Do not follow where the path may lead. Go instead where there is no path and leave a trail.
Ralph Waldo Emerson

Use your exam number on the exam and blue book. Write legibly and coherently. Nothing other than a writing instrument is allowed on your person or at or near your desk. Cell phones must be powered off, and it is a disciplinary violation to have it on or near your person.

You will be graded on your knowledge of the law, ability to analyze the issues and your treatment of the issues.

Please take the time to think about and organize your answer. Please do not just define the issue of law, but carefully apply it to the facts and clearly state what the ramifications of your conclusion are. Please limit your essay answer to six pages and write on only one side of each page of your blue book.

Question One

Full Throttle Saloon Inc. of Sturgis, South Dakota (FTS) is an American reality television show promoted by truTV, a Delaware Corporation of New York, New York, and airing on its cable television station. The show is highly successful and is the top rated show on truTV, which charges advertisers hundreds of thousands of dollars for a single 30-second commercial airing on the show. The FTS’s main sponsor is Budweiser Inc. of St. Louis, Missouri. Budweiser displays its distinctive logo throughout the grounds of FTS. The television series chronicles the daily operations of the world's largest biker bar located in Sturgis, South Dakota.

FTS’s President Michael Ballard of Kansas City, Missouri purchased 30 acres of land for the FTS some 10 years ago. The indoor/outdoor bar includes several large stages, a huge fire pit, a tattoo parlor, zip lines, a wrestling ring, restaurants, dozens of stores, hundreds of cabins for rent and parking for thousands of motorcycles. On its website, it sells items ranging from key chains to expensive custom motorcycles. FTS is open from late March/early April until the end of November depending on the weather. During the Sturgis Motorcycle Rally, the saloon can average as many as 20,000 guests a night who come from all over the country having watched the show on truTV or visited its website. The saloon makes millions of dollars annually.

Over the years, the Sturgis health inspector has found numerous health and safety violations including as recently as Labor Day 2013 when the FTS was shut down for three days after a full review and hearing determined that there were numerous safety violations and an insufficient number of trained medical personnel to adequately deal with emergencies.
Taylor James and her partner, Bob Jackson, who live in Boston, Massachusetts traveled to Sturgis for FTS’s recent “Budweiser Close It Down and Burn It Up Thanksgiving Dynamite Party”. Unfortunately, tragedy struck. Michael Ballard was smiling broadly telling his workers to “pack ‘em in” as people kept coming in droves to hear the headlining band, Jackal. At the end of Jackal’s performance, Michael Ballard unveiled a huge wooden box with “Puh-Pow” written on the front. It was filled with 10 sticks of dynamite. The box accidently exploded. When the smoke cleared there were numerous bodies scattered upon the ground.

Taylor James lost her arm following the explosion while her partner, Bob Jackson suffered a minor brain injury. They returned to Boston where they continued to be treated at the Massachusetts General Hospital for their injuries. Taylor is unable to return to work as a guitarist for her band. Bob missed a few weeks of work at TD Garden but has now returned to his job as an usher there.

The Federal Alcohol, Tobacco, and Firearm Agency fined the FTS, Michael Ballard, truTV and Budweiser over $100,000 for violating two federal statutes dealing with the improper use of explosives while causing serious bodily injury. The Sturgis District Attorney is pursuing criminal charges for assault and battery with a dangerous weapon and maiming.

James and Jackson consult with you. How would you proceeded and why?

What discovery would you engage in?

SECTION TWO

In the space provided, please fully define the following concepts and describe how, if at all, it applies to the essay question on page 1:

1. THE THREE TESTING MOTIONS

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2. RES JUDICATA and COLLATERAL ESTOPPEL

3. ERIE PROBLEM AND THE OUTCOME DETERMINATIVE TEST

4. REMOVAL JURISDICTION
5. INJUNCTIVE RELIEF

6. CLASS ACTION
7. WELL PLED COMPLAINT RULE

8. AFFIRMATIVE DEFENSES

9. DISCOVERY
10. COUNTERCLAIMS AND CROSS-CLAIMS
MASSACHUSETTS SCHOOL OF LAW

CIVIL PROCEDURE AND CONFLICT RESOLUTION

EXAM # __________________________

That old law about 'an eye for an eye' leaves everybody blind. The time is always right to do the right thing.

