

Student ID Number: \_\_\_\_\_

## CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2016 Mid-Term Question  
Professor Coyne

Use only your student ID 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.

Please answer fully the short answer questions beginning on page two first in the space provided on this examination. Then answer Question One in essay format in the blue book.

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

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### Question One

Michael Christian and his 7-year-old daughter, Jen of Manchester, New Hampshire, went to visit Christian's parents for Columbus Day in 2013 to celebrate his parent's 50th anniversary at their home in Andover, Massachusetts. Christian's parents, Brian and Simone, were enjoying their 50th anniversary and had invited their family and friends to help them celebrate at a pool party. The party started early in the day. By noontime, there were over 75 family and friends eating, drinking, and partying out by the pool. Events by PartyHarty Inc. from nearby Pelham, New Hampshire catered the event and provided all the food, drink, and servers for the day's festivities. Sometime that afternoon, Nicky Alex of Chicago, Illinois, who was visiting New England for the first time, organized a slide/splash contest. The contest required all the parents and their kids to go down the recently installed Ginormous Pool Waterslide head first in pairs in an effort to make the biggest splash.

When Michael and Jen 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 Jen's head to hit the pool deck as she entered the water. Neck fractures left her a quadriplegic, and after many months of hospitalization, her doctors removed her from life support. She 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 some time.

Michael has had a very difficult recovery. He spent nearly 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 was out of work for many months before returning to his job as a college professor at UNH.

The Christians purchased the Ginormous Pool Waterslide from the local Toys “R” Us, a Delaware corporation with a principle place of business in New York. Toyquest Ginormous Corporation of Beijing, China made the Ginormous Pool Waterslide. After 10,000 of those slides had been sold in the United States through Toys “R” Us and Toyquest’s website, GinormousPoolWaterslides.com, they ordered a recall of the product. The Massachusetts Attorney General has since labeled the product a dangerous product and banned its sale in Massachusetts.

You represent Michael Christian, 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:

**Class Action** \_\_\_\_\_  
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**Eire Problem/Outcome Determinative Test** \_\_\_\_\_  
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**Removal Jurisdiction** \_\_\_\_\_  
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**Injunctive Relief** \_\_\_\_\_

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**Well Pled Complaint Rule** \_\_\_\_\_

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MASSACHUSETTS SCHOOL OF LAW

Civil Procedure and Conflict Resolution  
Professors Coyne & Dimitriadis

Final Examination Fall 2017

Student ID# \_\_\_\_\_

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*Benjamin Franklin*

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**PART I**

**Question One**

Paul Plaintiff is a 59-year old resident of Boston, Massachusetts and, until a few years ago, a very successful lawyer. He used to be very athletic and found great enjoyment in an active lifestyle with his wife Eve and pet poodle, Geez. Now, however, Plaintiff gets most of his exercise at Amanda's Rehab Center where he undergoes regular physical therapy.

Paul has had his left hip joint replaced three times in the last 12 years by Doctor George Doolittle at Providence General Hospital Corp. in Providence, Rhode Island. He has endured five separate operations to repair damage caused by what he now believes is a defective

product (the Stryker Rejuvenate Gold hip joint), Dr. Doolittle's unfamiliarity with this product, and the unsanitary conditions at the hospital.

At the age of 47, Plaintiff underwent his first hip replacement with a Stryker Rejuvenate Gold metal-on-metal hip manufactured by Stryker Inc. of Ontario, Canada and distributed throughout the United States by Best Medical Devices Inc. of New York, New York. He claims the hip never functioned properly. Paul suffered so much back and groin pain that he had Dr. Doolittle perform exploratory urology surgery to determine the source of his pain. This left him impotent. He also experienced severe headaches, tinnitus (ringing in the ears), and sinus problems preventing him from working for long stretches of time reducing his yearly income to \$50,000.

Paul recently discovered that the FDA, Consumer Reports, and 60 Minutes investigated numerous consumer complaints concerning the safety of the Stryker Rejuvenate Gold product. Each of them determined that the Stryker Rejuvenate Gold Product had a failure rate of over 75% -- nearly three times the rate of failure of similar products -- and was likely to cause metallosis, a form of blood poisoning caused by shards of metal rubbing off of the new hip and entering the patient's blood. Nationwide, individuals filed over 1,000 complaints with the Food and Drug Administration about the product and nearly 50 people died after receiving the Stryker Rejuvenate Gold product.

