MEMORANDUM

To: Fall 2008 Civil Procedure Class
From: Professor Virelli
Date: November 16, 2009
Re: Sample Answer and Comments for the Final Exam

Below please find a sample answer for the fall 2008 final exam. Since you were not permitted to remove it from the test room, I am also providing a copy of the exam.

This sample is an actual student answer and thus is not meant as a model (i.e. perfect) answer, but instead as an example of a successful answer (as you will see, unedited). I hope it will be helpful in identifying your strengths and weaknesses on this exam in particular and in exam-taking in general.

In addition to the sample, I have included some general comments for each question based on the exams as a whole. These are not meant to be exhaustive, but should help to fill in many of the gaps in the sample answer. The fact that a particular point is not mentioned in the sample or my comments does not mean that a student including that information in their answer did not receive credit for it; where answers included information that was relevant and instructive in answering the question, credit was awarded accordingly. Finally, as I explained earlier, you are welcome to schedule a meeting with me to discuss your exam, but I strongly encourage you to review this material prior to scheduling such a meeting.

PART I

QUESTION 1

Comments for Question 1:

This question consisted of four subparts. Part A, the Personal Jurisdiction question, required you to think of the two primary means of purposeful availment—the Stream of Commerce (SoC) and SoC Plus tests, and the Effects test. The attached answer does a nice job of dealing with each of these, but could have said more about why the Effects test doesn’t apply here, i.e. because WIPMM did not reach out to PA with knowledge that it would cause harm there. The SoC test depended on the expectations of WIPMM in selling jewelry in DE that it would be purchased by a consumer in PA. The
proximity of DE to PA and Tom’s conversation with the clerk were both relevant to that question. As for the SoC+ test, the additional issue was whether WIPMM (primarily through its website) intended to serve the PA market.

Part B required a very simple venue analysis. A substantial portion of the events giving rise to the claim occurred in PA – the watch breaking, the relationship dissolving, etc. – such that venue was easily established.

Part C was an equally simple joinder question. Rule 18 allows joinder of all claims by one party against another. Since each of the claims in the question is added to an existing claim between Tom and WIPMM, Rule 18 allows joinder of every claim.

Part D’s subject matter jurisdiction is a bit more complicated because each claim had to be dealt with separately. None of the claims get in on diversity grounds because, although the parties are diverse and aggregation is available, the total dollar value does not exceed $75,000. Nevertheless, the federal fraud claim gets in as a federal question. The IIED and Negligence claims are both state claims and are thus dependent on supplemental jurisdiction. The IIED claim arises from the same common nucleus as the fraud claim (the bad ring), and thus gets into federal court because the exceptions of 1367(b) do not apply where there is a federal question claim acting as the federal hook. The negligence claim involving the watch does not get in, however, because it does not share a common nucleus with the fraud claim – the problems with the watch and the ring are entirely unrelated. Extra points were available in this and every other supplemental jurisdiction question for discussing judicial discretion under 1367(c).

Sample Answer to Question 1:

A. 12(b)(2) Motion to Dismiss for lack of personal jurisdiction

In order to determine whether or not the court should grant WIPMM’s 12(b)(2) motion to dismiss for lack of personal jurisdiction it is necessary to determine whether or not the District Court for the Eastern District of Pennsylvania can exercise personal jurisdiction over the defendant, WIPMM. Personal Jurisdiction (“PJ”) is the ability of a court in the geographical boundary of a state to bind an individual. There are three ways for a court to obtain traditional general in personal personal jurisdiction: Domicile,
Consent, and Service in the state. Every individual has one domicile, where they reside and intend to stay. A Corporation can have more than one domicile. A corporation’s domicile is determined by where the corp. is incorporated, and where they hold their principle place of business. To determine a corporation’s principle place of business it is necessary to use the total activity test. The total activity test shows that a corporation’s principle place of business is either (1) their nerve center (brain) if they are engaged in far flung activities in multiple locations; or (2) the place of activity test, where the most is done to make the company “go”, if the company is engaged in similar activities in multiple places. Service in state is determined by which state the defendant was properly served, even if “transient” service. WIPMM’s domicile is not in Pennsylvania. WIPMM is domiciled in Delaware (due to incorporation), and California (due to its principle place of business as given from the facts). WIPMM did not give consent by defending the claim on its merits because Rule 12(b) of the FRCP states that filing a motion to dismiss does not waive personal jurisdiction objections, and as such does not show consent. WIPMM was not served in Pennsylvania, but in California. Therefore, WIPMM does not satisfy any of the traditional notions of general in personam personal jurisdiction. Thus, it is necessary to determine if Pennsylvania can obtain Long Arm PJ.

