CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2015 Mid-Term Question
Professors Coyne and Dimitriades

You have to learn the rules of the game. And then you have to play better than anyone else.

Albert Einstein

Please answer the short answer questions on pages two to four first.

Please review this question, reflect on it, and consider solutions to the problem. Please address the issues in a well-written essay.

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

Question One

Pierre Plainti of Boston, Massachusetts has been the leading goal scorer in the National Hockey League for the last ten years. At 39, he is among the oldest players in the NHL and he credits his incredible physical shape and productivity to his lifestyle, the work he has done with his trainer, Doc Vader of Phoenix, Arizona, and their development of their products called NeuroSafeBodyBetter or “NSBB”.

NeuroSafeBodyBetter is a nutritional supplement that Plainti and Vader say prevents concussions, brain injuries, and some cancers while promoting overall health. The advertisements claim the use of NSBB along with PP1’s recommended “Cancer Cures” diet on a regular basis will allow others to perform as Plainti has and heal the body and mind. Over the last five years, the product has seen phenomenal growth especially at the high school and college level.

Plainti believes in Vader’s holistic and nutritional approach so completely that he entrusts his diet, training and lifestyle regimen to Vader. The two have also worked together to establish the PP1 Therapy Center — a so-called athletic preparation, health, recovery, nutrition and mental fitness facility located outside Healthy Choices Arena in Portland, Maine. PP1 is a subsidiary of PP1, Inc.

PP1, Inc. of Delaware and Portland, Maine manufactures and markets NSSB. Pierre Plainti and Doc Vader own PP1, Inc. General Nutrition Centers (“GNC”) of Delaware and Pittsburg, Pennsylvania sell NSBB in its health food stores across the country and PP1 sells it online at WWW.NSBB.ORG.

Ward and William Winger, twin brothers from New London, Connecticut who played hockey at Boston College in Newton, Massachusetts purchased NSBB from their local GNC after seeing
advertisements for NSBB on YouTube, as they were concerned about the effects of concussions from the many years of playing hockey. They used NSBB for two years buying it online and at GNC stores. Prior to the use of NSBB, they were both projected to be early round draft picks of NHL teams when they graduated from college in 2016, which would guarantee them significant income.

In their senior year of college tragedy struck. Ward developed what his doctor at Massachusetts General Hospital called a highly treatable form of brain cancer but Ward decided to forgo traditional chemotherapy and radiation treatment at MGH believing that NSBB would cure him. He died before graduating college. William continued to play hockey even after suffering multiple concussions while increasing his intake of NSBB. Playing with yet another concussion William, suffered a traumatic brain injury, is now unable to care for himself needing regular nursing assistance, and help with his basic needs.

Their parents are devastated by this turn of events and consult you. Your investigation uncovers that three years ago the Federal Trade Commission brought suit claiming that Vader violated federal law by passing himself off as a doctor to consumers even though he never graduated from any medical school and falsifying clinical trials claiming to have cured 96 percent of terminally ill cancer patients. Vader agreed to settle the lawsuit through a consent judgment fining him $650,000 and agreeing to some additional restrictive measures regarding his marketing of products.

When ESPN—the world’s television sports network—recently asked Plaintiff to address Vader’s settlement with the FTC and issues surrounding the Ward brothers he responded, “So we’re trying to provide people a different way of thinking, a different way than western medicine’s approach to treating the disease. We focus on eliminating the causes and curing disease and illness. I’m sorry but what’s past is past. We’re all gonna die sometime.”

How would you proceed and why?

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

**Question Two**

Personal Jurisdiction

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2
You have to learn the rules of the game. And then you have to play better than anyone else.

Albert Einstein

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Question One

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NeuroSafeBodyBetter is a nutritional supplement that Plaintiff and Vader say prevents concussions, brain injuries, and some cancers while promoting overall health. The advertisements claim the use of NSBB along with PP1’s recommended “Cancer Cures” diet on a regular basis will allow others to perform as Plaintiff has and heal the body and mind. Over the last five years, the product has seen phenomenal growth especially at the high school and college level.

Plaintiff believes in Vader's holistic and nutritional approach so completely that he entrusts his diet, training and lifestyle regimen to Vader. The two have also worked together to establish the PP1 Therapy Center — a so-called athletic preparation, health, recovery, nutrition and mental fitness facility located outside Healthy Choices Arena in Portland, Maine. PP1 is a subsidiary of PP1, Inc.

PP1, Inc. of Delaware and Portland, Maine manufactures and markets NSSB. Pierre Plaintiff and Doc Vader own PP1, Inc. General Nutrition Centers (“GNC”) of Delaware and Pittsburg, Pennsylvania sell NSBB in its health food stores across the country and PP1 sells it online at www.NSBB.ORG.

