STETSON UNIVERSITY COLLEGE OF LAW
Gulfport, Florida

GENERAL INSTRUCTIONS

THE ATTENTION OF ALL STUDENTS IS CALLED TO THE FOLLOWING INSTRUCTIONS:

1. The answers and the pledge are to be identified by examination number only. DO NOT WRITE OR TYPE YOUR NAME ON ANY BLUEBOOKS, SCANTRON SHEETS, OR ANYWHERE ON THE EXAMINATION; USE YOUR EXAMINATION NUMBER INSTEAD.

2. During the course of the examination, ABSOLUTELY NO EXAMINATION MATERIALS MAY BE REMOVED FROM THE EXAM ROOM. This includes the exam, any Scantron sheets, bluebooks, or examination answers.

3. This examination ends at the expiration of the time indicated, or when the examination is turned in, whichever comes first.

4. The professor will be permitted to grade only answers that have been submitted during the examination, in the method indicated by the professor.

5. At the conclusion of the time prescribed for the examination, students are forbidden from communicating with the professor with reference to the final examination until the grades have been turned in to the Registrar's Office except that students may communicate with the professor at any time concerning matters related to the Code of Student Professionalism and Conduct or the Academic Honor Code.

TIME: FOUR (4) HOURS
SPECIAL INSTRUCTIONS

1. This is a LIMITED OPEN BOOK examination. You have previously been advised as to which materials you may use during the examination. You may bring to the exam the required books for the course and any of the seven (7) required handouts that were previously identified as permissible for the exam. As previously explained in class and by email, if you bring any of these 7 handouts with you, they should be printed in the same format (i.e. font size, spacing, margins, etc.) in which they were posted on the course’s TWEN site. You may consult the permitted materials and any handwritten notations you may have made in or on them during the exam. You may NOT, however, bring any other materials with you to the exam.

2. This examination consists of TEN (10) PAGES. You should check now that you have all the pages. You have FOUR (4) HOURS to complete the exam.

3. The point values and suggested times for answering each question are noted at the beginning of each question. Although each question may take you more or less time than suggested to complete, you should be conscious of the overall time allotted for the exam (4 hours) and budget accordingly.

4. The examination is worth a total of 200 POINTS and is divided into TWO (2) PARTS:

   - **PART I** of the examination contains THREE (3) ESSAY QUESTIONS and is worth a combined total of ONE HUNDRED FORTY (140) POINTS.
     - QUESTION 1 consists of FOUR (4) SUBPARTS and is worth a total of FIFTY (50) points.
     - QUESTION 2 consists of FOUR (4) SUBPARTS and is worth a total of FORTY (40) points.
     - QUESTION 3 consists of THREE (3) SUBPARTS and is worth a total of FIFTY (50) points.

   **YOU MUST ANSWER ALL OF THE QUESTIONS IN PART I.** I suggest you allot approximately TWO HOURS and FORTY-EIGHT MINUTES to Part I.
PART II of the examination consists of THREE (3) SHORT ANSWER QUESTIONS and is worth a combined total of SIXTY (60) POINTS.

- QUESTION 1 consists of TWO (2) SUBPARTS and is worth a total of TWENTY-FIVE (25) points.
- QUESTION 2 consists of TWO (2) SUBPARTS and is worth a total of FIFTEEN (15) points.
- QUESTION 3 consists of TWO (2) SUBPARTS and is worth a total of TWENTY (20) points.

YOU MUST ANSWER ALL OF THE QUESTIONS IN PART II. I suggest you allot approximately ONE HOUR and TWELVE MINUTES to Part II.

5. Please use a blue exam book or books or a computer to answer all of the questions in PARTS I and II. Make sure to write or type your exam number on your answer, including each blue exam book you use. You may use as many exam books or type as many pages as you would like. Scrap paper is also provided but will be not be considered as part of your answer for grading purposes.

6. If you handwriting your answers in blue books, please write on every other line and only on the front of each page (i.e. do not write on the backs of pages).

7. In forming your answers, you should not feel compelled to include case names or citations, but should make clear which doctrine, statutory provision, or rule and which of the given facts you are relying on to support your analysis. Your answers should be limited to the question(s) asked, and should be organized accordingly. Organization is an important factor in the quality of your answer, so take care in structuring your responses. I suggest outlining your answer (however briefly) before writing. This is not required, but it can be a useful tool in structuring your response.