To determine Long Arm PJ it is necessary to look first at the state’s Long Arm Statute. Pennsylvania has a long arm statute that permits jurisdiction “to the full extent allowed by the Due Process clause of the U.S. Constitution.” To comport with the due process clause of the Constitution PJ is determined by establishing the defendant’s minimum contacts with the state through purposeful availment and general or specific jurisdiction (relatedness), that comports with traditional notions of fair play and justice (reasonable). There are five ways to purposefully avail oneself. The first way is Quasi In Rem attached property. WIPMM has no property in the state of Pennsylvania, so cannot satisfy purposeful availment through property. The second way to purposefully avail is by entering the state and conducting activity there, WIPMM has not entered the state of Pennsylvania because WIPMM has never had a store in Pennsylvania and has never sent any employees into the state of Pennsylvania. The third way to purposefully avail oneself is a contractual relationship. A contractual relationship is established through propr
negotiations while contemplating future consequences along with the terms of the contract and the parties course of dealing. WIPMM has no contractual relationship with any individual in Pennsylvania because WIPMM has never solicited any contractual relationship with Pennsylvania residents, and has made no negotiations with Penn. residents. While it is true that their website advertises, there is no purchases or contracts made until you into a store in Delaware or California. The fourth way to purposefully avail is entering through the stream of commerce. The stream of commerce is determined the stream of commerce test, and the stream of commerce plus test. The stream of commerce test states there is purposeful availment when products are delivered to the forum state with reasonable expectation that it would be purchased in the forum state creating foreseeability of suit. Under the stream of commerce test WIPMM has not purposefully availed themselves. There was no delivery of products into Pennsylvania, because all products must be purchases at the stores in Delaware of California. While the clerk at the store knew that Tom would be taking the product back for use to his residence 45 minutes away, 45 minutes away does not necessarily mean Pennsylvania. Therefore, WIPMM did not have foreseeability of suit in Pennsylvania because 45 minutes may still have meant Delaware (even though Delaware is a small state). Under the stream of commerce plus test there is purposeful availment if there is an intent of purpose to serve the market with an expectation of suit in that market. This can be done through advertising, and marketing. WIPMM may have purposefully availed themselves through the stream of commerce plus test because their website (1) states an INTENTION of serve the AMERICAN art market, and (2) uses its sole advertising on the internet which is accessible to everyone in the world. Therefore, it can be said that WIPMM had purposefully directed its products to all states in America. Because of this advertising WIPMM could have anticipated suit anywhere as long as someone traveled to a store in Delaware or CA. Moreover, with the ease of interstate travel today the idea is not that far-fetched. Therefore, it could be argued that WIPMM was directing their product to everyone in America, especially because the internet is the sole way to advertise. Again, in O’Connor’s opinion on the stream of commerce plus test, advertising was a way to purposefully avail oneself through stream of commerce. The final way to
purposefully avail oneself is by causing injurious effects in the state. To cause injurious 
effects there is intentional conduct expressly aimed at or targeting the forum state with 
knowledge that it will cause harm. WIPMM has not purposefully availed themselves 
through effects because there was nothing intentional directed at Penn. Therefore, it is 
possible that a court would find that WIPMM purposefully availed themselves through 
the stream of commerce because of the stream of commerce plus test.

However, to establish minimum contacts that comport with due process the 
purposeful availment must either be related to establish specific jurisdiction (the suit is 
related to the contacts), or the contacts with the state must be so continuous, systematic, 
and substantial as to show general jurisdiction. Pennsylvania does not have general 
jurisdiction over WIPMM because there are no continuous, systematic, or substantial 
contacts in Pennsylvania. All there is in Pennsylvania are internet advertisements, but no 
stores at all. Specific jurisdiction is established, however, because the suit is related to the 
contacts established through purposeful availment. The contact established through 
purposeful availment is advertisement of WIPMM products. The suit is for the fraud, 
negligence, and IIED through the sale of the product. Therefore the suit it related, the 
minimum contacts are established.

Finally, the minimum contacts must comport with the traditional notions of fair 
play and justice (the suit must be reasonable). There are five factors to determine 
reasonableness. First is the burden on defendant. There is a burden on the defendant, 
because the defendant is not domiciled in Penn. However, WPMM is incorporated in 
Delaware, and Delaware is not far from Philadelphia. The second factor is the forum 
state’s interest. The forum state has a large interest here to protect the rights of its 
citizens. The third factor is the plaintiff’s interest. The plaintiff has a large interest 
because the plaintiff is domiciled in Pennsylvania (resides there with an intent to stay as 
evidence from the more and intent to stay in Penn). The fourth and fifth factors are the 
interstate judicial systems, and the shared interest of several states, respectively. There 
factors present the issue of a state stepping on another states toes. Here, there is no issue 
because no one is more adept to hear this case than another. Therefore, the minimum
contacts comport with the traditional notions of fair play and justice, and personal jurisdiction over the defendant in Pennsylvania is reasonable.

Pennsylvania has Personal Jurisdiction over WIPMM, and the court should not grant the 12(b) (2) motion to dismiss for lack of personal jurisdiction.