Martin Luther King, Jr.

Use your exam number on the exam and blue book. Write legibly and coherently.

You will be graded on your knowledge of the law, ability to analyze the issues and your treatment of the issues.

Please take the time to think about and organize your answer. Please do not just define the issue of law, but think about how it applies to the facts and the ramifications of your conclusion. Please limit your answer to six pages and write on only one side of each page.

QUESTION ONE

While looking for deals on a new phone to buy and browsing www.faceplace.com, a well-known internet website based in San Francisco, Tetende Peters of Harrison, New Hampshire saw that Gary Good Deals, a consumer advocate who appears frequently on NBC’s Today Show, was the spokesperson for the new Minitablephone. In reading that glowing recommendation by Deals, it provided Peters with a link to another site for the Minitablephone made by Minitablephone, Inc., a Delaware corporation with headquarters in Las Vegas, Nevada. Peters had earlier read about the Minitablephone in an article in The New York Times when the company first began manufacturing the Minitablephone in Toronoto, Canada. The Minitablephone claims to be the last and only device the user will ever need to work or play.
He further investigated it at Minitablephone.Com, a website owned and operated by the retail distributor of the Minitablephone, MINI.Com, Inc., a corporation headquartered and incorporated under New York law. He also checked out OOLALA Products Inc. through their website as well. OOLALA Products Inc., a Chinese corporate citizen, manufactured the Minitablephone’s main processor in China. Tetende called the telephone number and ordered the Minitablephone from his home in Harrison. He sent a check for $1,500 directly to the company as specified at MINI.Com.

The product arrived at his home a little more than one month later, and Peters was the envy of everyone at law school and at work at Chili’s Bar and Grill in Andover, Massachusetts. Tetende decided to take his wife, Susan, to work with him so they could celebrate the end of the semester. However, tragedy struck at Chili’s when they were eating some baby back ribs. The Minitablephone overheated and then exploded sending shards of glass throughout the bar area injuring Tetende and Susan. Many of Chilies’ employees were injured as well, including the bartender Rick who died from his injuries. Miraculously Tetende who previously was legally blind in one eye, has now regained his sight and his vision is 20-20 in both eyes.

Tetende Peters returned home and then went and spent the next six months at the coast of Maine receiving treatment at Maine Medical and Rehabilitation Center in beautiful LA, Maine. The Peters fell in love with the area and learned that Maine laws are extremely beneficial to injured parties in that they provide for awards of punitive damages. They hired an attorney and decided to stay in Maine.

Based upon complaints by private citizens to the Illinois Attorney General, the Illinois Attorney General determined that the Minitablephone was defective in that the piece manufactured by OOLALA overheated during short-term use. The administrative proceeding fined both MINI.Com Inc. and Minitablephone $100,000 when it determined that the companies failed to meet minimum safety standards.

The Peters consult you regarding these issues. How would you advise them to proceed and why?
1. Class Action:

2. The Three Testing Motions:
3. Equitable Remedies:

4. Res Judicata and Collateral Estoppel:
5. Erie and the Outcome Determinative Test:

6. Rule 11

7. Amending Pleadings:
8. Well Pled Complaint Rule:

9. Discovery:
10. Removal Jurisdiction:


MASSACHUSETTS SCHOOL OF LAW

CIVIL PROCEDURE AND CONFLICT RESOLUTION

PROFESSOR COYNE

FINAL EXAM FALL 2011

Exam Number ____________________

All the great things are simple, and many can be expressed in a single word: freedom, justice, honor, duty, mercy, hope.