8. You should assume that every lawsuit referred to in the exam has been filed in a United States District Court (i.e., a federal court) unless otherwise noted.

END OF INSTRUCTIONS

GOOD LUCK AND HAVE A GREAT BREAK!
PART I
ESSAY QUESTIONS
Suggested Time: 2 hours and 48 minutes

Please ANSWER ALL THREE (3) questions in Part I, including all subparts.

When I Paint My Masterpiece Jewelers, Inc. ("WIPMM") is a Delaware corporation with its principal place of business in San Francisco, California. WIPMM sells vintage and other exotic jewelry, including a wide collection of items from North Africa and the Middle East. WIPMM has a website on the World Wide Web that describes its merchandise and its mission of bringing cultural diversity into the American art market with only the “most authentic and highest quality jewelry from around the globe.” The website also includes a list of all of WIPMM’s stores and their contact information. The website is WIPMM’s sole method of advertising, but it does not process sales online; all transactions must be conducted in person at one of WIPMM’s stores. WIPMM has 15 stores in California and one in Wilmington, Delaware. It does not now, nor has it ever, had a store anywhere but California or Delaware.

Tom Thumb was born and raised in San Francisco. About a year ago, he walked past a WIPMM storefront in San Francisco and became entranced by a watch in the window. He went in and, as was his custom, engaged in small talk with the store clerk. He explained that he had lived in the neighborhood for years and only today noticed the WIPMM store, but that he was glad he did because he thought the watch was extraordinary. Tom purchased the watch that day for $5000 and wore it happily for about a year.

During that year, Tom met and fell in love with a woman named Johanna. When Johanna got a job offer in Philadelphia, Pennsylvania, Tom didn’t hesitate to sell his home in California and move east with her. When they got to Philadelphia and settled into an apartment there, Tom decided to propose. He went online looking for local jewelers and came across the WIPMM website. Still very excited about his watch purchase, he decided to look up WIPMM’s nearest location in hopes of finding a WIPMM store nearby and an engagement ring as unique as his prize watch. To his delight, he discovered that WIPMM had a store in Wilmington, Delaware, only about 45 minutes from Philadelphia. Tom visited the store and told the clerk he was looking for “an Egyptian ring, something that will sparkle when she speaks.” The clerk showed Tom precisely the ring he was looking for. It was a little pricey at $10,000, but Tom just had to have it. He bought it on the spot and in his excitement told the clerk that “I just moved east with my soon-to-be-fiancé and we live about 45 minutes away. I can’t believe how lucky I am to have found another WIPMM store 3000 miles from California.”

Tom drove back to Philadelphia and proposed to Johanna that night. She accepted and the two lived in pre-marital bliss for the next few weeks. Tom and Johanna decided that they would settle down in Philadelphia and eventually raise a family there. About a month after the
proposal, however, Tom’s entire life seemed to take a turn for the worse. The Egyptian ring he had given to Johanna as an engagement ring turned Johanna’s finger a grisly shade of green. She had to be hospitalized with an infection and had to have the ring cut off her finger due to the swelling. Convinced that it was all Tom’s fault, Johanna called off the engagement and refused to speak to Tom. She moved out and left Tom alone in their apartment.

Two weeks after losing his fiancé, Tom’s prized watch from the WIPMM store in San Francisco stopped working. When he took the watch to be repaired, he learned that the original inner workings of the watch had been completely replaced within the last year with cheap domestic replacement parts, and that the replacement parts had rusted together into a single dysfunctional mass. The watch was broken beyond repair.

That was the last straw for Tom. He filed a lawsuit against WIPMM in the U.S. District Court for the Eastern District of Pennsylvania in Philadelphia. He brought a claim for $10,000 against WIPMM under a federal fraud statute for selling him a tainted ring in interstate commerce. He also brought a claim for $60,000 for intentional infliction of emotional distress and loss of consortium as a result of Johanna leaving him due to the tainted ring. Finally, he asserted a claim of negligence in which he sought to recover the $5000 he paid for the watch. Tom hired a process server who properly served WIPMM at its San Francisco store location.

**Question 1:**
(Suggested Time: 1 Hour; Possible Points: 50)

WIPMM’s lawyer, an excellent civil procedure student, immediately began drafting motions to dismiss Tom’s complaint. She filed the following motions on behalf of WIPMM:

A. 12(b)(2) motion to dismiss for lack of personal jurisdiction. For this question, assume Pennsylvania has a long-arm statute that permits jurisdiction “to the full extent allowed by the Due Process Clause of the U.S. Constitution.”