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

To determine whether or not to grant to motion to dismiss for lack of venue, it is necessart to determine is venue is proper in the Eastern District of Pennsylvania in Philadelphia. Venue is governed by FRCP 1391. Under 1391 Venue is determined under 1391(a) when founded solely on diversity. However, because one of Tom’s claims against WIPMM is a federal fraud claim, and thus creation by federal law by using the well pleaded complaint rule to look at Tom’s cause of action, it is not solely based on diversity. Therefore, to determine venue one must look at 139 1(b). Under 139 1(b) venue is proper in (1) a district where any defendant resides, if all defendants reside in the same state; or (2) in a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred. Under 1391 (b)(1) a corpoation resides in any district where it is subject to PJ. As previously mentioned, WIPMM may be subject to PJ in philadelphia because it is subject to PJ in Penn, and Phily because the advertisements also happened in Phily. Furthermore, venue is proper under 1391(b)(2) because a substantial part of the events giving rise to claim happened in the district as the events happened in Philadelphia. Tom took the ring back to philadelphia. It was in Philadelphia where the problems with the ring occurred. Therefore, under 1391(b)(1) and (2) venue is proper. Thus, the court should not grant the 12(b)(3) motion to dismis for lack of venue because venue is proper under 1391.

C. Motion to dismiss for improper joinder.

Tom’s claims for IIED and for negligence are governed by FRCP 18 “Joinder of Claims.” Under Rule 18 a party asserting a claim may join, as independent or alernative claims, as many claims as it has against an opposing party. Tom’s additional claims against WIPMM are permissible under Rule 18 because they are against an existing
party, just added on to the original claim. However, while the claims satisfy Rule 18, the claims must also satisfy Subject matter jurisdiction (“SMJ”) to be proper.

B. Motion to dismiss for lack of SMJ

Subject Matter Jurisdiction is the ability for federal court to hear the case. Subject Matter jurisdiction is about court systems. There are three ways to obtain Subject Matter jurisdiction: Federal Question under 1331, Diversity under 1332, and Supplemental under 1367. 1331 Federal Question allows SMJ over claims found in the plaintiff’s complaint/cause of action, that are with created by federal law (determined by the creation test), or have an essential federal ingredient (determined by the essential federal ingredient test). Tom’s first claim satisfies 1331 federal question for SMJ. Using the well pleaded complaint rule one looks at Tom’s cause of action alone. Tom is asserted a claim against WIPMM under a federal fraud statute. While it is unclear whether or not the claim was created by federal law (there is no law said to be “violated”), it is clear that under the essential federal ingredient test the court must interpret a federal fraud statute to adjudicate the claim. Therefore, the claim is dependent on federal law, and satisfy 1331 federal question to establish SMJ.

The IIED and Negligence claims does not satisfy 1331 federal question because the IIED is a tort that is strictly state law. The second way to establish SMJ is through 1332 diversity. Under 1332 there is SMJ if the amount in controversy exceeds $75,000, and all plaintiffs are diverse (reside in different states) from all defendants. The amount in controversy is not satisfied in this case. While one is permitted to aggregate all claims between the same parties, the three claims in this case do not EXCEED $75,000. There are three claim Tom asserts against WIPMM for $60,000, $10,000, and $5,000. Those claims aggregate to $75,000 but do not exceed $75,000. Therefore, the IIED and negligence claims do not satisfy the 1332 amount in controversy requirement and cannot have SMJ under 1332 diversity (even though Tom and WIPMM are diverse - Tom with a domicile in Penn, and WIPMM with domiciles in Delaware and CA as previously mentioned). The third way to have SMJ is under 1367 supplemental jurisdiction. Under 1367(a) if there is a claim with original jurisdiction (a federal hook) a case so related with
a common nucleus of operative fact also have SMJ. There is a federal hook in this case, the federal fraud claim based in 1331 federal question. The IIED and negligence claims have a common nucleus of operative fact because they all stem from problems with the same ring. There is a common fact involved as a trigger to the claim, they all arise from the same product. There are exceptions to supplemental jurisdiction under 1367(b) for claims based in diversity. However, the original claim is based in 1331 federal question, so the exceptions do not apply. However, one must look to 1367(c) to determine is the courts will decline SMJ due to discretion. Under 1367(c) a court may decline supplemental jurisdiction if (1) the claim raises novel or complex issues of state law. There are no complex issues of state law, because IIED and negligence are a common torts not distinct to Pen. (2) the claim substantially predominates over the original jurisdiction claim. This factors may cause the court to decline SMJ because there are two state tort claims while there is only one federal claim. (3) The district court has dismissed all claims of original jurisdiction. This factor does not apply because nothing has been dismissed. (4) Other compelling reasons, which may or may not apply depending on the court. Therefore under 1367(c) the court may decline supplemental jurisdiction because of the predominance of the tort claims opposed to the single federal claim. Therefore under 1367 the IIED and negligence claims may have supplemental SMJ because while 1367(a) is satisfied, the court may use discretion to decline SMJ under 1367(c).