After a hearing, because of its failure to comply with federal safety standards, the FDA ordered an immediate recall of the product.

Over the years, Paul's infection ate away at surrounding muscles and soft tissues, and every time Paul underwent surgery to address the issues, more infections set in. Paul recently contacted Dr. Ted Luther who intends to replace the defective Stryker Rejuvenate Gold hip device with a product manufactured by a different company, Allynsey Hip Products of Nashville, Tennessee.

The Plaintiff's visit you to discuss this matter. How would you proceed and why?

What procedural devices would you anticipate utilizing?

What discovery methods and requests do you anticipate the Defendants using?

## **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. Res Judicata and Collateral Estoppel:

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2. The Three Testing Motions:

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3. Rule 11:

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4. Injunctive Relief:

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5. Erie and the Outcome Determinative Test:

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6. Well Pled Complaint:

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7. Personal Jurisdiction:

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8. Counterclaim:

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9. Class Action:

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10. Forum Non Conveniens:

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CivProFinalFall2017/Coyne/CivPro

# CIVIL PROCEDURE AND CONFLICT RESOLUTION

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**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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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 Identification Number on this examination and blue book. Please answer this problem in no more than five handwritten pages. We will evaluate your answer on your knowledge of the law, ability to recognize issues and your analysis of these issues.

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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](http://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](http://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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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?

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Class Action \_\_\_\_\_  
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Erie and the Outcome Determinative Test \_\_\_\_\_  
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Removal Jurisdiction \_\_\_\_\_  
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**Injunctive Relief** \_\_\_\_\_

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**Three Testing Motions** \_\_\_\_\_

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Epad, Inc., a corporation headquartered and incorporated under Delaware law, manufactures the Epad at its plant in Toronto, Canada. It calls itself the largest manufacturer of smart devices, including the Epad, in the Northeast in its advertisements on *NBCBoston*, a media broadcasting outlet available throughout New England. Epad Inc. sells the Epad through its outlet stores throughout the Northeast including New York City, NY, Salem, NH, Augusta, ME, and over the internet at [www.EEpad.com](http://www.EEpad.com) through a distributor called EEpad.com, Inc., a New York corporation.

On April 1, 2013, while on vacation in New York City and seeing it on display at the outlet store there, Adima Sullivan purchased an Epad for \$2,500 at [www.EEpad.com](http://www.EEpad.com). She had it delivered to her home in Massachusetts. She used the Epad for a brief period before its battery exploded spreading acid throughout the room in which she was working. Sullivan lost the use of her left hand and her dog, Faith, whom she loves dearly, was maimed losing a leg and its hearing in the explosion. Her partner, Harry, was slightly injured when he cut himself causing him to lose a finger as he rushed to her aid.

Through its informal investigation of this incident, the Massachusetts State Police believe that the Epad was poorly designed and a dangerous product. Its investigation also revealed that many others who purchased the Epad were also injured, although none as seriously as Sullivan. In its investigation, the State Police discovered that the Epad's battery, manufactured by Sansueus Better Battery of Tokyo, Japan and shipped to Epad at its manufacturing facility in Toronto Canada, was never approved for sale in the United States and thus violated federal law. They ordered a recall of the product.



Sullivan and her partner, Harry, visit you to discuss their options. What is your advice? How would you proceed and why? What procedural devices would you expect the Defendants to 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 \_\_\_\_\_

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Erie and the Outcome Determinative Test \_\_\_\_\_

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Well-Plead Complaint Rule \_\_\_\_\_

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MASSACHUSETTS SCHOOL OF LAW

Civil Procedure and Conflict Resolution  
Professors Coyne & Dimitriadis

Final Examination Fall 2016

Exam # \_\_\_\_\_

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*Benjamin Franklin*

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**Question One**

For over two decades, Kris Krinkle was the creative force behind Andover's Test Kitchen Inc. of Portsmouth, New Hampshire. During that time, he became synonymous with its brand and distinctive cooking and media content. Andover's Test Kitchen is a nationwide television series and the name of the multimedia corporation that includes cookbook operations, an online cooking school, Calorie Country magazine, a radio show, and a variety of other assets. Nevertheless, in June of 2015 after asking for a raise and a more clearly defined percentage of the company, ATK informed him that the board wanted he and his wife, Lauren Gordon, to move their workspace out of company headquarters in New York. ATK also asked them to sign employment agreements that included

covenants not to compete, but they would not. Krinkle was subsequently relieved of all management duties. The bow-tied recipe guru abruptly left the company. Gordon left as well. He did not receive severance or a 2015 bonus that should have totaled over a million dollars.