Winston Churchill

Use your exam number on the exam and blue book. (Your exam number consists of the last 6 digits of your social security number plus the numbers "59," unless you have been told otherwise.) Write legibly and coherently.

I will grade your exam on your knowledge of the law, ability to analyze the issues and your application of the law to the issues.

Please take the time to think about and organize your answer. Please not only define the issue of law, but clearly express how it applies to the facts and what the ramifications are of your analysis. Please limit your answer to six pages and write on only one side of each page.

Question One

Michael and Campbell Allison and their 7-year-old twins Jaime and Nicole left their home in Florida to visit Campbell’s parents at their home in Worcester, Massachusetts for the 4th of July and to celebrate Campbell’s parent’s 30th anniversary. Campbell’s parents, Sergio and Lauren Patrick were enjoying their 30th anniversary and had invited their family and friends to help them celebrate at a pool party. Family and friends were coming in from all over the United States.

The party started early in the day. Guests continued arriving throughout the day. By noontime, there were over 75 family and friends eating, drinking, and partying out by the pool. Events by Scott Inc. from nearby Keene, New Hampshire catered the event and provided all the food, drink, and servers
for the day's festivities.

Sometime that afternoon, Rhonda Lyssa, from Sante Fe, New Mexico, who flew in for the party and was visiting New England for the first time, organized a father/son slide/splash contest. The contest required all the dads and their sons to go down the recently installed Ginormous Pool Waterslide head first in pairs in an effort to make the biggest splash. The winning dad would get a bottle of fine Kentucky Bullet Bourbon. Michael loved Bourbon and had commented throughout the day that the Bourbon they were serving was particularly good.

When Michael and Jaime were going down the inflatable waterslide there was a horrible accident. As they reached the end of the slide, the slide bottomed out against the lip of concrete pool, causing Jaime’s head to hit the pool deck as he entered the water. Neck fractures left him a quadriplegic, and after many months of hospitalization, his doctors removed him from life support due to the severity of his injuries. He died from injuries sustained in the accident.

Michael also hit his head when the slide bottomed out against the lip of the concrete pool and was unconscious as he entered the water. Unfortunately, horrified guests stood by leaving Michael underwater for over 4 minutes. A few guests jumped into the water to help Jaime. Some of the guests screamed, passed out and vomited as they watched what was taking place. At least 4 of them were rushed by ambulance to the local hospital. Seeing all of this, Lauren Patrick collapsed and died.

Michael has had a very difficult recovery. He spent a month in the Massachusetts General Hospital incurring over $52,000 in hospital bills and has lost the use of his left arm. Most of his brain function has returned. He has been out of work over 9 months now and his relationship with his wife has suffered as she blames him for contributing to the loss of their son, Jaime. He hopes to return to his job as a college professor at Florida State early next year.

Worcester police investigated the accident and their investigation uncovered a number of facts. The pool was installed 15 years ago by RI Pools Inc., a defunct corporation previously headquartered in Providence, Rhode Island. This is the first serious accident at that pool. The Patricks purchased the Ginormous Pool Waterslide from the local Toys "R" Us, a Delaware corporation with a principle place of business in New York. The Ginormous Pool Waterslide was made by Toyquest Banzai Ginormous Pool Waterslides Corporation of Beijing, China and imported by ChinaUsimports Inc. of New York. It did not comply with federal standards regulating swimming pool slides. Over 10,000 of
those slides had been sold in the United States through Toys R Us and Toyquest's website, GinormousPoolWaterslides.com.

The Allisons are not the first people to have been injured or even paralyzed by an incident involving the Ginormous Pool Waterslide. According to the findings of the Federal Trade Commission, which ordered a recall of the product, more than 10,000 of the slides were sold nationwide, without having been tested to see if the inflatable slide met federal safety standards. The FTC also found that there were 2 prior reports of paralysis and two deaths caused when the slide bottomed out against the pool.