Therefore, the motion to dismiss for lack of SMJ may or may not be denied.

**QUESTION 2**

**Comments for Question 2:**

Part A was a straightforward test of your knowledge of Rule 15 amendments. The best answers explained that amendment as of right was not available due to timing issues and then went through the criteria for amendment with leave of court that we saw in *Aquaslide* (bad faith, prejudice, undue delay).

Part B asked about joinder of the claim against AAJ. Since it is joinder of a party, it was a Rule 20 and/or Rule 19 question. The biggest issue was whether the AAJ claim involved a common question of law or fact with the claims against WIPMM (Rule 19...
pretty clearly did not apply here because AAJ is in no way necessary to Tom’s case against WIPMM). I concluded that the claim against AAJ did not share a common question with the claim against WIPMM, but if you disagreed and were persuasive, a different conclusion was not necessarily detrimental to your score.

Part C involves a subject matter jurisdiction issue for Tom’s claim against AAJ. It is a state claim with an amount in controversy below $75,000 that is not able to be aggregated because it is against a different party. All that is left is supplemental jurisdiction, and it seems pretty clear that there is no common nucleus of operative fact between the claim against AAJ and those which constitute the federal hook, i.e. those against WIPMM.

The transfer question in Part D created problems because students failed to carefully walk through the elements of a transfer (PJ and Venue in the original district (1404 or 1406); convenience; the interests of justice; and PJ and venue in the new district (“might have been brought”)). Those of you that did that analysis in its entirety generally provided good answers.

Sample Answer to Question 2:

A. Amend of complaint to include AAJ.

Rule 15 governs amendments pleadings (which includes complaints per Rule 7). Under Rule I 5(1)(a) of the FRCP a party may amend a its pleading once as a matter of course (A) before being served with a responsive pleading; or (B) within 20 days after service the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar. Under 15 (a) the motion to amend will not be granted because while Tom does get one amendment as a matter of course, that amend must under (a) be before service of the responsive pleading. The amendment was filed after the answer, and cannot satisfy (A). The motion does not satisfy (B) because a responsive pleading is allowed in the form of an answer. However, under 15(2) a party may amend its pleadings with the opposing party’s written consent or the court’s leave. Under (B) the court should freely give leave when justice so requires. (B) is a fairly permissive standard, and because Tom filed a motion to amend his complaint, the court will most likely grant the motion.
However, Tom must comply with Rule 15(c) to file the amendment within 10 days of responsive pleading. As the timing is unclear, it is possible Tom satisfies Rule 15(c). Therefore, there is a good chance that Tom’s motion to amend his complaint against WIPMM will be granted under Rule 15(B).

B. Claim against AAJ permitted under the Rules of Joinder?

A Plaintiff may add parties under Rule 17, 19, and 20. Under Rule 17(a) a plaintiff must assert a claim against the real party in interest as determined by the substantive law of the claim. The claim against AAJ for negligence satisfies rule 17 as the real party in interest because it is for a ring that AAJ sold to Tom. The Joinder Rules of 19 and 20 determine whether or not AAJ can be joined as a party to the original claim against WPMM. Rule 20 governs the permissive joinder of parties. Under 20(2) persons may be joined in one action as defendants if: (A) they are part of the same transaction or occurrence to all defendants, and (B) there is a common question of law or fact to all defendants. To determine the same transaction or occurrence one must use the Logical Relationship test stating that the claim has a relationship between one wrong action, or the same products, or a similar recovery. While Tom’s claim against AAL may share a common question of law or fact with WIPMM under (B) because both claims are under the tort of negligence, Tom’s claim against AAJ does not satisfy the logical relationship test with WIPMM so show the same transaction or occurrence under (A) with the claims against WIPMM. The claims against WIPMM are for one sale, and the claims against AAJ are for an entirely different sale. The claims arise from two completely separate allegedly wrongful actions. Therefore, AAJ cannot be joined as a party under Rule 20. Rule 19 governs the Required Joinder of Parties stating that a party must be joined if they are necessary to the suit. AAJ does not satisfy any necessity requirements such as 19(a)(1) complete relief against WPMM without AAJ; (2) or prejudice against a party for not joining them because Tom can always sue AAJ in another suit. Therefore, AAJ cannot be joined as a party under the rules of joinder.
C. SMJ over Tom’s claim against AAJ.

