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: THREE-AND-ONE-HALF (3.5) 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 to confirm that you have all the pages. You have THREE-AND-ONE-HALF (3.5) 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 (3.5 hours) and budget accordingly.
4. The examination is divided into TWO (2) PARTS:

PART I consists of FIVE (5) questions, some of which have multiple parts. You are expected to answer all five questions in PART I. PART I is worth a total of 200 POINTS.

PART II consists of ONE (1) EXTRA CREDIT question, which you are not required to answer. PART II is worth up to 20 additional points.

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 not be considered as part of your answer for grading purposes.

6. If you handwrite 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!
August West (“August”) has always wanted to own a handcrafted sailboat. Although he was born and raised in Tampa, Florida, an area full of accomplished nautical craftspeople, August really wanted a boat made by Catfish John, a popular boat designer and master woodworker from Memphis, Tennessee. August heard of Catfish John’s boat designing prowess at the annual Tampa Boat Show, which includes a presentation by the Southeastern Boatmakers Guild (SBG), a regional organization of individual boat designers that seeks not only to promote hand-crafted boats, but that serves as an informal service and repair network for owners of handmade boats. Owners of boats built by SBG members are encouraged to have their boats serviced by other SBG members when the owner is unable to bring it back to the original manufacturer. The SBG was founded in Florida and derives its largest membership from Florida businesses, but stretches as far north as Virginia and as far west as Texas. Catfish John is one of the original members. When August saw some pictures of Catfish John’s boats at the SBG presentation, he knew those were the only boats for him.

Because boat-making is seasonal and vulnerable to national economic conditions, Catfish John supplements his income by selling low- to moderately-priced wooden sculptures on the internet. He uses his name recognition from his boat-making business as a marketing tool for his sculpture. It is a relatively lucrative part of Catfish John’s overall business portfolio, and one that he attributes to the unique qualities of the wood he uses in his sculptures. Every autumn, Catfish John drives to Florida to purchase a truckload of 3-year-old cypress from a tree farm in Ocala. The colors and grains in that vintage of cypress are a woodworker’s dream, and have kept Catfish John coming back for each of the last 15 years, even as wood and gas prices make the trip more and more expensive.

After much scrimping and saving, in January, 2006 August finally made the trip from Tampa to Memphis and ordered a new, custom sailboat from Catfish John. The price on the new boat was $150,000. August paid Catfish John a $75,000 deposit on the boat when he ordered it, with the remaining $75,000 due when the finished boat arrived safely in Tampa. More specifically, August and Catfish John agreed that when the boat was finished, Catfish John would arrange to have it delivered to the Port of New Orleans in Louisiana because, as August explained, he wanted “to sail it back to my home in Tampa myself. When I get the boat safely to Tampa, I will send you the $75,000 I owe you.” Catfish John agreed and even threw in for free the charts and supplies necessary to make the trip from New Orleans to, as he put it, “Tampa or, better yet, Cancun—it is beautiful this time of year and a great sail.” The two men did not speak again, except for a voice mail message left by Catfish John for August telling him the boat would be ready for pickup in New Orleans on June 15, 2006.
August picked up his new boat, the “Pearly Baker,” in New Orleans on June 15, 2006 and set sail for Tampa using the charts that Catfish John had included as part of the deal. The trip was generally uneventful until August entered Tampa Harbor on July 1, 2006. Although he entered the harbor paying careful attention to the charts that Catfish John gave him to make sure he was in deep enough water to avoid running aground, it turned out the charts, which were from five years ago, were too old to include a sandbar that had developed as a result of a particularly strong hurricane season 2 years earlier (it is common knowledge among sailors that charts should be updated for just this reason at least every two years). As a result of his outdated chart, August sailed the Pearly Baker right into the new sandbar. The Pearly Baker came to an abrupt halt in the middle of the harbor and began to take on water. Despite his best efforts to save it, the boat went down right in front of August as he watched helplessly from a Coast Guard boat that had come out from shore to rescue him.

August never paid Catfish John the remaining $75,000, but after almost two years of grieving over his lost treasure, he decided that he cannot go on without a greater feeling of closure. He filed suit against Catfish John in federal court in Tampa, Florida for negligence in the manufacturing of the Pearly Baker, claiming that the boat should not have leaked so badly simply by contacting a new (and thereby relatively soft) sandbar. August sought a refund of the money already paid to Catfish John, as well as compensation for his travel expenses, medical bills from the hospital in Tampa where he was treated, and pain and suffering relating to the crash, all of which greatly exceeded the amount of the original deposit. The suit was filed on June 15, 2008, approximately two weeks before the applicable statute of limitations expired.

Catfish John filed a timely motion to dismiss the suit under Fed. R. Civ. P. 12(b)(2). Analyze and explain in detail whether you think Catfish John’s motion will be successful. To the extent you think it may be useful, a copy of the relevant language of Florida’s Long Arm Statute is attached on the following page.

Important Note: You should disregard any consideration of, or issues relating to, admiralty law in your response.
Florida Long-Arm Statute

Fla. Statutes § 48.193. -- Acts subjecting person to jurisdiction of courts of state

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:

(a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.

(b) Committing a tortious act within this state.

(c) Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.

(d) Contracting to insure any person, property, or risk located within this state at the time of contracting.

(e) With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

(f) Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:

1. The defendant was engaged in solicitation or service activities within this state; or

2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.

(g) Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.

(h) With respect to a proceeding for paternity, engaging in the act of sexual intercourse within this state with respect to which a child may have been conceived.