You represent the Allisons, how would you proceed and why?

Specifically what would you do in discovery?

Part 2

Please define fully each concept below in well-written English sentences. After defining the concept clearly and fully, explain how each concept affects Question 1. Please appropriately tie that concept to the facts of the case or explain why the concept is not applicable to the fact pattern contained in Question 1.

1. Injunctive Relief:
2. Amending Pleadings:

3. Erie and the Outcome Determinative Test:
4. Res Judicata and Collateral Estoppel:

5. Removal Jurisdiction:
6. Counterclaims:


7. The Three Testing Motions:
8. Well Pled Complaint Rule:

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9. Affirmative Defenses:

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Many of life's circumstances are created by three basic choices: the disciplines you choose to keep, the people you choose to be with; and, the laws you choose to obey.

Charles Millhuff

Use your social security number on the exam and blue book. Write legibly and coherently.

You will be graded on your knowledge of the law, ability to analyze the issues and your treatment of the issues.

Please take the time to think about and organize your answer. Please do not just define the issue of law, but think about how it applies to the facts and what the ramifications of your conclusion are. Please limit your answer to six pages and write on only one side of each page.

Question One
James and Felicia Jones are Massachusetts residents. They consult you regarding the explosion of their vintage car in which they lost their beloved dog Roy and Mrs. Jones laptop containing confidential information regarding the start of her new diamond business. Luckily, both James and Felicia Jones suffered only minor injuries when the car exploded in the driveway of their home while they were sleeping. Felicea planned to begin a new diamond business after the first of the year. She anticipated grossing more than $1,000,000 a year through a new scientific process she discovered while working at MIT. Unfortunately, the only copy of the process and business plans where on that laptop and it is impossible to recreate that information.
They discuss with you claims they have against EBay Motors, Juan Batista and BigBoys Toys, a Florida corporation, for negligence, fraud and breach of contract arising from the Jones’ purchase of an automobile from BigBoys over the web at EBaymotors.com that they saw through EBay Motors, a California corporation operating EBaymotors.com.

While conducting an Internet search of the EBay Motors auction website, James Jones saw a 1975 Dodge Charger automobile offered for sale. The website contained a lengthy description of the car and its features. In addition, it provided an "Ask seller a question" button that, when activated, identified Juan Batista of Puerto Rico as the seller who was using BigBoys Toys to sell the vehicle. Jones began making e-mail inquiries to Batista concerning the car. EBay Motors responded to those emails. In one of them, EBay informed Jones that the car came with a four year/50,000 mile factory warranty and Juan Batista personally completely rebuilt the car in Puerto Rico. Unfortunately one of those modifications appears to be what may have caused the car to explode as a similar explosion happened to a 1967 Mustang convertible that Batista rebuilt and sold in Puerto Rico. The police investigation of that matter some years ago concluded that Batista improperly modified the vehicle and the Plaintiff’s estate was successful in recovering a million dollar verdict against Batista.

In reliance on EBay’s promises and representations, Jones calculated his winning bid and that, after EBay faxed copies of the purchase agreement to him, he signed the agreement, faxed it back to EBay, and mailed a check to BigBoys in payment of the $45,000 purchase price. There is a clause in the purchase agreement establishing Texas as the forum for any disputes concerning the transaction.

The Jones inform you that they previously went to their cousin, Sandy Shores, for help on this matter. Shores, the Jones’ previous attorney, sent BigBoys, EBay Motors, and Batista a demand letter describing the damages and demanding an immediate resolution to the matter or failing a resolution she would enter suit in Massachusetts on behalf of the Jones family.