As previously mentioned there are three ways to have SMJ over a claim: 1331 Federal Question, 1332 Diversity, or 1367 Supplemental. (please look to the previous analysis in Question 1 D for a rule explanation of the SMJ rules). Tom’s claims against AAJ does not have SMJ under 1331 Federal Question. Looking at the complaint, there is no assertion of a federal claim by creation or essential federal ingredient. The claim is the tort of negligence, and is purely a state law claim that is not dependent on the interpretation of any federal law. Tom’s claims against AAJ also do not have SMJ under 1332 Diversity. Under 1332 Diversity, as previously mentioned, the claim must meet the amount in controversy requirement exceeding $75,000 and have complete diversity among all parties. Tom’s claim against AAJ does not meet the AIC because it is for $70,000 and does not exceed $75,000. Tom cannot aggregate any claims to meet the requirement for the AAJ claim because you can only aggregate claims against the same defendant (which does not include any claims against WIPMM). While the parties are diverse, with AAJ being domiciled and a resident of Delaware while Tom being a resident of Penn., because the claim does not meet the AIC requirement there is not diversity. Tom’s claims against AAJ also do not have Supplemental SMJ under 1367. As previously mentioned, under 1367(a) a claim has SMJ through supplemental jurisdiction if there is a claim of original jurisdiction (federal hook) that is related to the additional claim through the same case or controversy through a common nucleus of operative fact. While there is a federal hook in Tom’s original claim against WIPMM for the federal fraud violation, Tom’s claim against AAJ does not have a common nucleus of operative fact with the WIPMM claim. As previously mentioned, the AAJ claim stems from an entirely different ring sale. There are two distinct actions between the two claims. Therefore, there is no supplemental jurisdiction over Tom’s AAJ negligence claim because it does not satisfy 1367(a). Therefore, there is no SMJ over Tom’s negligence claim against AAJ because the claim does not satisfy 1331, 1332, or 1367 to get into federal court.
D. WIPMM and AAJ’s motion to transfer

To determine the standard for transferring the case to the District of Delaware it is necessary to determine whether or not venue was proper in the eastern district of Pennsylvania. Transfer is used to go horizontally within the federal court system. Transfer is governed by 1404 (when venue was originally proper) and 1406 (when venue was originally improper). As previously mentioned, venue is proper for the original claim against WIPMM in the eastern district of Pennsylvania because a substantial part of the events took place in Phily, and the defendant resided there per PJ. However, because there is an additional defendant the 1391 venue analysis must be re-considered. Under 1391(b)(2) venue is still proper because a substantial part of the events still took place in Phily because the ring was appraised in Phily, which caused Tom to discover it was worthless and gave Tom reason to bring suit against AAJ. While the ring was sold in Delaware, under (2) only a substantial part of the events must have happened in Phily, not the event that caused that claim. Furthermore, under 1391 (b)(1) if there is more than one defendant, only one defendant must reside in the district if all defendants reside in the same state (determined by PJ for corporations). And as previously mentioned, WIPMM does reside in Phily per PJ. WIPMM also resides in Delaware by PJ because it is domiciled in Delaware. AAJ is most likely not a corporation because it is a sole proprietorship, and therefore only resides in Delaware. Therefore, defendants are from the same state under 1391 and 1391(b)(1) does apply because ONE defendant (WIPMM) does reside in Phily under 1391(b)(1). Therefore, venue was proper under (b) (1) and (2). Because venue was proper one must use 1404 (and not 1406) to govern the standards for transfer.

Under 1404 there are three requirements for transfer. (1) for the convenience of the parties and witnesses. Factors considered for convenience are the availability of witnesses, or location of counsel. The transfer may be convenient for the availability of WIPMM or AAJ’s lawyers and witnesses within their companies because they are from Delaware. However, deference is often given to the choice of forum of the plaintiff. And the plaintiff did chose Pennsylvania.

(2) In the interest of justice. Factors considered for the interest of justice are the
place of the alleged wrong, any undue delay or prejudice, and against the plaintiffs choice of forum. In the interest of justice there is less of chance for transfer because, again, the plaintiff chose the forum. However, the alleged wrong of selling the ring did occur in Delaware. So, under (2) the transfer may or may not be allowed.

(3) The third factor for transfer is to any other district of division where it might have been brough. Under this analysis the new forum, the district of Delaware, must have proper PJ and Venue. (please look to Question 1A for a PJ rules). Delaware has proper PJ over both WIPMM and AAJ because WIPMM is domiciled in Delaware through incorporation (having traditional general PJ) and AAJ resides in Delaware as a sole proprietorship in Delaware with an intent to stay there. Delaware has proper PJ over Tom because Tom entered the state and conducted activity there by buying the ring and thur purposefully availed himself in a way that is related to the suit over the ring he purchased. (see previous PJ analysis of Long arm PJ). Furthermore, the PJ over the parties is reasonable because the state has an interest because the product was purchased in the state. To satisfy this requirement venue must be proper in the district of Delaware as well. As previously mentioned, under 1391(b) venue is proper in any district where any defendant resides if all defendants from the same state (decided by PJ for corporations). As previously mentioned, WIPMM and AAJ do reside in the same state (per PJ for corporations). AAJ and WIPMM are both domiciled in Delaware. Furthermore, 1391(B)(2) is satisfied because the rings were bought in Delaware and A substantial part of events happened there. Therefore, assuming that there was SMJ over the claims, the transfer would be dependent on the convenience factor of 1404 because venue and PJ are proper in the Delaware district.