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When ESPN—the world’s television sports network—recently asked Plainti to address Vader’s settlement with the FTC and issues surrounding the Ward brothers he responded, “So we’re trying to provide people a different way of thinking, a different way than western medicine’s approach to treating the disease. We focus on eliminating the causes and curing disease and illness. I’m sorry but what’s past is past. We’re all gonna die sometime.”

How would you proceed and why?

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

**Question Two**

**Subject Matter Jurisdiction**

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Erie and the Outcome Determinative Test

The Three Testing Motions

Class Actions
Statute of Limitations

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UrFone Plus+, Inc., a corporation headquartered and incorporated under Delaware law, manufactures the UrFone Plus+ at its plant in Salem, New Hampshire. It calls itself the largest manufacturer of cell phones, including the UrFone Plus+, in New England in its advertisements on New England News, a local media outlet. UrFone Plus+ Inc. sells the UrFone Plus+ through its outlet stores in North Conway, N.H., Kittery, Maine, and over the internet at www.EUrFone Plus+.com through a distributor called EUrFone Plus+.com, Inc., a Kentucky corporation.

On April 1, 2010, while on vacation in Maine, Kate Chico purchased a UrFone Plus+ for $1,500 at www.EUrFonePlus+.com. She had it delivered to her home in Massachusetts. She used the UrFone Plus+ for a brief period before it exploded sending pieces of hot metal throughout the room in which she was working. Chico lost her right eye and her dog Lucky was killed instantly when the phone exploded. Her mother and brother, Britt and Bill, 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 UrFone Plus+ was poorly designed and a highly dangerous product. Their investigation also revealed that many others who purchased the UrFone Plus+ also have been injured, although none as seriously as Chico. In their research, they discovered that the sale of the device violated federal law as it had never received Federal Telecommunications Commission approval. They ordered a recall of the product.

Chico and her mother and brother visit you to discuss their options. What is your advice?
How would you proceed and why? What procedural moves would you expect the Defendants to try and use?

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

Three Testing Motions______________________________________________________________
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Rule 11______________________________________________________________
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Subject Matter Jurisdiction__________________________________________________________
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Affirmative Defenses

Discovery
UrFone Plus+, Inc., a corporation headquartered and incorporated under Delaware law, manufactures the UrFone Plus+ at its plant in Salem, New Hampshire. It calls itself the largest manufacturer of cell phones, including the UrFone Plus+, in New England in its advertisements on New England News, a local media outlet. UrFone Plus+ Inc. sells the UrFone Plus+ through its outlet stores in North Conway, N.H., Kittery, Maine, and over the internet at www.EUrFonePlus+.com through a distributor called EUrFone Plus+.com, Inc., a Kentucky corporation.

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Chico and her mother and brother visit you to discuss their options. What is your advice?
How would you proceed and why? What procedural moves would you expect the Defendants to try and use?

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

Class Action

Erie and the Outcome Determinative Test

Removal Jurisdiction
Injunctive Relief

Three Testing Motions
UrFone Plus+, Inc., a corporation headquartered and incorporated under Delaware law, manufactures the UrFone Plus+ at its plant in Salem, New Hampshire. It calls itself the largest manufacturer of cell phones, including the UrFone Plus+, in New England in its advertisements on New England News, a local media outlet. UrFone Plus+ Inc. sells the UrFone Plus+ through its outlet stores in North Conway, N.H., Kittery, Maine, and over the internet at www.EUrFone Plus+.com through a distributor called EUrFone Plus+.com, Inc., a Kentucky corporation.

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Chico and her mother and brother visit you to discuss their options. What is your advice? How would you proceed and why? What procedural moves would you expect the Defendants to try and use?
Use your exam number on the exam and blue book. Write your essay answer to Question One in the bluebook. Write your answers to Part 2 directly in the space provided on this examination. Write legibly and coherently. You have 85 minutes to complete this examination.

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 conclusions are. Please limit your bluebook answer to six pages and write on only one side of each page.

The foundation of justice is good faith.
Cicero

Question One

Major League Baseball recently suspended Armando Fraudulo of New York and Miami Beach, Florida from playing baseball for one full year as a result of failing a drug test. Fraudulo is a professional baseball player with the New York Yankees whose contract pays him $22,000,000 per year. The Yankees have stopped paying Mr. Fraudulo. This was the second time he has been suspended as a result of a failed drug test. He is appealing the suspension. In 2009, he was suspended for 30 games. Fraudulo did not appeal that suspension, served the full suspension and returned to lead his team to win the World Series. For many years, A-Fraud, as his fans call him, was considered by many to be one of the best baseball players in the world while playing for one of the greatest sports organizations ever. In recent years, however, both the team and A-Fraud have fallen on rough times.