BigBoys, EBay and Batista responded saying they would not pay the Jones a dime as they are not responsible for any losses and that that they do not have any agents, representatives, officers, or employees in Massachusetts; that they are not licensed to do business in Massachusetts; that they do not own or rent property in Massachusetts; that they do not maintain an office in Massachusetts; and that they have no subsidiaries or business affiliates in Massachusetts. BigBoys maintains that, since its formation 10 years ago, through eBay or otherwise it had made only two web sales to persons in Massachusetts amounting to less than one-half of one percent of its gross revenues. Batista claims he
has never even visited the United States let alone Massachusetts. He claims he has never sold any vehicles in Massachusetts.

They also responded that the first page of the two-page "purchase agreement/bill of sale" signed by Jones contains an acknowledgment that he had read and understood the terms and conditions set forth on the reverse side (or second page) of the agreement; and that, in paragraph 12 on the reverse side of the agreement, the parties agreed that the agreement was made in Florida, that it would be governed by Texas law, and that any action or proceeding arising out of the transaction would be litigated only in a Texas court. Texas law is favorable to the sellers.

Jones tells you that he has not agreed to paragraph 12. To support this assertion, Jones showed you various e-mails between himself and EBay that indicate Jones acknowledged receipt of the purchase agreement with no printed information on the back of it and an email from EBay which stated, "We will send you the printed information on the back of the buyers order although it really does not apply to you as this vehicle comes with factory warranty and that he would fax back "your revised bill of sale once received." James and Felicea Jones are very angry about this situation and are adamant that they "should not have to go to Texas or some other dump." They want you aggressively pursue this.

How would you proceed?

Part 2

Please define fully each concept below and explain how each of the following concepts affects Question One. Please appropriately tie that concept to the facts of the case or explain why the concept is not applicable to the fact pattern contained in Question One.

1. Equitable Relief:
2. The Three Testing Motions:
3. Removal Jurisdiction:

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4. Res Judicata and Collateral Estoppel:

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5. Erie and the Outcome Determinative Test:


6. Counterclaims:


7. Amending Pleadings:


8. Well Pled Complaint Rule:

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9. Discovery:

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10. Forum Non Conveniens:
Caroline James and Kathy Demetria were best of friends. A few years ago they began making investment decisions together. Caroline lives in Boston, Massachusetts and until a few months ago, Kathy lived in Salem, New Hampshire. Recently, as her fortunes waned, Kathy moved to Caroline’s apartment while she looked for her own place. “I’m so glad to be out of cow country forever, and feel at home here with you in Boston, who knows how long I’ll stay,” she told Caroline. She continued to have most of her mail delivered to her parent’s house in Salem, New Hampshire.

Caroline and Kathy both worked at the law firm of Dewey, Cheatem, & Howe in downtown Boston. On the recommendation of one of the partners Dan Dewey, they started using a financial consultant, Adam Absconds Inc., who was a client of the firm and who has offices in Manhattan, Boston and Concord, New Hampshire to advise on their investments. Absconds is well known in the area as he lives on the ocean in Rye, New Hampshire.

After viewing the firm’s website www.AbscondsFastMoney.com, they each invested a substantial amount of money with Absconds in a private real estate investment trust run by TrojanWarrior, Inc. Absconds, who said it was a “guaranteed” 17% return per year, pushed it
very heavily. He presented them with very impressive written material provided by
TrojanWarrior. Absconds indicated that he had invested in a different TrojanWarrior real estate
trust a year ago, and was doing “fabulous, just fabulous.” TrojanWarrior, Inc. is a
Connecticut corporation, with offices in Princeton, New Jersey and in Dallas, Texas. Their Chief
Investment Officer works in the Bahamas and manages some overseas investment accounts from
there. What real estate trust investments that were actually made, were made exclusively in
Texas real estate ventures, and were managed and supervised by the Dallas office. While
approval to start a new real estate venture comes from Princeton, all the actual work, financing
and control is set in Dallas or the Bahamas.