**Question 3**

**Comments for Question 3:**

Part A of this question involved an analysis of whether the court in Pennsylvania has personal jurisdiction over Dupree. The most frequent mistake made with regard to this Part was students treating Dupree like a corporation – the fact pattern describes him as a Delaware resident and treats him as an individual throughout. This question also
caused some trouble because multiple layers of the PJ analysis required detailed
discussion. With regard to purposeful availment, the effects test was first – did Dupree
reach out to Pennsylvania by specifically (and falsely) promoting AAJ in his blog? In
addition to the effects test, Dupree may have availed himself of PA by owning significant
property there (Shaffer) and by entering the State to do business there (Int’l Shoe). After
considering purposeful availment, you were required to do a similarly detailed analysis to
determine relatedness. While Dupree’s use of the blog may have been related to the
claims against him, his property ownership and business activities in the State were not.
Thus, the effects test analysis satisfied the relatedness prong but the other two grounds
for availment (property ownership and entering the State) did not. This led to the final
question regarding relatedness of whether Dupree’s property ownership or business
activities in PA were significant enough to create general jurisdiction over Dupree
(Perkins).

Part B’s subject matter question was an exercise in careful organization and
diligence. Tom’s claims against AAJ get into federal court on diversity grounds
(aggregation). His claim against Dupree is a state claim for less than $75,000, so only
supplemental jurisdiction is available. Because the federal hook is a diversity claim
(Tom’s claim against AAJ), even if there is a common nucleus of operative fact between
Tom’s claims against AAJ and Dupree (which is doubtful), 1367(b) precludes jurisdiction
because Tom’s claim against Dupree is one by a plaintiff against a person made a party
under Rule 20. AAJ’s claim against DTT has a better chance. Although a state claim
between non-diverse parties, supplemental jurisdiction is likely available because the
negligence claim by AAJ against DTT involves the quality of the ring and thus shares a
common nucleus of operative fact with Tom’s claim against AAJ (which gets into federal
court on diversity grounds). AAJ’s claim against DTT is also a claim by one defendant
against another, so 1367(b) does not apply.

Part C’s joinder question was simple. The only basis for a defendant like Dupree
to add a party (i.e. DTT) to the suit is through Rule 13(h). Since Dupree’s claim against
DTT was neither an indemnity claim (it alleged negligence by DTT) nor associated with
a cross- or counter-claim by Dupree, none of the prerequisites of 13(h) are satisfied.
Sample Answer to Question 3:

A. PJ over Dupree

Please look to Question 1A for a full analysis of the PJ Rules. Dupree does not satisfy the three traditional notions of general PJ in Penn. Dupree is domiciled as a corporation in Delaware through incorporation and principle place of business. Dupree was served in Delaware, and not in Penn. Dupree has not given consent through any motions to dismiss. Therefore, it is necessary to see if Penn. have long arm jurisdiction over Dupree.

Penn. has a long arm statute allowing for PJ that comports with due process. To comport with due process one must have minimum contacts with the state with either specific or general jurisdiction (relatedness) that is reasonable. (please look to question 1a for a full analysis on the five ways of minimum contacts through purposeful avallment). Dupree has purposefully availed itself by entering the state. Much like the corporation in International Shoe, Dupree has sent employees (300) to the state of Pennsylvania. Therefore, he has purposefully availed himself. The employees sent into the state were sent to mine for precious stones to supply the stones to gem dealers (distributors). Therefore, the purposeful avalllement is realted to the suit that Tom is alleging negligence against Dupree for SUPPLYING the stone to AAJ. Therefore, there is specific jurisdiction, and the purposful avallment can be considered minimum contacts that comports with due process. Furthermore, this may be a case of general jurisdiction because Duprees contacts are so systematic and continious with the state. Dupree controls the largest mining operation in Western Penn, which is pretty substantial. Therefore, the suit may not even have to be related. However, the suit must be reasonable through the five factos (look to question 1a for the factors specifically). The suit is reasonable in Penn because Tom is a resident of Penn and the state of Penn has a large interest in their own residents. Furthermore, against, Dupree has substantial connections with Penn. Therefore, Dupree is subject to PJ in Penn.

B. Lack of SMJ?
Tom’s claim against AAJ
To determine whether or not there is SMJ over Tom’s negligence claim against AAJ, first one must look to 1331 federal question. Tom’s claim is a pure negligence claim and was not created by federal law, and does not have an essential federal ingredient (please look to previous federal question analysis for further explanation). Next, one must look to 1332, diversity. The claim satisfies the AIC requirement of 1332 because you can aggregate Tom’s $70,000 negligence claim with Tom’s $10,000 pain and suffering claim against the same party, AAJ. However, the parties must be completely diverse. The parties are completely diverse. Tom is domiciled in Penn. AAJ is domiciled in Delaware (as a sole proprietorship AAJ is not a corporation that can have two domiciles. Therefore, Tom’s claim over AAJ has SMJ under 1332 diversity.