Six months ago, Krinkle announced he was back in the game and would launch a new venture called Federal Street Kitchen Inc. of Boston, Massachusetts. The company would also be a test kitchen and have multimedia projects including a magazine, television shows, a cooking school, and more. That did not sit well with ATKr.

Andover's Test Kitchen comes to see you as it feels Federal Street Kitchen would be a direct competitor and Krinkle's new magazine would be too similar to his old one. Andover's Test Kitchen accuses Krinkle of a breach of trust by literally and conceptually ripping the company off and building Federal Street Kitchen while he was still on its payroll. Andover's Test Kitchen also says that they were involved in negotiations while he was building the new company. It claims that Mr. Krinkle spent the last year of his employment with Andover's Test Kitchen creating this new venture.

ATK accuses Krinkle of using company resources and relationships to create his new endeavor; of stealing confidential information from Andover's Test Kitchen, soliciting Andover's Test Kitchen employees and outside vendors and misappropriating corporate opportunities belonging to Andover's Test Kitchen. Among ATK's allegations are that Krinkle sought to capture the email addresses of readers; that Lauren Gordon misrepresented herself as doing business for ATK while searching for real estate for Federal Street Kitchen; that Gordon provided Krinkle with media lists she had built while a consultant at ATK; and that Krinkle recruited and hired two media experts and current ATK staffers, Colin Peters and Alex Emmanuel of Providence, Rhode Island, to work at Federal Street Kitchen in violation of their employment agreements.

ATK claims this is negatively affecting its nationwide radio and television shows with numerous outlets dropping them in favor of Federal Street Kitchen. Many of its magazine subscribers are accusing them of fraud for not disclosing that Krinkle was leaving before their magazine subscriptions renewed.

Andover's Test Kitchen consults with you regarding the Civil Procedure issues present. What is your advice regarding those issues?

How would you proceed and why?

What steps would you expect the Defendant to take?

What discovery methods would you use and why?

What steps would you take to protect your client's rights both before and throughout trial?

## 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. Injunctive Relief:

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2. The Three Testing Motions:

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3. Removal Jurisdiction:

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4. Res Judicata and Collateral Estoppel:

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5. Erie and the Outcome Determinative Test:

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6. Well Pled Complaint:

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7. General Jurisdiction:

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8. Counterclaim:

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9. Standard of Proof:

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10. Forum Non Conveniens:

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MASSACHUSETTS SCHOOL OF LAW

Civil Procedure and Conflict Resolution  
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Final Examination Fall 2015

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**Question One**

Jack and Stephanie Williams are Andover, Massachusetts residents. They consult you regarding the explosion of their vintage motor home in which they lost their beloved dog Putz and Mrs. Williams laptop containing confidential information regarding the start of her new software testing business. Both Jack and Stephanie Williams also suffered injuries when the motor home exploded in the driveway of their home. Jack was left permanently disabled and unable to work because of the explosion.

Stephanie was beginning a new software testing business after the first of the year. She expected to gross 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 were on that laptop and it is impossible to recreate that information.

They discuss with you claims they have against FB Sells, Andrew Ally and BigBoys Toys, a Florida corporation, for negligence, fraud, and breach of contract arising from the Williams' purchase of the motor home from BigBoys and Andrew Ally over the internet at FACEBOOK.com. They saw advertisements for the motor home through FB Sells, a division of FACEBOOK INC., a Delaware corporation with headquarters in California. FACEBOOK INC. operates FB Sells.