Within a few months of investing, the economy hit the skids and something appeared
terribly amiss with their investments. Caroline and Kathy learned that TrojanWarrior, Inc. was in
real trouble with the Texas regulators over phony real estate investments, including those
invested in by them. The Texas regulators had summarily issued a cease and desist order against
Trojan Warrior preventing them from doing business in Texas because of fraudulent business
practices. The Federal Securities Exchange Commission also did the same for violating the SEC
Consumer Disclosure Act.

Kathy and Caroline quickly discovered that they were not alone and that many investors
had lost their life savings. Absconds took his money and fled to an island in the Bahamas living
fat and happy. The women lost hundreds of thousands of dollars. The Massachusetts Attorney
General has recently filed suit and obtained an injunction preventing further violations of the
Massachusetts Consumer Protection Statute or G.L. 93A.

TrojanWarrior’s overseas investments are doing fine. Kathy in particular was devastated
by the loss of her life savings, and suffered a heart attack. Caroline and Kathy now consult you
regarding this matter. What is your advice to them? How would you proceed and why?

Fact Pattern for Short Answer Questions

I Pilot, Inc., a corporation headquartered and incorporated under California law,
manufactures I Pilot organizers at its plant in Portland, New Mindiana. It calls itself the first
manufacturer of I Pilot organizers in the world in its advertisements in US, a national magazine.
I Pilot Inc. sells the I Pilots through its retail stores in LA, California and Albany, New York and

On May 11, 2009, Britt Nicks purchased a I Pilot organizer for $2,500 at www.ElPilot.com. She had it delivered to her home in Massachusetts. She used the I Pilot for a brief period of time before it exploded sending pieces of metal throughout the room in which she was working. Nicks lost her right eye and her dog XMen was killed instantly. Her father and sister were slightly injured as they rushed to her aid.

As a result of its investigation and hearing, the Massachusetts State Police found that the I Pilot organizer was a dangerous product. They ordered an immediate recall of the product.

In the space provided, please fully define the following concepts and then describe how, if at all, that well defined concept applies to the fact pattern:

The Three Testing Motions

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Collateral Estoppel and Res Judicata

Affirmative Defenses
The Erie Doctrine/Outcome Determinative Test

Counterclaims

Equitable Remedies
Specific and General Jurisdiction

Standards of Proof
Amended Pleadings


Discovery


Civpro&conflictresfallfinal2009.civpro
CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2008 Final Examination
Professor Coyne

Where law ends, there tyranny begins.
William Pitt

Please answer the short answer questions on page two first.

Please review this question, reflect on it and consider solutions to the problem. Please address the issues and propose a solution to this problem.

Use only your social security number on this examination and blue book. Please answer this problem in no more than five handwritten pages. I will evaluate your answer on your knowledge of the law, ability to recognize issues and your analysis of these issues.

Internet Law Student Aids, Inc., a corporation headquartered and incorporated under Delaware law is a company that promises law students a one stop fix for getting through law school and passing the bar examination. Its two biggest products are Law School Flash and Studenttutors Keyz. It manufactures the Studenttutors in hard copy at its plant in Tampa, Florida. It calls itself the biggest tutoring service in the United States and it claims the Studenttutors will ensure that you successfully complete law school and pass the bar.

Internet Law Student Aids sells its products, including the Studenttutors, over the Internet at www.InternetStudenttutors.com through a distributor called Internet Studenttutors.com, Inc., an Alaska corporation founded by Sarah Parker and Alex Bissell and at the outlet store at its plant in Tampa, Florida. Parker and Bissell were first year law students at the University of Alaska when they founded the companies 5 years ago. Parker and Bissell never
completed law school. The companies do no print or other traditional media advertising and instead rely on chat groups, online postings and word of mouth marketing to spread their story over the internet. Sales have grown dramatically and last year the companies grossed in excess of $3,000,000.