Tom’s claim against Dupree

Under 1331 federal question Tom’s claim against Dupree does not have SMJ because the tort of negligence asserted was not created by federal law, and does not have an essential federal ingredient. Under 1332 Tom’s claim against Dupree does not have SMJ because the AIC does not exceed $75,000 as it only for $10,000 and cannot be aggregated with any other claims. The final way to have SMJ is under 1367 supplemental jurisdiction. As previously mentioned there must be a federal hook under 1367. There is a federal hook in this case, from Tom’s claim against AAJ. However, this hook must stem from the same transaction or occurrence. Tom’s false advertising claim against Dupree comes from the same transaction or occurrence from the negligence claim against AAJ. Both claims come from the same action (alleged wrong) of the sale of the ring. Therefore, the claim against Dupree satisfies 1367(a). However, because the original claim was based in diversity one must look to 1367(b). 1367(b) bars supplemental jurisdiction in diversity cases if plaintiffs joined parties under Rules 14, 19, 20, or 24; OR persons joined as plaintiffs under 19 or 24. The only way Dupree can be joined as a party is under either 19 or 20 for required or permissive joinder of parties. Therefore, because Dupree would be joined under 19 or 20 any supplemental jurisdiction against Dupree is barred for satisfying SMJ.
SMJ over AAJ’s claim against DDT

Under 1331 federal question the claim against DDT cannot satisfy SMJ because the claim asserted is for negligence, purely a state claim with no creation in federal law or an essential federal ingredient. Under 1332 diversity AAJ’s claim against DDT cannot satisfy SMJ because while the claim does meet the AIC of $75,000 because it is for $100,000, the parties are not completely diverse. As previously mentioned, AAJ as a sole proprietorship is domiciled in Delaware (residing in Delaware). DDT is a Delaware corporation with its principle place of business in Delaware, and thus also resides in Delaware. Therefore, the parties are not completely diverse and do not satisfy 1332 diversity. Under 1367, the claim satisfies 1367(a) because there is a federal hook with Tom’s diversity claim against AAJ (as previously mentioned) and it arises from the same transaction or occurrence of the single purchase of the bad ring. However, because the original claim in from diversity we must go on to (b). (b) does not apply because DDT was not joined by a plaintiff, but a defendant (AAJ) and it was not joined to be a plaintiff, but a third party defendant. Therefore, to get Supplemental jurisdiction it must satisfy the discretionary requirement in 1367(c). (look to previous SMJ analysis for factors). It mostly likely will satisfy (c) as there are no novel issue here, but a simple tort, and it does not predominate over the other claim, as it is a single claim. Therefore, AAJ’s claim against DDT most likely has supplemental SMJ.

C. Joinder of DDT by AAJ

As a defendant, AAJ only has two options to join DDT as an additional party. First, Rule 14, is for indemnity. DDT is not liable for any of AAJ’s actions, and cannot be joined for indemnity, and therefore cannot be joined under Rule 14. Second, AAJ can joing DDT under rule 13(h). Under 13(h) Rules 19 and 20 govern the addition of a person as a party TO a counterclaim or crossclaim. DDT cannot be joined under 13(h) because there is no counter or cross claim to join DDT to. Therefore, without an already present counter claim against Tom or cross claim against Dupree, DDT cannot be joined under 13(h). Therefore, AAJ cannot join DDT as a party. DDT’s motion to dismiss AAJ’s claim against for improper joinder should be granted.
PART II

QUESTION 4

Comments for Question 4:

It was important to remember here that we studied at least three distinct pleading standards: heightened pleading (Rule 9(b)), Rule 8 pleading under Twombly, and standard notice pleading (Dioguardi). Only the notice pleading standard was likely met by the portion of the complaint given.

Sample Answer to Question 4:

A. Pleading standard for Tom’s claim

Tom’s claim against Dupree is for false advertising which requires an intentional false statement. Normally, under Rule 8(a) a complaint must have a short plain statement of the facts for a claim for relief stating jurisdiction and what relief should be granted. However, because this claim is for a form of fraud (false advertising which requires an intentional false statement) the 9(b) heightened pleading standard should be used. Under 9(b) Fraud of Mistake; Conditions of mind: party must state with particularity the circumstances constituting fraud or mistake. Conditions of mind may be alleged generally. Therefore, because the claim could arise under fraud, the rule 9(b) particularity standard should be applied under Rule 8(a).

B. Tom’s complaint satisfies?

Tom’s complaint satisfies both the 8(a) “notice pleading” standard. Under notice pleading a short plain statement of facts suffices to satisfy the 8(a) standard. Tom gave a statement of facts showing that a false statement was made by saying that Dupree posted false information about AAJ on his blog, while stating that it was intentional by not informing himself about AAJ. Under rule 9(b) tom may or may not satisfy the heightened pleading standard. 9(b) states that the allegations must be stated with particularity. Tom stated with particularity that Dupree posted inaccurate information about AAJ on his blog. However, Tom did not say when the post was made, or what was said in the post.
Therefore the allegation may not be particular enough. However, 9(b) does allow state of mind to be alleged. Intention is a state of mind, and Tom did merely allege the state of mind of malice for intent. Therefore, although Tom does correctly allege the intention aspect, it is unlikely that Tom satisfies the particularity standard for fraud in 9(b).