A-Fraud consults you regarding a lawsuit he would like to bring against Major League Baseball Corp ("MLB"), a Delaware Corporation, its baseball Commissioner Bud Selig of Milwaukee, Wisconsin, Biogenesis of America, LLC ("Biogenesis"), a clinic in Coral Gables, Florida that allegedly supplied a number of professional ballplayers throughout the United States with steroids and other banned performance enhancing substances ("PES") and the New York Yankee’s team doctor Chris Ahmad
of New York, New York who as A-Fraud sees it have conspired against him to make him a scapegoat for baseball’s steroid scandal and used his personal medical records and information impermissibly in order to deflect attention from Major League Baseball’s encouraging ballplayers to use performance enhancing drugs for decades. As A-Fraud sees it, this was done to encourage more fans to come to the ball park and to increase television revenues that during the steroid era amounted to billions of dollars in revenue to MLB and its teams. A-Fraud claims that MLB only adopted an anti-PES stance after increasing pressure from fans and Congress in 2006. A-Fraud claims that the conspirators decided to make him a scapegoat and improperly marshal evidence in an effort to destroy his reputation, career and income.

At the core of this steroid scandal is Biogenesis of America, LLC a clinic in Coral Gables, Florida, that allegedly supplied a number of professional ballplayers throughout the United States with banned PES for many years. A-Fraud claims that from the start of their investigation, the conspirators have pursued vigilante justice, conspired with each other to fabricate false evidence against him and engaged in character assassination. They have ignored the procedures set forth in baseball’s collectively-bargained labor agreements entered into in accordance with federal law; violated the strict confidentiality imposed by these agreements; paid individuals millions of dollars in bribes in order to obtain false testimony; made promises of future employment to individuals to obtain testimony on MLB’s behalf; and singled out A-Fraud for an unprecedented year-long suspension- the longest non-permanent ban in baseball history.

Fraudulolo would like you to move quickly and seek compensatory and punitive damages. Discuss the civil issues presented. How would you proceed and why?

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. Class Action:
2. Well Pled Complaint Rule:

3. Erie Problem and the Outcome Determinative Test:
4. Counterclaims:

5. Removal Jurisdiction:
CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2010 Evening Mid-Term Question
Professor Coyne

No man is above the law and no man is below it: nor do we ask any man's permission when we ask him to obey it.

Theodore Roosevelt

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 exam 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.

Question One

On August 15, 2010, Paula Pumpkin purchased an X2010 Tablet organizer for $1250 at www.Tablet.com. She had it delivered to her summer home in Maine. She used the X2010 Tablet for a brief period before it exploded sending pieces of metal throughout her cottage where she was working on her blog. Pumpkin lost her right eye and her pet snake, Serpent, was seriously injured. Her father Jamal and sister Chantelle were also slightly injured when they cut themselves on the pieces of the metal as they rushed to her aid. Serpent required months of hospitalization at the veterinary clinic near Paula’s home in Massachusetts and a subsequent experimental surgery. Serpent succumbed to her injuries some 6 months after the incident. The Pumpkin family was devastated as Paula’s long hoped for modeling career was now likely lost. Jamal had hoped that this would be his way out of the financial mess the family is in because Jamal and Chantelle have not worked in years.

called Tablet.com, Inc., a Texas corporation. New Age Industries Inc., a Korean company that contracts with companies in Korea for its products, manufactures the X2010 Tablet organizer in Seoul, Korea. It ships no product into the United States as all of its contracts explicitly state that it is the obligation of the purchaser to both arrange for shipping of the product from Seoul, Korea and obtain all permits necessary to transport the product into the country of choice. New Age sold 1 billion of its tablet computers so far in 2010.

As a result of its informal investigation of this incident, the Federal Trade Commission determined that the X2010 Tablet organizer was poorly designed and a highly dangerous product. Their investigation also revealed that a few others who purchased these initial versions of the X2010 Tablet computer also have been injured, although none as seriously as Pumpkin or Serpent. They ordered a recall of the product.

Pumpkin, her father, and sister visit you to discuss their options. What is your advice? How would you proceed and why?

**Question Two**

In the space provided, please fully define the concept and then explain how, if at all, the concept applies to the essay question that begins on page 1:

Well-Pled Complaint Rule

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2
Injunctive Relief

Forum Non Conveniens
CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2009 Mid-Term Question
Professor Coyne

Use only your exam number on this examination and blue book.
Please answer fully the short answer questions beginning on page two first in the space
provided on this examination.

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

Question One

Please review this question, reflect on it and consider solutions to the problem. 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.