On December 1, 2007, Peter Putz and his study group partners, Mitch and Kathy Martin were at their condominium near Lazy U Law School in Boston, Massachusetts. Lazy U boasts that it is the first law school in the country with an annual tuition of $50,000. The study partners visited a few websites offering various "student services" while desperately hoping to make up for a semester of too much alcohol and too little studying. At that time, they stumbled across information about Internet Law Student Aids, www.InternetStudenttutors.com and Internet Studenttutors.com, Inc.

Knowing that they were in deep trouble on their final examinations, Putz ordered the DELUXE A+ Studenttutors Keyz for $2700 online using his credit card with the study partners agreeing to copy the materials and share the cost equally. Studenttutors Keyz is copyrighted material and under the terms of the electronic contract, any individual violating that copyright agrees to pay the company $10,000 for each known copyright violation. Putz downloaded the material onto his computer and then made DVDs for his study group.

Peter Putz, Mitch Martin, Kathy Martin and their friend Caleb James all started using the materials immediately. Despite their efforts, they did miserably on almost all their examinations. As it turned out, there were numerous misstatements of the law in the poorly written materials. The school placed Putz and Caleb James on academic probation. They also had to repeat their first year of law school. Mitch Martin was able to save his semester with an outstanding performance on his Civil Procedure examination. Kathy Martin was asked to leave law school.
Kathy Martin grew despondent and died 6 months later. Her death is under investigation.

In early 2007, law students in Texas, Missouri and California filed complaints with the Federal Trade Commission complaining that the study materials were in violation of Federal Law, specifically 28 United States Code section 1339. 28 USC 1339 prohibits the electronic distribution of false and misleading information over the internet for profit. After an emergency hearing, the Federal Trade Commission issued a cease and desist order forbidding Internet Law Student Aids, www.InternetStudenttutors.com and Internet Studenttutors.com, Inc. from making any further false claims about the success of its products or distributing false and misleading information over the internet. It fined Parker and Bissell $100,000 each.

Putz, Martin and James visit you to discuss this matter. What is your advice? How would you proceed and why? What discovery steps would you take and why.

**Fact Pattern for Short Answer Questions**


On April 1, 2005, Brianna Blakely purchased a Message Pilot organizer for $2,500 at www.EMessagePilot.com. She had it delivered to her home in Massachusetts. She used the Message Pilot for a brief period of time before it exploded sending pieces of metal throughout the room in which she was working. Blakely lost her right eye and her dog Rover was killed instantly when the organizer exploded. Her mother and sister, Nikita and Swon, were slightly injured when they cut themselves on the pieces of the metal as they rushed to her aid.

As a result of its informal investigation of this incident, the Massachusetts State Police believe that the Message Pilot organizer was poorly designed and a dangerous product. Their investigation also revealed that many others who purchased these Message Pilot organizers also have been injured, although none as seriously as Blakely. They ordered a recall of the product.

In the space provided, please explain the following and describe how, if at all, it applies
to the fact pattern:

The Three Testing Motions

Well Pled Complaint Rule

Collateral Estoppel and Res Judicata
Class Actions

The Erie Doctrine/Outcome Determinative Test
Counter Claims


Equitable Remedies


Specific and General Jurisdiction


Standards of Proof

Amended Pleadings
A leader is a dealer in hope.  

Napoleon Bonaparte

Use your social security number on the exam and blue book. Write legibly and coherently.

Your knowledge of the law, ability to analyze the issues and your treatment of the issues will form the basis for your grade.

Please take the time to think about and organize your answer. Please do not just define the issue of law, but think about how it applies to the facts and what the ramifications of your conclusion are. Please limit your answer to six pages and write on only one side of each page.