While conducting a search of the FB Sells website, Jack Williams saw a restored 1955 Airstream motor home for sale. The website contained a lengthy description of the motor home and its features. In addition, it provided an "Ask seller" button that, when activated, identified Andrew Ally of Georgia as the restorer/seller who was using BigBoys Toys to sell the vehicle. Williams began making email inquiries to Ally concerning the motor home. FB Sells responded to those emails. In one of them, FB Sells informed Williams that the motor home came with a four year/100,000 mile factory warranty and Andrew Ally personally completely rebuilt the motor home at his facility in Georgia. Unfortunately one of those modifications appears to be what caused the motor home to explode as a similar explosion happened to another motor home that Ally rebuilt and sold in New Hampshire in 2012. The police investigation of that matter concluded that Ally improperly modified the vehicle and the Plaintiff's estate was successful in recovering a million dollar verdict against Ally.

In reliance on various promises and representations, Williams made an offer for the motor home. After FB Sells faxed copies of the purchase agreement to him, he signed the agreement, faxed it back to FB Sells, and mailed a check to BigBoys in payment of the \$45,000 purchase price. There is a clause in the purchase agreement that says any disputes will be resolved using California law.

Having been recently informed of the problem, BigBoys Toys, has severed its relationships with both Ally and FB Sells claiming that their refusal to reimburse them for past costs and expenses constitutes a breach of the agreements that existed among them.

How would you proceed?

How would you expect the Defendants to respond and why?  
What discovery methods would you use? 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. Injunctive Relief:

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2. The Three Testing Motions:

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3. Removal Jurisdiction:

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4. Res Judicata and Collateral Estoppel:

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5. Erie and the Outcome Determinative Test:

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6. Well Pled Complaint:

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7. Specific Jurisdiction:

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8. Affirmative Defenses:

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9. Class Action:

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10. Forum Non Conveniens:

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# CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2014 Final  
Professor Coyne

*Justice denied anywhere diminishes Justice everywhere.*

**Martin Luther King Jr.**

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## **Question One**

Steven Smith of Bangor, Maine drove a brand new Arak automobile manufactured by Arak Electric Cars Inc. of Delaware and Detroit, Michigan, down Tremont Street in Boston, Massachusetts. The Arak Steven was driving was provided by his employer and owned by Devin Computers Inc. Devin Computers is a Delaware Corporation with offices in Boston, Atlanta and Chicago. The Arak collided with another car, driven by Jean Jones of Salem New Hampshire. Jones was a 32-year-old surgeon working at the Massachusetts General Hospital. Jean died at the scene from the injuries she sustained from the impact. At the time of her death, Jean was separated from Michael Jones, her spouse.

A police investigation revealed that two years prior to the accident, a court convicted Steven Smith of Driving Under the Influence Causing Serious Bodily Injury resulting in Smith being incarcerated for 9 months and his driver's license being suspended for 5 years.

The Federal Highway Safety Commission investigated complaints from Arak owners around the country that the Arak violated federal safety standards because at low speeds it would lose all battery power causing the loss of power steering and braking mechanisms making it likely that the driver of the vehicle would be unable to control the vehicle. After a four day hearing in Washington, D.C., in which testimony was provided by numerous lay and expert witnesses, the Commission found violations and ordered a recall of the vehicle until Arak installed a backup battery and low power alarm on the vehicle. Investigator Josie Marta testified, and was extensively cross-examined, at the Federal Highway Safety Commission hearing. Marta testified that she investigated complaints from Arak owners around the country who all complained that the Arak at low speeds would lose all battery power causing the loss of power steering and braking.

Michael Jones has contacted you about representing him and his wife's estate. He disclosed to you that he had previously filed a complaint for divorce from Jean but they were reconciling. He and Jean had dismissed the complaint a month before the accident. He provided you a copy of the complaint. Among other things, the complaint alleged that Michael and Jean had last lived together over a year prior to the filing of the Complaint, that Jean had deserted and failed to support Michael and was unfaithful to him throughout their marriage.

Michael asks you what your advice would be in pursuing claims against Steven Smith, Devin Computers Inc. and Arak. How would you proceed and why? How would you expect the Defendants do defend this case?

What discovery methods would you employ?