Goanywhere, Inc., a corporation headquartered and incorporated under New Jersey law,
manufactures the Goanywhere GPSNavigator at its plant in Bumsrush, New York. It calls itself the
largest manufacturer of the Goanywhere GPSNavigator in the New York area in its online
advertisements. Goanywhere Inc. sells the devices only over the internet at www.Goanywhere.com
through a distributor called Goanywhere.com, Inc., a Delaware corporation.

On his Facebook page (www.facebook.com) on September 1, 2007, Kelly Nichols saw that
her next door neighbor, Jobe Johnson, had purchased a Goanywhere GPSNavigator. Jobe’s posting
said that it was a great product. Nichols asked Jobe what he liked about it. Jobe commented back,
“EVERYTHING.” Kelly followed the link Jobe posted on his Facebook page and purchased the
so Federal Express would deliver it overnight to her home in Massachusetts. She used the
Goanywhere GPSNavigator for a brief period before it exploded destroying her new car. Nichols was
not seriously injured and missed only 2 weeks of work as a lawyer but her cat Fluffy was seriously
injured. After a lengthy series of treatments at the Veterinarian’s office, Fluffy succumbed to her
injuries.

As a result of its investigation of this incident, the National Highway Transportation Bureau
found that the Goanywhere GPSNavigator was poorly designed and a dangerous product. Their
investigation also revealed violations of federal law in that the product was not labeled properly for
consumers, the instructions were inaccurate and it was a violation of federal law to ship the product
across state lines. The product has since been recalled.

Nichols consults you on this matter. What is your advice? How would you proceed and
why?
Question 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:

Personal Jurisdiction


Eire Problem/Outcome Determinative Test


Removal Jurisdiction


2
Injunctive Relief

Well Pled Complaint Rule
CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2007 Mid-Term Question
Professor Coyne

I have spent all my life under a Communist regime, and I will tell you that a society without any objective legal scale is a terrible one indeed. But a society with no other scale but the legal one is not quite worthy of man either.

Alexander Solzhenitsyn

Please answer the short answer questions on pages two and three 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.

E-Phone, Inc., a corporation headquartered and incorporated under Pennsylvania law, manufactures the E-Phone at its plant in Atlantic City New Jersey. The E-phone is billed as the last electronic device you will ever need, as it is a minicomputer, organizer, phone, GPS, and music player in a portable device. It advertises in USA Today and The Boston Business Journal, two newspapers distributed in various parts of the country. E-Phone Inc. sells the phones through retail stores in Chicago, Illinois, Los Angeles California, New York, New York, Groton, Pennsylvania and Providence, Rhode Island and at www.E-Phone.com through the distributor, NotthePhone, Inc., a Bermuda corporation. NotthePhone, Inc is the sole E-Phone distributor in the United States and ships product to the E-Phone retail stores as well as web purchasers who accept the E-Phone contract on line.

On April 1, 2007, Paula Plainty purchased an E-Phone for $2,000 at the Providence Place mall. She later returned to her at her dorm room at State U. in Maine where she was studying pre-law. She used it during her Property law class and since the battery was running low, she plugged it into the nearby outlet.

Shortly after plugging it into the outlet, Plainty became lightheaded and noticed a few students around her began to doze off. Since it was property class, she did not think it was unusual until she noticed that a smoky haze had enveloped the room. Just then, she saw her esteemed professor, Cara Corsair, fall and slam her head against the podium where it split open spilling blood on the students seated in the front row. Blood continued to pour from the wound as the smoke detectors sounded an alarm. After a lengthy and painful hospitalization, Corsair passed away. Plainty and a number of the students passed out from the noxious gas that the E-Phone produced. The students were hospitalized in order to receive treatment for their injuries.
Some even suffered some minor brain damage.

Through its informal investigation of this incident, the State U. police department felt that the origin of the odors was the E-Phone and that it was manufactured from foreign toxic substances that would overheat too easily. Their investigation also revealed that similar events have recently occurred. Federal Law Chapter 41 allows consumers injured from faulty electronic devices to sue the manufacturer, distributor and seller for losses caused by said devices.

Discuss the issues presented.

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

The Outcome Determinative Test

Supplemental Jurisdiction
CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2006 Mid-Term Question
Professor Coyne

Lawyers cannot remain empty of head and pure of heart....

A lawyer has a duty to investigate or take some steps to inform himself in a situation where he believes that there is client perjury.
Barry S. Alberts

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 Cellphones, Inc., a corporation headquartered and incorporated under Connecticut law, manufactures Internet Cellphones at its plant in Albany, New York. It calls itself the first manufacturer of Internet Cellphones in the northeast in its advertisements in USA Today, a newspaper distributed throughout the country. Internet Cellphones Inc. sells the Cell phones through its retail stores in Andover, Massachusetts, Groton, Connecticut and Providence, Rhode Island and over the internet at www.InternetCellphones.com through a distributor called EInternet Cellphones.com, Inc., a Delaware corporation.

On April 1, 2006, Braxton Kim purchased an Internet Cellphone for $1,000 at www.InternetCellphones.com. He had it delivered to his home in Salem, New Hampshire. He used the Internet Cellphone at a 75th birthday party for his mother where it exploded sending pieces of glass and plastic throughout the room. Kim was severely injured and his cat, Puffy, who went everywhere with him, was killed instantly in the explosion. His mother, Pearl, suffered permanent disfiguring injuries because of the explosion and was hospitalized for many months.

Through its formal investigation of this incident, the New Hampshire Attorney General’s office discovered that the Internet Cellphones were poorly manufactured and a dangerous product. Their investigation also revealed that the phone had never received approval from the Federal Trade Commission as an approved electronic device. It ordered a recall of the product.

Kim visits you to discuss this matter. What is your advice? How would you proceed and why?
In the space provided, please briefly explain the following and describe how, if at all, it applies to the essay question on page 1:

Forum Non Conveniens

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The Erie Doctrine

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Removal Jurisdiction

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Injunctive Relief

Specific and General Jurisdiction
CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2004 — Mid-Term Question
Professor Coyne

"Even when laws have been written down, they ought not always remain unaltered."
Aristotle

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. Your answer will be evaluated on your knowledge of the law, ability to recognize issues and your analysis of these issues.


On February 1, 2002, Britt Hart purchased a flatscreen television for $2,500 at www.EFlatscreens.com and had it delivered to her home in Massachusetts. She used the flatscreen in Massachusetts for a brief period of time before it exploded sending pieces of glass throughout the room in which she was working. Britt Hart was injured as a result of the explosion and lost her right eye. Her mother and sister, Rita and Maggie, were slightly injured when they cut themselves on the pieces of the glass as they came to her aid.

As a result of its informal investigation of this incident, the Massachusetts State Police believe that the flatscreen television was poorly designed and made of substandard parts. Their investigation also revealed that many others who purchased these flatscreen televisions also have been injured, although none as seriously as Hart.

Hart and her mother and sister visit you to discuss their options. What is your advice? How would you proceed? And why?
In the space provided, please briefly explain the following and describe how, if at all, it applies to the essay question on page 1:

Well-Pled Complaint Rule

The Outcome Determinative Test

Subject Matter Jurisdiction

Jen Pino purchased a computer at www.webcomputers.com and had it delivered to her home in New York. She used the computer in New York for a brief period of time before it exploded sending pieces of glass throughout the room in which she was working.

Jen Pino was injured as a result of the explosion and lost her right eye. Her live in boyfriend Gene Simmons was slightly injured when he cut his finger on one of the pieces of glass as he came to help her.

As a result of its informal investigation of this incident, the New York State Police believe that the computer was poorly designed and made of inferior electrical components. Their investigation also revealed that many others who purchased these computers also have been injured, although none as seriously as Pino.

Pino and Simmons visit you to discuss their options. What is your advice? How would you proceed? And why?
In the space provided, please briefly explain the following and describe how, if at all, it applies to the essay question on page 1:

Statutes of Limitation

The Outcome Determinative Test

Supplemental Jurisdiction

Injunctive Relief

Forum Non Conveniens
CIVIL PROCEDURE and CONFLICT RESOLUTION
MIDTERM FALL 2002
Professor Coyne

SOCIAL SECURITY NO:

*Lawyers cannot remain empty of head and pure of heart . . . .
a lawyer has a duty to investigate or take some steps to inform himself.*

Barry Salberts
2000

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.

No more than five (5) pages handwritten, one side only. I will not read anything that exceeds the page limitation.

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**QUESTION ONE**

The Pilgrim Nuclear Power Plant in Plymouth, Massachusetts provides electricity to its customers and is owned and operated by Entergy Corporation of New Orleans, Louisiana. Entergy operates nuclear power plants in Plymouth, Texas, Louisiana and Pennsylvania. The Plymouth plant has a history of shoddy operations and has been shut down numerous times by the Nuclear Regulatory Commission for a variety of problems.

Recently, a serious explosion occurred at the plant when some spent nuclear fuel rods were improperly placed in a storage shed by the plant superintendent, Joseph Malaguti, of Plymouth, Massachusetts. Malaguti put 100 rods in a storage shed on the advice of their consultant, Hotwires, Inc., a New York Corporation that provides management and consulting services to utility companies throughout the United States. The rods then became exposed to the air and exploded, sending debris throughout Manomet, which ultimately caused respiratory problems and some minor burns to people living in the Manomet section of Plymouth. Brian and Ann Wiseman claim they now suffer from respiratory problems as a result of this explosion.

Ann and Brian Wiseman have come to see you to complain about this "serious health" hazard and want you to pursue this situation. They explain to you that this situation has made them so uneasy that they sold their house in Manomet and moved to Maine where they now feel safe. They are very angry about this situation and want you to "punish" Entergy, "bury them in paper" and "just drive them out of business."

They also explain to you that they have successfully lobbied the Nuclear Regulatory Commission to sanction Malaguti and Entergy for violating the Federal statute that makes it unlawful to place spent nuclear rods in anything other than an approved holding facility.
What is your advice?

**QUESTION TWO** (25 percent of grade) (Please define the term or terms below and explain how, if at all, this concept applies to Question One.)

1. Notice Pleading

2. Supplemental Jurisdiction

3. Removal Jurisdiction

4. Class Action

5. Outcome Determinative Test
CIVIL PROCEDURE
Student Answer
Nuclear Plant

Every attorney has an obligation to fully investigate the claims of his or her client. Failure to do so may result in sanctions under Rule 11. I would ask the Wisemans to produce the support and evidence they have to help show the liability of Entergy, Malaguti and Hotwires. I would also attempt to use ADR to try and reach an amicable resolution of this matter. If efforts at alternative dispute resolution fail, I would then file suit.

In order to file suit, we must be able to show that the court has subject matter jurisdiction, personal jurisdiction, and venue. The plaintiff bears the burden of both liability and actual damage by a preponderance of the evidence.

Subject matter jurisdiction (SMJ) is the power of the court over the dispute or controversy. It is so important that it can be raised at anytime and by anyone. A decision or ruling without SMJ renders the decision void. To file suit in Federal Court there must be either a violation of federal law or statute, a constitutional question, or a diversity action where the damages are likely to exceed 75K, and the plaintiff and the defendant are from different states. Based on my analysis, Entergy and Malaguti have violated a federal statute, therefore this action should be filed in the federal court. Since Hotwires consulted with both Malaguti and Entergy, the federal court will have subject matter jurisdiction over them as well based on a violation of a federal statute.

(A discussion of Diversity Jurisdiction would be appropriate here.)

The Wisemans can also allege tort claims against Entergy, Malaguti and Hotwires. The tort claims are controlled by state law. Since there is a violation of a federal statute arising out of the same nucleus of fact, the federal court can hear any state claims in the same setting as the federal violation due to Supplemental Jurisdiction. Supplemental Jurisdiction allows the federal court to hear state law claims that arise from the same set of facts as a claim that has a valid basis to be in federal court.

Personal jurisdiction is required so the Court can bind the defendant personally to any judgment it renders. Since Entergy and Malaguti are from Massachusetts and conduct business there, the Court has power over them based on their minimum contacts in Massachusetts. However, Hotwires is from New York and personal jurisdiction may not exist in Massachusetts absent minimum contacts. The rule of International Shoe must be
followed to obtain personal jurisdiction. Hotwires minimum contacts within the forum state must be such so that the exercise of jurisdiction will not offend the traditional notions of fair play and substantial justice. The contacts, ties, and relations within the state must be examined to see if they are continuous and systematic. We should also look at the quality and nature of those contacts in deciding to exercise personal jurisdiction. The Wisemans will have to show Hotwires’ activity was continuous and systematic in Massachusetts, such that it could foresee that it would be reasonable for them to be haled into court to defend a suit in Massachusetts. Forseeability alone is never enough by itself to exercise jurisdiction. Hotwires has sufficient contacts in Massachusetts because it has done business here with the other defendants.

The test for venue is to look for where a substantial part of the events giving rise to the cause of action occurred. Here, the proper venue would be Massachusetts Federal Court, as the violation of the federal statute occurred in Massachusetts, two of the three defendants are from Massachusetts, and the evidence and witness will be from Massachusetts. By filing in Massachusetts Federal Court, Entergy and Malaguti cannot claim forum non-conveniens or seek removal jurisdiction from state court to Federal Court. Venue, like Personal Jurisdiction, can be conferred by consent.

In my complaint (pleading it properly so it can withstand a motion to dismiss), I would identify all the indispensable parties (Entropy, Malaguti and Hotwires), identify the court and state my reasons why Subject Matter Jurisdiction is proper, state facts in a clear and concise manner (not conclusions of law), state all the types of damages the plaintiffs are seeking, sign the complaint in good faith under Rule 11 and request a jury trial.