QUESTION ONE

Webtoday.com Magazine, a corporation incorporated and headquartered in Boston, Massachusetts, is the finest online magazine on the web. It first went online in 2005 and has grown steadily since that time. Starki Vietzke of Salem, Maine went online to Webtoday.com’s shops which are run by X Corp., a Delaware corporation with a principal place of business in London England to purchase diet drugs, specifically the diet drug VOXPOPULI, manufactured by Johnson & Johnson of New Jersey. Vietzke had also read about the diet drug in an article in The Boston Globe and then further investigated it by googling more information about it at the search engine www.google.com that is headquartered and incorporated under New York law. The drugs were described as wonder drugs and guaranteed to achieve great results. Starki purchased a 6-month supply of the drugs online using his MasterCard.
Vietzke was the envy of everyone in the neighborhood as he started to lose weight immediately. Many of his neighbors were very impressed with the results and asked Vietzke to obtain the drugs for them as well which he agreed to do, becoming a distributor of VOXPOPULI. However, tragedy soon struck when Starki had a heart attack 6 months after starting the drug. He has lost sight in his left eye and now walks with a limp. His wife Tu has quit her job as physician in charge of Maine Medical Center to help nurse him back to health. A few of his neighbors have also suffered adverse side effects.

The Vietzke’s moved to Alabama so Starki could get treatment at Alabama General Hospital and Birmingham Rehabilitation Center in Birmingham, Alabama. The Vietzke’s learned that Alabama laws are extremely beneficial to injured parties in that they provide for generous awards of punitive damages. Starki and Tu decided to remain in Alabama during treatment.

After a three day administrative hearing held by the Federal Drug Safety Bureau, it recalled VOXPOPULI for failing to meet certain safety standards.

Federal law mandates that all drugs be properly labeled or any injured party may sue the distributor and manufacturer for twice the actual damages plus attorney’s fees. Johnson & Johnson denies that the drug was mislabeled.

The Vietzke’s consult you regarding these issues. How would you proceed and why?

 QUESTION TWO

The Museum of Modern Art and the Solomon R. Guggenheim Foundation filed suit in U.S. District Court in New York asking the court to declare them the rightful owners of two Picasso paintings that a Jewish scholar claims were the rightful property of a relative persecuted in Nazi Germany.

The two institutions took the step to fend off an expected lawsuit from Julius H. Schoeps, a German who has been waging a relentless legal fight to recover artwork and property once owned by his great uncle. Schoeps demanded that the museums hand over both works, "Boy Leading a Horse," which is in MoMA's collection, and "Le Moulin de la Galette," in the Guggenheim's collection.

MoMA director Glenn D. Lowry and Guggenheim Foundation director Thomas Krens in a joint statement said the paintings were not obtained under Nazi duress. Summary Judgment was granted for the defendants in a previous class action filed in state court after lengthy discovery in the United States and Europe.
The Museum of Modern Art and the Guggenheim Museum take the issue of restitution very seriously. They claim that evidence from their extensive research makes clear the museums' ownership of these works and that Mr. Schoeps has no basis for his claim. Both paintings were originally owned by Paul von Mendelssohn-Bartholdy, an aristocratic German banker and descendent of composer Felix Mendelssohn. Mendelssohn-Bartholdy died in 1935, two years after Adolf Hitler came to power.

The family sold the two paintings, now owned by the museums, in 1934 or 1935 to Jewish art dealer Justin Thannhauser, who himself fled Germany and spent much of the war in Switzerland. Thannhauser kept "Le Moulin de la Galette" until 1963, when he gave it to the Solomon R. Guggenheim Museum. He sold "Boy Leading a Horse" to former MoMA chairman William Paley in 1936.

Please address in detail how each of the following concepts affects Question 2, making sure that you properly define each concept first. Then appropriately tie that issue to the facts of the case or explain why the concept is not applicable to the fact pattern contained in Question Two.

Discovery: ________________________________

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Erie Doctrine and the Outcome Determinative Test: ____________________________

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Motions for a New Trial and To Vacate Judgment: ____________________________

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Res Judicata and Collateral Estoppel: ______________________________________

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Counterclaims:


Amending Pleadings:


General and Specific Jurisdiction:


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Well Pled Complaint Rule:


Intervention:


The Three Testing Motions:


