter of a commercial unit located in the Eastside Market Place Building.

4. During the early hours of August 12, 2006, the building was destroyed by an explosion and fire.

5. Steve’s property was completely destroyed.

6. Steve’s made a claim to Eastside’s insurance company but coverage was denied.

7. Steve’s made a claim to Eastside for losses incurred and was denied.

8. Eastside through its owner, made representations that it would assist in relocating tenants.

9. Instead Eastside has impeded Steve’s ability to find a new location.

COUNT I

10. Steve’s realleges paragraphs 1-9.

11. As result of the explosion and fire Steve’s has suffered a loss of $30,000.00 in inventory.
Wherefore, Steve’s Art Corner Inc. demands judgment and such other relief as the court deems just.

COUNT II

12. Steve’s realleges paragraphs 1-11.

13. As a result of Eastside’s efforts to impede Steve’s ability to secure new rental business space, Steve’s has lost $75,000.00 in ongoing business and $25,000 in new business.

Wherefore, Steve’s Art Corner Inc. demands judgment and such other relief as the court deems just.

Respectfully submitted,

________________________________________
Artful Drafter, Esquire
243 Jurist Lane
Anywhere, Massachusetts 01111
(777) 444-0000
1. Please state your name, address and explain your relationship to the Defendant and the basis for your authority to respond and represent the Defendant in answering these interrogatories.

2. How did you learn of the explosion and fire at Eastside Market Place?

10. Did you offer to assist your tenants in finding new locations following the explosion and fire at Eastside Market Place?

11. What is your legal theory for alleging that the Plaintiff should not be granted judgment on her Complaint?

25. Have you provided any assistance to Attorney Fred Friendly in his efforts to find new office space? If so, please provide the following information.
   a. Did you provide references to potential landlords?
   b. Did you provide financial assistance?
   c. Did you return rental deposits?

26. Have you provided any assistance to Attorney Rosa Doright in her efforts to find new office space? If so, please provide the following information.
   a. Did you provide references to potential landlords?
   b. Did you provide financial assistance?
   c. Did you return rental deposits?

27. Please provide the name of any expert witnesses you have consulted regarding this litigation, including their contact information, any opinions they may have and the basis upon which the opinion(s) are based.

Respectfully submitted,
Artful Drafter, Esquire
243 Jurist Lane
Anywhere, Massachusetts 01111
(777) 444-0000