Notice would be sent in compliance with Rule 4 of F.R.C.P. Notice should be reasonably calculated to apprise the defendants of plaintiffs’ claims. The defendants have the right to be heard and present their defenses. Entergy and Malaguti, would be served under the F.R.C.P. since they both are present in state. Service for Hotwires would follow the Massachusetts Long Arm Statute, as they are not present in Massachusetts. The statute must be constitutionally sound and, at a minimum, exert jurisdiction only over defendants who have established minimum contacts.

In awarding damages, the Court’s goal is to make the plaintiff whole. Courts try to put the plaintiff in the same position he or she was prior to the violation of law. The Wisemans must prove actual damages. Actual damages are either general or special damages. General damages are less capable of being quantified which are caused by the event, such as pain and suffering, scaring, and loss of enjoyment of life. Special damages are more likely to be out-of-pocket damages and can be proven more easily. The plaintiff would be entitled to collect medical bills, lost wages and other out of pocket expenses. The
1. **Notice Pleading:** Under Rule 8, facts must be stated in a clear and concise manner, showing a violation of law for which relief can be granted. The complaint must be able to withstand a motion to dismiss, but need only put the defendant on notice about the claim and you are not required to plead every fact. The Wiseman’s complaint must satisfy notice pleading requirements.

2. **Supplemental Jurisdiction:** Allows the federal court to hear related state claims which arise from the same common nucleus of facts as a claim having a valid basis to be in federal court. If the Wisemans pursue a claim in federal court, their tort claim should be brought there as well through supplemental jurisdiction.

3. **Removal Jurisdiction:** Allows a defendant to remove an action from state court to federal court provided relief is sought under a Federal law. If removal is predicated upon Diversity Jurisdiction then no defendant can be from the same state as the action was entered in to remove the action from state court to federal court. If Entergy violated a Federal statute, and the Wisemans enter the action in state court, then the defendants may remove it to federal court.

4. **Class Action:** A large group of people too numerous for joinder have suffered an injury based on a common set of facts or law. The court must certify the class. The representative must adequately represent the injuries of the class. The citizens of Manomet may have a class action for their injuries.

5. **Outcome Determinative Test:** A federal court sitting in diversity is an extension of state court. The federal court must use state law to resolve that controversy and the outcome will be the same in federal court as it would have been in state court. The only time this rule can be violated as if there is an important Federal right at issue, or there is a F.R.C.P. directly on point. Any decision on the state law claim the Wisemans assert in federal court will be controlled by the outcome determinative test.
CIVIL PROCEDURE AND CONFLICT RESOLUTION
Fall 2001 - Midterm
Professor Coyne

*I have the simplest tastes. I am always satisfied with the best.*

Oscar Wilde

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

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

No more than five (5) pages handwritten, one-side only, or four (4) typed double spaced pages, I will not read anything that exceeds the page limitation.

QUESTION ONE

SANDYSHORES.COM Inc. is a New York Corporation that operates an Internet based advertising service for beach clubs, hotels, motels, restaurants and travel related services which in any way concern the beach. For an annual fee, SANDYSHORES.COM accepts an advertisement and place a link on its site so that all who visit SANDYSHORES.COM will be able to immediately visit the website of the beach club, hotel, restaurant or travel agency that has paid for its services. The visitor will then be able to view availability, prices and can make reservations.

In just three years, SANDYSHORES.COM has become the largest vacation related website existing on the Internet. It boasts that it will increase traffic to an establishment’s website by 1,000 percent and triple a company’s revenues.

In late 2000, Ms. Shore, the president of SANDYSHORES.COM Inc., visited Jerry’s Bahama Beach Club and Resort, Inc. at their headquarters in Orlando, Florida and solicited their business. Jerry’s then entered into a ten year contract requiring it to pay SANDYSHORES.COM the sum of $50,000.00 per year. The contract allowed Jerry’s to place advertisements on the SANDYSHORES.COM’s website and a link to Jerry’s website would appear at SANDYSHORES.COM.

During the first 6 months of the agreement, things could not have gone better for Jerry’s. Its rate of usage rose dramatically and its revenues increased by over $15,000.00 per month. Unfortunately, Jerry’s Bahama Beach Club and Resort, Inc. and Sandi Shore had a falling out in the summer of 2001 when Sandi drove her car into the restaurant at Jerry’s Bahama Beach Club and Resort, Inc., causing $10,000.00 worth of damage and then refused to pay for the repairs.

Shortly thereafter, Sandi Shore terminated the contract for advertising on its website and
refuses to accept any more advertising from Jerry's.

Jerry's Bahama Beach Club and Resort, Inc. consults you regarding this situation. It is very concerned that its removal from SANDYSHORES.COM is having a terrible effect on its revenues and 2002 bookings. Its revenues are already now down $15,000.00 from the previous month and bookings are very poor for the upcoming season and things look pretty bleak and Jerry's wants you to "bury them in paper."

What would you advise Jerry's Bahama Beach Club and Resort, Inc. to do? Please explain its litigation options.

QUESTION TWO

In the space provided, briefly explain the following terms:

Personal Jurisdiction: ______________________________________________________________
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The Erie Doctrine: _________________________________________________________________
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Damages: _____________________________________________________________
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Class Actions: 

Supplemental Jurisdiction: 

myfiles/CivPro.MidtermFall2001
CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2000 — Mid-Term Question
Professor Coyne

"No system of justice can rise above the ethics of those who administer it."
Report of the National Commission 1929

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. Your answer will be evaluated on your knowledge of the law, ability to recognize issues and your analysis of these issues.

The Martinelli Corporation, a corporation headquartered and incorporated under Massachusetts law, manufactures ladders at its plant in Andover, Massachusetts. For many years, it called itself the largest manufacturer of ladders in New England in its advertisements in The Boston Globe. The ladders were made with aluminum obtained by an aluminum distributor in Virginia called USA Aluminum, Inc. USA Aluminum, Inc. is incorporated under Delaware law. Both the Martinelli Corporation and USA Aluminum, Inc. have websites respectively called Martinelli.com and USAAluminum.com.

Paul Plaintiff purchased a ladder from the Martinelli Corporation and had it delivered to his home in Maine. He used the ladder in Maine for one year before selling his home and moving with his wife to Florida.

Paul was seriously injured when the ladder he was using collapsed at his new home. The ladder buckled and sent Paul some 18 feet to the ground where he fell on his wife, Selma, who was holding the ladder. Selma is a sturdy woman and was not seriously injured by Paul’s fall although all of her teeth were knocked out when Paul fell on her.

In its informal investigation of this incident, the Florida Product Safety Commission determined that the Martinelli Corporation’s ladder was poorly designed and made from inferior grade aluminum.

Paul and Selma visit you to discuss their options. What is your advice to them?

myfiles/civpro.midterm
In the space provided, please briefly explain the following:

Personal Jurisdiction: _______________________________________________________

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The Erie Problem: __________________________________________________________

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Class Action: ______________________________________________________________

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Equitable Relief: ____________________________________________________________

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Attorneys Fees: _____________________________________________________________

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To protect those who are not able to protect themselves is a duty which every one owes to society.

Edward Macnaghten (1890)

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

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

No more than five (5) pages handwritten, one side only, or four (4) typed double spaced pages. I will not read anything that exceeds the page limitation.

SNOWYSLOPES.COM Inc is a Delaware Corporation that operates an Internet based advertising service for ski areas, hotels, motels, restaurants and travel related services which in any way concern skiing or winter travel. For a set fee, SNOWYSLOPES.COM accepts an advertisement and a link to the site so that all who visit SNOWYSLOPES.COM will be able to immediately visit the website of the ski area, hotel, restaurant or travel agency. The visitor will then be able to view availability, prices and make reservations.

In just three years, SNOWYSLOPES.COM has become the largest vacation related website existing on the Internet. It boasts that it will increase traffic to an establishment’s website by 1000% and triple a company’s revenues.

During 1998 Sally Slopes, the president of SNOWYSLOPES.COM Inc, visited Mike’s Ski Hill and Resort, Inc. at their headquarters in Newburyport, Massachusetts and solicited their business. Mike’s then entered into a five-year contract which required it to pay SNOWYSLOPES.COM the sum of $35,000.00 per year. The contract allowed Mike’s to place advertisements on the SNOWYSLOPES.COM’s website and a link to Mike’s website would appear at SNOWYSLOPES.COM.

During the first year of the agreement, things could not have gone better for Mike’s. Its rate of usage rose dramatically and its revenues increased by over $10,000.00 per month. Unfortunately,
Mike's Ski Hill and Resort, Inc. and Sally Slopes had a falling out in the Summer of 1999 when Sally Slopes fell at Mike's Ski Hill and Resort, Inc. and fractured her leg.

Sally Slopes terminated the contract the following week and refused to accept any more advertising from Mike's.

Mike's consults you regarding this situation. It is terribly concerned that its removal from SNOWYSLOPES.COM is having a terrible effect on its revenues and winter of 2000 bookings. Its revenues are now down $15,000.00 from the previous month, bookings are very poor for the upcoming winter and things look pretty bleak.

What would you advise Mike's Ski Hill and Resort, Inc. to do?

myfiles/CivilPro.Midterm