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## **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. RULE 11**

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**2. INJUNCTIVE RELIEF** \_\_\_\_\_

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**3. THE THREE TESTING MOTIONS** \_\_\_\_\_

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**4. RES JUDICATA and COLLATERAL ESTOPPEL**\_\_\_\_\_

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**5. ERIE PROBLEM AND THE OUTCOME DETERMINATIVE TEST**\_\_\_\_\_

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**6. GENERAL and SPECIFIC JURISDICTION**\_\_\_\_\_

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**7. FORUM NON CONVENIENS**

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**8. LONG ARM STATUTE**

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**9. WELL PLED COMPLAINT RULE**

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**10. INTERPLEADER**

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# **CIVIL PROCEDURE AND CONFLICT RESOLUTION**

**Fall 2013 Final  
Professor Coyne**

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.**

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## **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 accidentally 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 proceed and why?

What discovery would you engage in?

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## 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

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**5. INJUNCTIVE RELIEF** \_\_\_\_\_

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**6. CLASS ACTION** \_\_\_\_\_

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7. WELL PLED COMPLAINT RULE

8. AFFIRMATIVE DEFENSES

9. DISCOVERY

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**10. COUNTERCLAIMS AND CROSS-CLAIMS**

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**MASSACHUSETTS SCHOOL OF LAW**

**CIVIL PROCEDURE  
AND CONFLICT RESOLUTION**

**PROFESSOR COYNE  
FINAL EXAM -- FALL 2012**

**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.

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**QUESTION ONE**

While looking for deals on a new phone to buy and browsing [www.faceplace.com](http://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 Minitabletphone. In reading that glowing recommendation by Deals, it provided Peters with a link to another site for the Minitabletphone made by Minitabletphone, Inc., a Delaware corporation with headquarters in Las Vegas, Nevada. Peters had earlier read about the Minitabletphone in an article in *The New York Times* when the company first began manufacturing the Minitabletphone in Toronoto, Canada. The Minitabletphone claims to be the last and only device the user will ever need to work or play.

He further investigated it at Minitabletphone.Com, a website owned and operated by the retail distributor of the Minitabletphone, 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 Minitabletphone's main processor in China. Tetende called the telephone number and ordered the Minitabletphone from his home in Harrison. He sent a check for \$1500 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 Minitabletphone 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 Minitabletphone was defective in that the piece manufactured by OOLALA overheated during short-term use. The administrative proceeding fined both MINI.Com Inc. and Minitabletphone \$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:

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2. The Three Testing Motions:

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3. Equitable Remedies:

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4. Res Judicata and Collateral Estoppel:

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5. Erie and the Outcome Determinative Test:

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7. Amending Pleadings:

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8. Well Pled Complaint Rule:

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9. Discovery:

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10. Removal Jurisdiction:

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# 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.

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## **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 4<sup>th</sup> of July and to celebrate Campbell's parent's 30th anniversary. Campbell's parents, Sergio and Lauren Patrick were enjoying their 30<sup>th</sup> 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?

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**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:

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2. Amending Pleadings:

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3. Erie and the Outcome Determinative Test:

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4. Res Judicata and Collateral Estoppel:

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5. Removal Jurisdiction:

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6. Counterclaims:

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7. The Three Testing Motions:

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8. Well Pled Complaint Rule:

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9. Affirmative Defenses:

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MASSACHUSETTS SCHOOL OF LAW

CIVIL PROCEDURE  
AND CONFLICT RESOLUTION

PROFESSOR COYNE  
FINAL EXAM -- FALL 2010

ID# \_\_\_\_\_

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.

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**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 were 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:

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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:

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6. Counterclaims:

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7. Amending Pleadings:

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8. Well Pled Complaint Rule:

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9. Discovery:

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10. Forum Non Conveniens:

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# CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2009 Final Examination  
Professor Coyne

*Tyranny begins where law ends.*

William Pitt

Number: \_\_\_\_\_

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 Identification 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.

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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](http://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

over the internet at www.EI Pilot.com through a distributor called EI Pilot.com, Inc., a Delaware corporation.

On May 11, 2009, Britt Nicks purchased a I Pilot organizer for \$2,500 at www.EIPilot.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 ResJudicata**

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**Affirmative Defenses**

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**The Erie Doctrine/Outcome Determinative Test**

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**Counterclaims**

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**Equitable Remedies**

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**Specific and General Jurisdiction**

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**Standards of Proof**

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**Amended Pleadings**

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**Discovery**

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# 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.