B. 12(b)(3) motion to dismiss for lack of venue;

C. Motion to dismiss Tom’s intentional infliction of emotional distress and negligence claims for improper joinder; and

D. 12(b)(1) motion to dismiss for lack of subject matter jurisdiction over all three claims.

How should the court resolve each of these motions? Please provide separate responses for each motion, including full explanations and support for your answers.
From this point forward, assume that WIPMM’s motions to dismiss were denied and that WIPMM timely filed its answer to Tom’s complaint.

Now that he was in active litigation against WIPMM, Tom decided to look online to see if anyone else has had similar difficulties with WIPMM. He found Dupree’s Diamond Blog, a public online dialogue operated by McGee Dupree, a Delaware resident. The blog describes itself as “the source for true and useful information about jewelers.” In addition to blogging about jewelers, Dupree is among the largest suppliers of precious stones and metals in the Mid-Atlantic States. He has significant operations and hundreds of employees in New York and West Virginia, and for the last 15 years, Dupree has controlled the largest mining operation in Western Pennsylvania. He has 5 facilities, including his worldwide mining headquarters, and more than 300 employees in Pennsylvania alone.

Tom’s search of Dupree’s blog for information about WIPMM led him to a post from 2007 claiming that the reason that WIPMM had so much Middle Eastern jewelry was because they were operating as a money laundering operation for terrorists. It explained that this information should be “of particular importance to readers in California, Delaware, Pennsylvania, New Jersey, and Maryland” due to the location of WIPMM stores, and credited All American Jewelers (“AAJ”), a sole proprietorship from Wilmington, Delaware (and a competitor of WIPMM) with providing the information. The post went on to praise AAJ for being a “truly great American small business” and for “providing a shining example of the highest standards of integrity and quality in the retail jewelry industry.” AAJ is also a frequent customer of Dupree’s mining interests.

The blog post included the phone number and Wilmington, Delaware address of AAJ’s only retail store. Based on the post, Tom visited the AAJ store and bought a new ring for Johanna, hoping to win her back. John Wesley Harding, AAJ’s owner, met Tom during his visit to the store. When Harding asked Tom how he had heard of AAJ, Tom mentioned Dupree’s blog. Harding was surprised to hear that the store had been mentioned online, as he had limited AAJ’s marketing strategy to advertisements in the local phonebook and customer word of mouth.

Tom paid $10,000 for the new ring, but Harding assured Tom that it was on clearance due to an abundance of inventory and was actually worth $70,000. Because it was on clearance, however, AAJ had a “no return” policy for the ring. In order to avoid sales tax, Harding treated the transaction as a phone sale, delivering the ring from the AAJ store in Wilmington directly to Tom’s home in Philadelphia.
Back in Philadelphia, Tom took the new ring to Johanna and begged her to take him back, but she was too traumatized by her recent medical ordeal and rejected him again. Unable to return the ring and too pained to keep it, Tom had it appraised for sale and discovered that what appeared to be platinum and diamond was really aluminum and glass. The ring was only worth about $500.

Upon finding out that AAJ had sold him a ring that was basically worthless, Tom filed a motion to amend his complaint against WIPMM to include a claim of negligence against AAJ. Despite the fact that he only paid $10,000 for the ring, Tom sought damages of $70,000 from AAJ based on the theory (arrived at in good faith) that had AAJ’s representations about the ring been true, Tom would have received property worth $70,000. Tom hired a process server who properly served Tom’s amended complaint on WIPMM in San Francisco and on AAJ in Wilmington.

**Explain your answers to the following questions fully.**

A. What is the likelihood that Tom’s motion to amend his complaint against WIPMM to add a claim against AAJ will be granted?

B. Assuming for purposes of this question that Tom’s motion to amend is granted, is his claim against AAJ permitted under the rules of joinder?

C. Does the court have subject matter jurisdiction over Tom’s claim against AAJ?

After Tom amended his complaint to include his claim against AAJ, the two defendants—WIPMM and AAJ—moved to transfer the case from the Eastern District of Pennsylvania to the District of Delaware (Delaware has only one federal judicial district), or in the alternative to sever Tom’s claims against WIPMM from his claims against AAJ.