**QUESTION 5**

Comments for Question 5:

This question tested whether you knew that the deadline for filing an answer after a motion to dismiss was decided is 10 days (12(a)(4)) and whether you understand the exceptions for filing motions after the answer has been filed. In this case (notwithstanding the conclusion drawn in the sample answer below), an attempt to dismiss Tom’s claims on the grounds that they fail to state a claim for relief would be allowed because it may be brought in a motion for judgment on the pleadings under the exception outlined in 12(h)(2).

**Sample Answer to Question 5:**

A. Timely Answer

Rule 12(4) governs the Time to Serve a Responsive Pleading to a motion. Under 12(4) (a) if the court denies a motion the responsive pleading must be served within 10 days after notice of the court’s action. Therefore, under 12(4) Dupree’s answer is not timely because it was sent more than 10 days after the notice, as it was sent 18 days after the notice.

B. Dismiss for failure to state a claim

No, Dupree cannot have the claim dismissed for failure to state a claim. First, under rule 12(g) one is granted ONE motion to dismiss unless under Rule 12(h)(2) or (3), which do not apply here. Because Dupre already filed a motion to dismiss for lack of PJ he cannot file another for failure to state of claim. Furthermore, for failure to state a claim one must look at the substance of the complaint. And as previously mentioned, the substance of the complaint may or may not satisfy 9(b). So, if it did satisfy 9(b) then one cannot dismiss for failure to state a claim.
QUESTION 6

Comments for Question 6:

The sample answer gets it right – there are 2 or 3 forms of discovery that will work for each piece of information and summary judgment is not available to either party because both claims depend upon a genuine issue of material fact (Rule 56(c)).

Sample Answer to Question 4:

A. Discovery Tools

(1) Dupree’s written admission that what he said about AAJ was not true:

The first tool of discovery that is relevant for this statement is Interrogatories under Rule 33. Interrogatories are written questions directed at a party. Dupree is a party so they would have been directed to him. The scope of interrogatories is relevance from rule 26(b)(2). Relevance is defined as anything reasonably calculated that may lead to the discovery of admissible evidence. A question directed about the statement is relevant to a claim or defense because it can be used to find admissible evidence. Another tool of discovery that could have been used to get this admission is a Request for Admission under Rule 36. Requests for admission are under the same relevancy scope as interrogatories, so relevance is present. Furthermore, they are directed to a party (dupree is a party) and they are in writing. They also ask for admissions to limit the scope, and dupree is “admitting.”

(2) explains under oath

The first tool against is interrogatories. As previously mentioned, Dupree is a party, and the the scope of whether or not the post was true is relevant. Furthermore, interrogatories are under oath, and the admission was under oath. Another, and possibly better tool, to get an admission of state of mind is a deposition under Rule 30. A deposition is a face to face question an answer session that is a good tool to get admissions of state of mind.

(3) Documents and sworn testimony

The first tool to get documents is through document production under Rule 34.
The same relevane requirements are present as interrogatories, and request for admissions so statements about the falsity of statements is directly relevant for a false advertising claim. Documents are requested with reasonable particularity of each item or category to be inspected. The answering party must produce or copy to produce documents presented if there are no objections. To request documents from a non-party (witness) than one must do so through a subpoena (permission from the court). Collecting documents can be achieved in this way of document production. Documents can also be produced through depositions through a subpoena to be referenced throughout a deposition. The sworn witness testimony is only achievable through a deposition because a deposition is the only discovery tool that permits non-parties to participate. Depositions are under oath, and would be “sworn testimony. Therefore, the only way to get documents and sworn witness testimony would be through depositions without permission of the court.

B. Summary Judgment

Summary Judgment is governed by Rule 56. Under rule 56(c) summary judgment should be granted if the pleadings, discovery and disclosure materials on file, and any affidavits show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. The standard to determine whether or not there is a genuine issue of material fact must be shown by the standard of proof the party would be held to at trial Under 56(a) Tom could file for a motion for summary judgment when Dupree filed one. And under 56 (b) Dupree can file a motion for summary judgment at any time. Therefore, procedurally, both parties have satisfied 56(a) and (b).

Based on the documents and sworn witness testimony showing that Dupree has reason to know that his statements about AAJ were false (intentional), yet Dupree says he was not aware that it was false when it was posted, it seems that there is a genuine issue of material fact for both parties. Therefore, because there are conflicting statements in the discovery materials, it seems that neither Tom or Dupree would win their motions for summary judgment because there is a genuine issue of the material fact of making fraudulent statements intentionally.