(2) A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

* * *
Assume for purposes of this question only that Catfish John’s 12(b)(2) motion was denied on October 1, 2008. Catfish John filed and properly served an answer in which he included a timely and well-pled counterclaim against August for breach of contract for the $75,000 August refused to pay Catfish John for the Pearly Baker.

(A) August moved to dismiss Catfish John’s counterclaim on the grounds that it may not be pursued in federal court. Please analyze and explain in detail how you think the court should rule on August’s motion.

Immediately after filing and serving his Answer, Catfish John filed a motion to transfer the case to the United States District Court for the Western District of Tennessee, in Memphis, Tennessee. August opposed the motion.

(B) Please analyze and explain in detail whether you think the court can or should transfer the case, and if so, why.
Assume for purposes of this question that the court granted Catfish John’s transfer motion and ordered the case transferred to the Western District of Tennessee in Memphis. The trial court in the W.D. Tenn. set a scheduling conference pursuant to Fed. R. Civ. P. 16(b) for November 28, 2008.

(A) Which state choice of law doctrine will apply to the case in the Western District of Tennessee? Explain your answer.

(B) What is the latest date on which discovery could have begun? Explain your answer.

On December 15, 2008, in response to Catfish John’s counterclaim, August moved for leave to amend his original complaint to add another claim against Catfish John for negligence in giving August outdated charts that Catfish John knew or should have known were likely to be inaccurate and cause an accident. Catfish John objected on the grounds that (1) amendment is improper at this juncture in the suit, (2) the inclusion of August’s new claim against him is impermissible under the Federal Rules of Civil Procedure, and (3) August’s new claim against Catfish John is untimely due to the expiration of the two-year statute of limitations for negligence claims on June 30, 2008.

(C) Please analyze and explain in detail how you think the court should rule on August’s motion for leave to amend in light of Catfish John’s objections thereto.

Note: Please limit your response to address ONLY the three objections raised by Catfish John to August’s motion.
After further investigation, August decided to amend his complaint again to add two claims against Lost Sailor Hauling, a shipping company incorporated under the laws of Florida with its principal place of business in Nashville, Tennessee. Lost Sailor was hired by Catfish John to move the Pearly Baker from Catfish John’s workshop in Memphis to New Orleans for delivery to August. August was granted leave to amend his complaint to add the following two claims against Lost Sailor: (1) a claim for negligence for allegedly mishandling the Pearly Baker on its trip from Memphis to New Orleans, and (2) a claim for negligence per se for violating a federal regulation prohibiting the overland transportation of wooden boats in shipments greater than 10,000 pounds, thereby increasing the risk of hull damage during their journey. Each claim was for $150,000.

In response to August’s most recent amended complaint, Catfish John filed an amended answer that included (1) a claim for $150,000 against Lost Sailor alleging that, due to Catfish John’s contract with Lost Sailor to ship the Pearly Baker, Lost Sailor must compensate Catfish John for any judgments August may win against him, and (2) a claim for $150,000 against Casey Jones, the Tampa Harbor Master, for his alleged negligence in failing to properly mark the sandbar on which the Pearly Baker ran aground. Casey is a current and lifelong Tampa resident.

Please analyze and explain in detail whether all of the claims added by August and Catfish John:

(A) Are permissible under the federal rules of joinder; and

(B) Comply with the requirements of federal subject matter jurisdiction.
August filed a motion for summary judgment against Lost Sailor, in which he sought summary judgment on both of his claims against Lost Sailor. The following evidence is part of the summary judgment record:

1. Paperwork from Lost Sailor signed by the harbor master in New Orleans that attests to the fact that the Pearly Baker was “in good working order” when it arrived in New Orleans on June 15, 2006.

2. A transcript of a sworn statement by Lost Sailor’s chief compliance officer, whom neither August nor his attorney had any familiarity with before Lost Sailor’s attorney identified him as someone with information about company policies, claiming that Lost Sailor “makes every effort to comply with all state and federal shipping regulations and has never been cited for a violation,” and that Lost Sailor has a written corporate policy of shipping “no more than two boats weighing 5000 pounds or less at any given time,” and that to his knowledge, “that policy has never been violated.”

3. An invoice dated June 15, 2006 from the New Orleans harbor master’s personal records describing a shipment of “the Pearly Baker and three other boats,” each of which weighed “approximately 3,000 pounds.”

4. A transcript of a sworn statement from the New Orleans harbor master corroborating the information in his records that the shipment including the Pearly Baker consisted of “four (4) boats weighing approximately 3000 pounds each.”

5. Sworn responses by August that he was concerned about the “attitude” of the movers from Lost Sailor while they were moving the Pearly Baker, in particular their “lack of attention to the boat,” but that he “did not observe any obvious damage to the boat when it was placed into the water in New Orleans.”

6. A written denial by Lost Sailor that the Pearly Baker was in any way damaged on its trip from Memphis to New Orleans.

Based on the information listed above, explain fully:

(A) Which discovery device(s) were most likely used by a party that did not have the information in its possession custody or control at the outset of the suit to obtain each piece of information listed above; and

(B) Whether August is likely to be successful in his summary judgment motion on either of his claims against Lost Sailor. Explain your answer fully as to the summary judgment issue for each claim.
Describe the differences in pleading standards between those stated by the court in *Dioguardi* and those articulated in *Iqbal*, and state whether you agree with the statement that “*Iqbal* appropriately achieves the important purpose of promoting judicial efficiency and discouraging frivolous lawsuits”.

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