D. What is the likely outcome of WIPMM’s and AAJ’s motion to transfer?  
(Note: You should not address either the severance or choice of law issues in your response to this question).
Question 3:
(Suggested Time: 1 Hour; Possible Points: 50)

Assume from this point on that the court chose not to transfer the case to the District of Delaware, but to sever it such that Tom’s claims against WIPMM will be tried in a separate lawsuit from his claims against AAJ. Both cases, however, will remain in the Eastern District of Pennsylvania.

After the cases were severed, Tom learned about Dupree’s relationship with AAJ. In his case against AAJ, Tom moved to amend his complaint again. In addition to his existing $70,000 negligence claim against AAJ, Tom’s amended complaint included an additional claim for $10,000 against AAJ for Tom’s pain and suffering resulting from the emotional stress of being rejected again by Johanna and spending his entire savings on another worthless ring, as well as a false advertising claim against Dupree in the amount of $10,000. Tom’s motion to amend was granted and he properly served the amended complaint on both AAJ and Dupree in Delaware.

AAJ’s response to Tom’s new complaint included a third-party claim by AAJ against its supplier in this case, Don’t Think Twice Diamonds (DTT), for $100,000 due to DTT’s alleged negligence in providing AAJ with the (virtually worthless) ring that AAJ sold to Tom. DTT is a Delaware corporation with its principal place of business in Newark, Delaware.

Explain your answers to the following questions fully.

A. Dupree filed a timely motion to dismiss the claim against him for lack of personal jurisdiction under Rule 12(b)(2). What is the likely outcome? For purposes of this question, assume Pennsylvania’s long-arm statute permits jurisdiction “to the full extent allowed by the Due Process Clause of the U.S. Constitution.”

B. Dupree, AAJ and DTT filed a timely joint motion to dismiss all of the claims against them for lack of subject matter jurisdiction under Rule 12(b)(1). What is the likely outcome?

C. DTT timely moved to dismiss AAJ’s claim against it for improper joinder. What is the likely outcome?
PART II
SHORT ANSWERS
Suggested Time: 1 hour and 12 minutes

Please ANSWER ALL THREE (3) Questions in Part II, including all subparts.

The questions in this section refer to the fact pattern developed in Part I.

Question 4:
(Suggested Time: 30 Minutes; Possible Points: 25)

Tom’s amended complaint alleges false advertising against Dupree. For our purposes, assume that a claim of false advertising requires Tom to prove that Dupree made a false statement about AAJ and did so intentionally. Tom’s complaint alleges, in pertinent part:

¶10. Defendant Dupree had every opportunity to inform himself about AAJ. Dupree posted inaccurate information about AAJ on his blog. Dupree did so with actual malice and intent to mislead his readers, including plaintiff Tom Thumb.

A. What pleading standards could the court conceivably apply to Tom’s complaint?

B. Does ¶10 of Tom’s complaint satisfy those standards?

Question 5:
(Suggested Time: 18 Minutes; Possible Points: 15)

Assume for purposes of this question that the court notified the parties of its denial of Dupree’s motion to dismiss Tom’s claims against him for lack of personal jurisdiction on December 1, and that Dupree filed his Answer on December 19 of the same year.

A. Is Dupree’s Answer timely? Explain your answer fully.

B. Assuming that the court does allow Dupree to file his Answer on December 19, may Dupree thereafter seek to have Tom’s claim against him dismissed for failure to state a claim upon which relief can be granted? Explain your answer fully.
**Question 6:**
*(Suggested Time: 24 Minutes; Possible Points: 20)*

Assume for purposes of this question that the court denies Dupree’s challenge to Tom’s complaint and the case proceeds further into litigation. The following evidence is developed in discovery:

1. Dupree admits in writing that what he said on his blog about AAJ was not true.
2. Dupree explains under oath that although what he said about AAJ was not true, he was not aware that it was false at the time he posted it.
3. Tom collects documents and sworn witness testimony showing that Dupree had reason to know that his statements about AAJ were false when Dupree made them.

A. What discovery tool(s) may have been used to collect each of these pieces of information?

B. Based on this evidence, Tom and Dupree each file a motion for summary judgment. Who is likely to win each motion and why?

ON MY HONOR, I HAVE NEITHER GIVEN NOR RECEIVED AID ON THIS EXAMINATION.

EXAM NO. ________