MOTIONS AND LITIGATION PRACTICE
Professor Wolfe
Fall 2007
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

Fact Pattern

Your new client (a school teacher) has just left the office. She has brought you
paperwork that names her as a defendant in a civil lawsuit. (The Complaint is attached as Exhibit A.) This is her first experience and she is very concerned but appears to be an educated, stable, responsible person.

When asked to tell what happened, you learn that on March 3, 2007 after returning home from school at about three in the afternoon she took her dog, Loveable, for their usual walk at the usual time along Route 43. They were walking along Route 43 when this man lost control of his car. The car ran off the road on the side of the street where she was walking, rolled over and slid to a stop. She and others ran to the place where the vehicle stopped and since she had a cell phone, she thought the least she could do was call for an ambulance. Which she did.

While waiting for the ambulance, the others pulled the man from the car. She shows you a picture that appeared in the local paper (See photo – client is marked "A."). You can see her and the dog and others in the picture.

She goes on. Finally the driver was out of the car. He was so angry and agitated. He tried to break away from the others who tried to help him. He went nuts when he saw the dog. She has no idea why but he ran toward her and the dog and grabbed the dog by the ears and howled something about how he hated dogs. She got her dog separated from man. Everyone was wearing gloves that day. The man grabbed his gloved hand but she saw no blood. However, both of Loveable’s ears were torn. Melinda hurried home and took the dog to the vet. The dog needed surgery which cost Melinda Twelve Thousand Dollars. She did not have pet insurance. Moreover the dog appears to have a hearing loss and gets spooked every time a man of the size of the Driver comes close to her.

When you ask how she got the paperwork. She reports that a neighbor, Mary Helpful, brought it to her yesterday. She said, the guy who had it asked her to give it to Melinda for him as Loveable was in the fenced in yard and the guy understood that the dog was vicious. Mary assured the guy the dog was friendly but said she would be happy to take the paperwork and give it to Melinda.

You explained the litigation process to Melinda and asked her who might have helpful information. She pointed to the picture and said that Tom Sawit (B in the picture) would be the best person to talk to. And John Watchful, (C in the picture) knows her and the dog. The Vet is Dr. Patience.

She had heard nothing from anyone connected with the accident until she received the paperwork. She does not know the driver personally.

You suggest that your job is to respond to the complaint and that you can make a claim on her behalf to recover the costs of the dog’s surgery. You recommend that the matter be decided by a jury.
You got her contact information, discussed terms of employment, and asked her to leave you the paperwork (gave her copies to take home) and you sent her home.

**Question No. 1**

Name all of the required legal documents that should have been in the package.

**Question No. 2**

Name the documents required by the rules that you will have to draft and file with the court in response to the Complaint package.

**Question No. 3**

Draft your answer (defenses if any) and counterclaim on the sheets provided. Be sure to indicate that you are responding to Question No. 2

**Question No. 4**

Once your Answer is filed, what do you expect to receive from the court and what is its purpose?
TIME PASSES

Question No. 5

You are developing your Discovery strategy. In the space provided, indicate with a check mark the forms of discovery available for each of the persons listed below.

<table>
<thead>
<tr>
<th>Name</th>
<th>Interrogatories</th>
<th>Production of Documents</th>
<th>Deposition</th>
<th>Admissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mary Helpful</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Harvey Miserable</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tom Sawit</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>John Watchful</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dr. Patience</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Question No. 6

You have received the Discovery requests that are partially reproduced as Exhibit B. Answer the requests as required by the rules on the page(s) provided. Label your response as Question No.6

Question No. 7

List each person to whom you will send copies of your responses?

Question No. 8

You have sent discovery requests to Harvey Miserable on behalf of Melinda and the responses are a clear and complete violation of the rules and the intent of the rules. You have decided to go to court to get an order to compel the Plaintiff to respond to the requests.

a. What procedure(s) are you required to complete in order to have your requested order heard?
b. What documents will you draft?

c. To whom will you send copies?

d. Does the party have to respond? If the party does not respond, what happens?

e. How do you get a hearing date?

NOW SUPPOSE THE COMPLAINT HAD BEEN FILED IN THE SUPERIOR COURT ......

Question No. 9

a. What changes (if any) would you make in your response to Question No. 1?

b. What changes (if any) would you make to your response to Question No. 2?
c. What changes (if any) would you make to your response to Question No. 3?

d. What changes (if any) would you make to your response to Question No. 4?

e. What changes (if any) would you make to your response to Question No. 5?

f. What changes (if any) would you make to your response to Question No. 6?

g. What changes (if any) would you make to your response to Question No. 7?

h. What changes (if any) would you make to your response to Question No. 8?
Extra Credit

1. What are the usual "Stips."

2. You have negotiated the case and the clients have decided on the terms of a settlement agreement. You have drafted the terms of the agreement.
   a. Who signs the document and why?
   b. What must you do to "officially" close the case?

3. What is the difference between "officially" closing a settlement case than one is which an Agreement for Judgment is filed?
Exhibit A

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

TRIAL COURT
LOWELL DISTRICT COURT
DOCKET NO. 877CV843

COMPLAINT

HARVEY MISERABLE,
Plaintiff

V.

WILLIAM CAUSE, and
MELINDA CAREFUL,
Defendants

Now comes the Plaintiff and complains as follows:

1. The Plaintiff, Harvey Miserable, is an individual and lives on West Street in Lowell, Massachusetts.

2. The Defendant, William Cause, is an individual and lives on School Street, Lowell, Massachusetts.

3. The Defendant, Melinda Careful, is an individual and lives on Market Street, Lowell, Massachusetts

FACTS

4. On March 3, 2007, the Plaintiff was driving on Route 43 through Lowell, Massachusetts when he was forced off the road by the Defendant, William Cause (hereinafter Cause).

5. The Plaintiff's car rolled over and was severely damaged.

6. When the Plaintiff was assisted from his car, he was attacked by Defendant bystander, Melinda Careful's dog named Loveable. (Defendant bystander hereinafter referred to as Careful).

7. As a result of the accident plus the dog bite, the Plaintiff was seriously injured.

COUNT ONE

8. Plaintiff re-alleges paragraphs one through seven as though fully restated herein.
9. As a result of Cause's negligent driving, Plaintiff suffered Thirty Thousand ($30,000) Dollars in damages.

Wherefore, Plaintiff demands judgment, reimbursement of damages and such other relief as the court deems just.

COUNT TWO

10. Plaintiff re-alleges paragraphs one through nine as though fully restated herein.

11. As a result of the dog bite caused by Careful's dog, the Plaintiff suffered Ten Thousand Dollars in medical and plastic surgery costs.

Wherefore, Plaintiff demands judgment, reimbursement of damages and such other relief as the court deems just.

Respectfully submitted
HARVEY MISERABLE
by his attorney,

Esther Eager, Attorney
14 Main Street
(etc)
Exhibit B
COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

TRIAL COURT
LOWELL DISTRICT COURT
DOCKET NO. 877CV843

HARVEY MISERABLE, )
    Plaintiff )
V. )
) Plaintiff’s First Set of
WILLIAM CAUSE, and ) Interrogatories Propounded to
MELINDA CAREFUL, ) Defendant Melinda Careful
    Defendants )

Now comes the Plaintiff and requests that these interrogatories be answered fully and
with the time limits established by the rules.

1. Please provide the following information: your name, address, and occupation.

15. Please provide the following information concerning the date March 3, 2007.
    a. Did you teach that day?
    b. Do you always walk the dog at that time of day
    c. Do you always walk along Route 43.

20. Please describe the exact injuries you claim the dog suffered.

28. Please identify the strengths and weaknesses of your counterclaim.

31. How much would you settle this case for?

Respectfully submitted
HARVEY MISERABLE
by his attorney,

Esther Eager, Attorney
14 Main Street
(etc)