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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](http://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](http://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](http://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**

Message Pilot, Inc., a corporation headquartered and incorporated under Vermont law, manufactures Message Pilot organizers at its plant in Concord, New Hampshire. It calls itself the first manufacturer of Message Pilot organizers in New England in its advertisements in *North Shore Weekly*, a local newspaper. Message Pilot Inc. sells the Message Pilots through its retail stores in Burlington, Vermont and Providence, Rhode Island and over the internet at [www.EMessagePilot.com](http://www.EMessagePilot.com) through a distributor called EMessage Pilot.com, Inc., a Delaware corporation.

On April 1, 2005, Brianna Blakely purchased a Message Pilot organizer for \$2,500 at [www.EMessagePilot.com](http://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

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### Well Pled Complaint Rule

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### Collateral Estoppel and ResJudicata

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Class Actions

The Erie Doctrine/Outcome Determinative Test

Counter Claims

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Equitable Remedies

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Specific and General Jurisdiction

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Standards of Proof

Amended Pleadings

**CIVIL PROCEDURE  
AND CONFLICT RESOLUTION**

**PROFESSOR COYNE  
FINAL EXAM FALL 2007**

SS# \_\_\_\_\_

*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.

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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](http://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: \_\_\_\_\_

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The Three Testing Motions: \_\_\_\_\_

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# CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2015 Mid-Term Question  
Professors Coyne and Dimitriades

Student Number \_\_\_\_\_

*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.

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## 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 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**

Personal Jurisdiction \_\_\_\_\_

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Injunctive Relief

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Erie and the Outcome Determinative Test

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The Three Testing Motions

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Rule 11 \_\_\_\_\_

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CivProMidtermDAY2015/Coyne



# CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2015 Mid-Term Question  
Professors Coyne and Dimitriades

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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 \_\_\_\_\_

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The Three Testing Motions \_\_\_\_\_

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Class Actions \_\_\_\_\_

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**Statute of Limitations**\_\_\_\_\_

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# CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2014 Mid-Term Question  
Professors Coyne and Dimitriadis

Exam ID Number \_\_\_\_\_

**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 page two 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 Identification Number on this examination and blue book. Please answer this problem in no more than five handwritten pages. We will evaluate your answer on your knowledge of the law, ability to recognize issues and your analysis of these issues.

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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.EUrFonePlus+.com](http://www.EUrFonePlus+.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](http://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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# CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2014 Mid-Term Question  
Professors Coyne and Dimitriadis

Exam ID Number \_\_\_\_\_

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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 \_\_\_\_\_  
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Erie and the Outcome Determinative Test \_\_\_\_\_  
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Removal Jurisdiction \_\_\_\_\_  
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Injunctive Relief \_\_\_\_\_

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## CIVIL PROCEDURE AND CONFLICT RESOLUTION

### Fall 2014 Mid-Term Question Professors Coyne and Dimitriadis

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](http://www.EUrFonePlus+.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](http://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?

# MASSACHUSETTS SCHOOL OF LAW

CIVIL PROCEDURE AND CONFLICT RESOLUTION

PROFESSOR COYNE  
Mid-Term Exam  
Fall 2013

ID Number: \_\_\_\_\_

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**

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## **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.

Fraudulo 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:

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2. Well Pled Complaint Rule:

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3. Erie Problem and the Outcome Determinative Test:

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4. Counterclaims:

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5. Removal Jurisdiction:

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# 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.

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## 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.

X2010 Tablet, Inc., a corporation headquartered and incorporated under Delaware law, sells the X2010 Tablet computer from its warehouse in "tax free" Concord, New Hampshire. It calls itself the largest reseller of X2010 Tablet computers in the northeast. X2010 Tablet Inc. sells the X2010 Tablets through its retail stores in Philadelphia, Pennsylvania and Providence Rhode Island, at its Facebook site and over the internet at www.Tablet.com through a distributor



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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Erie Problem/ Outcome Determinative Test \_\_\_\_\_

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Removal Jurisdiction \_\_\_\_\_

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Injunctive Relief

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# 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

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## 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](http://www.Goanywhere.com) through a distributor called Goanywhere.com, Inc., a Delaware corporation.

On his Facebook page ([www.facebook.com](http://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 product for \$200 at [www.Goanywhere.com](http://www.Goanywhere.com). She ordered Federal Express shipping for an extra \$25 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**

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**Eire Problem/Outcome Determinative Test**

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**Removal Jurisdiction**

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**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.

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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](http://www.E-Phone.com) through the distributor, NottheIPhone, Inc., a Bermuda corporation. NottheIPhone, 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 Plaintiff 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, Plaintiff 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. Plaintiff 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 \_\_\_\_\_

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Supplemental  
Jurisdiction \_\_\_\_\_

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Injunctive Relief

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Personal Jurisdiction

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Rule 11

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# 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.

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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](http://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](http://www.InternetCellphones.com) . He had it delivered to his home in Salem, New Hampshire. He used the Internet Cellphone at a 75<sup>th</sup> 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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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.

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Flatscreens R Us, Inc., a corporation headquartered and incorporated under New Hampshire law, manufactures flatscreen televisions at its plant in Andover, Massachusetts. It calls itself the best manufacturer of flatscreen televisions in New England in its advertisements in *New England Today*, a local newspaper. The flatscreens are sold through its retail stores in Salem, New Hampshire and Providence, Rhode Island and over the internet at [www.EFlatscreens.com](http://www.EFlatscreens.com) by a distributor called EFlatscreens.com, Inc., a Delaware corporation.

On February 1, 2002, Britt Hart purchased a flatscreen television for \$2,500 at [www.EFlatscreens.com](http://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?

myfiles/CivilProcedure/Civpro.Midterm2004

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 \_\_\_\_\_

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The Outcome Determinative Test

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Subject Matter Jurisdiction \_\_\_\_\_

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Affirmative Defenses \_\_\_\_\_

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## CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2003 — 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.

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EZ Computers, Inc., a corporation headquartered and incorporated under Massachusetts law, manufactures computers at its plant in Andover, Massachusetts. It calls itself the largest manufacturer of computers in New England in its advertisements in *The Boston Globe*. The computers are sold through its retail stores in New England and over the internet at [www.webcomputers.com](http://www.webcomputers.com) by a distributor called Web Computers.com, Inc., a Delaware corporation.

Jen Pino purchased a computer at [www.webcomputers.com](http://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?

myfiles/CivilProcedure/civpromidterm2003



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

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The Outcome Determinative Test

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Supplemental Jurisdiction

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Injunctive Relief

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Forum Non Conveniens

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**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 hailed into court to defend a suit in Massachusetts. Foreseeability 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 (Entergy, 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

Wisemans must be able to produce the necessary support to prove their damages.

Injunctive relief is another form of relief the Wisemans might seek to stop the power plant's many problems. In order to have an injunction issued, the Wisemans must satisfy all five requirements for the issuance of an injunction. The Wisemans must show that there is:

1. No adequate remedy at law.
2. A likelihood of success based on the facts and law.
3. Immediate and irreparable harm.
4. The competing harm tips in their favor.
5. Public policy concerns favoring the granting of the injunction.

The Wisemans might seek the issuance of a temporary restraining order, then a preliminary injunction (after some form of hearing) and finally a permanent injunction. The purpose of the injunction is to make Entergy, Malaguti and Hotwires refrain from its shoddy operation of the plant due to the adverse affects on the public. In order for an appeals court to reverse the lower court's ruling on the issuance of an injunction, the lower court must have been clearly erroneous on the application of law to the case.

The Wisemans could potentially be the representatives of a class action suit where they sue for the injury to the class as a whole. In order to have a class action, there must be a group too numerous for joinder who have been injured as a result of common questions of law or fact. Because numerous people were injured when the rods exploded, it may be appropriate for a class action. If so, then attorneys' fees may be awarded under the substantial benefit, common fund or private attorney general theory.

Myfiles/CivPro.GoodAnswer

**QUESTION TWO**  
**CIVIL PROCEDURE**  
**CORRECT ANSWERS**

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.

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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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Erie Doctrine: \_\_\_\_\_  
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Damages: \_\_\_\_\_  
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Class Actions: \_\_\_\_\_

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Supplemental Jurisdiction: \_\_\_\_\_

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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.

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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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**CIVIL PROCEDURE AND CONFLICT RESOLUTION**

**Fall 1999 - Midterm**

**Professor Coyne**

*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.

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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 Skil Hill and Resort, Inc. to do?

myfiles/CivilPro.Midterm