

**STETSON UNIVERSITY COLLEGE OF LAW  
Gulfport, Florida**

**GENERAL INSTRUCTIONS**

**I DIRECT THE ATTENTION OF ALL STUDENTS TO THE FOLLOWING:**

1. The answers and the pledge are to be identified by examination number only.
2. During the course of the examination, the examination and answers may not be removed from the rooms prescribed for taking the examination.
3. This examination ends at the expiration of the time allotted, or when the examination is turned in, whichever comes first.
4. The instructor will be permitted to grade only answers that have been submitted during the examination, in the manner indicated by the instructor.
5. From the conclusion of the time prescribed for the examination, students are forbidden from communicating with the instructor with reference to this examination until grades have been turned into the Registrar's Office except that students may communicate with the instructor at any time concerning matters related to the Code of Student Professional Responsibility.

**TIME FOR EXAMINATION: FOUR 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 any of the required books for the course, any handouts distributed in class, your class notes and any outlines you prepared yourself or in conjunction with others.
2. This examination consists of sixteen (16) pages. You should check now that you have all pages.
3. The examination is in two Sections. Section I of the examination requires you to provide essay answers. The Section contains two (2) separate questions requiring answers. **YOU MUST ANSWER BOTH QUESTIONS IN SECTION I.** Section I is worth a total of seventy (70) points. My suggestion is that you allot a total of approximately three (3) hours to Section I. The point breakdowns and suggested times for the essay

questions are as follows: Question #1: forty (40) points; Suggested Time: one hour and forty-five minutes; Question #2: thirty (30) points; Suggested Time: one hour and fifteen minutes. Section II of the examination consists of ten (10) multiple choice questions. Each multiple choice question is worth three (3) points. Therefore, in total Section II is worth thirty (30) points. I suggest you allot approximately one hour to Section II, or about six (6) minutes per question.

4. Please use a blue book or blue books or a computer to answer the essay questions in Section I. Write your exam number on each blue book you use. If using the blue books, please start each essay question in its own bluebook. You may use as many bluebooks as you would like so long as the answer to each question starts in its own book. If you are using a computer, please start the answer to each question on its own page.
5. Please use the answer sheet provided with your examination materials to answer the multiple choice questions in Section II. Make sure to write your examination number on the answer sheet. If you believe that any of the multiple choice questions are ambiguous or you perceive a mistake or flaw in the question, you should still answer the question. Then, explain concisely on the back of the answer sheet why you think the question is flawed. I would not suggest that you use this challenge option often because it takes time away from the rest of the exam.

**END OF INSTRUCTIONS – GOOD LUCK!!**

**HAVE A GREAT BREAK. YOU HAVE EARNED IT.**

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**SECTION I:(Total Points: Seventy (70); Total Suggested Time: Three Hours)**

**Question #1: (Forty (40) Points / Suggested Time: One Hour and Forty-Five Minutes)**

One of the most valuable pieces of Americana is an original Declaration of Independence, a centerpiece of what is today the American federal government. There are very few of these documents remaining. One of the remaining Declarations is jointly owned by (1) John Hancock, a citizen of Dallas, Texas, and (2) Patriot, Inc. (“Patriot”) a corporation incorporated in Florida, with its principal place of business in Dallas, Texas.

In January, 2003, Dolly Madison, a citizen of Tampa, Florida entered into negotiations with Thomas Jefferson concerning the Declaration owned by Patriot and Mr. Hancock. Jefferson was a broker specializing in transactions in rare documents. Jefferson was a citizen of Florida. His job was to broker deals between willing sellers and willing buyers. Patriot and Mr. Hancock had asked Jefferson to enter into negotiations with Madison, but they had also instructed him not to reach a final deal without their approval. To reinforce this point, the agreement between Patriot and Hancock on the one hand and Jefferson on the other provided that Jefferson would “indemnify Patriot and/or Hancock for any loses resulting from Jefferson acting beyond the scope of his authority.”

Despite their instructions, Jefferson and Madison, who knew that Jefferson was acting on behalf of Hancock and Patriot but who did not know of the restriction on Jefferson’s authority, reached an agreement that was reduced to writing. You should assume that this agreement is a valid contract. In the agreement, Jefferson agreed on behalf of Hancock and Patriot to sell the Declaration to Madison for \$200,000. The contract specifically provided that Jefferson was not personally obligated to do anything under the agreement. He only signed the contract as a representative of Hancock and Patriot.

When Patriot and Hancock learned about the deal, they were furious with Jefferson. It turns out that \$200,000 was well below the average price for the purchase of a Declaration. They immediately contacted Madison and said that they would not go through with the deal. After this refusal, Madison decided to file suit. She sued only Mr. Hancock in the federal court in Tampa, Florida. In the suit, she sought specific performance of the contract to sell the Declaration for \$200,000. In other words, she wanted the Declaration be given to her in exchange for \$200,000.

Assume you are one of the lawyers for Hancock in the Florida federal court action. You have been asked to advise Hancock about only one facet of his response to the complaint. Specifically, you are to advise Hancock as to the best possible way under the circumstances of this litigation to add Jefferson and Patriot to the litigation. To the extent you make any assumptions about the law or any fact in order to conduct your analysis, please state them.

**To reiterate, your assignment is to analyze the potential joinder of Jefferson and**

**Patriot under the Federal Rules of Civil Procedure and any relevant jurisdictional statutes. You should not discuss personal jurisdiction at any point in your answer. You should prepare a memorandum to the client addressing both the joinder and jurisdictional issues. In the memo you should be sure to advise the client as to the best way in which to try to add each of these non-parties to the lawsuit. In addition you should address each possible means of obtaining jurisdiction over the claim under the joinder device you have identified for both Jefferson and Patriot.**

\* \* \* \* \*

**Question #2: (Thirty (30) Points / Suggested Time: One Hour and Fifteen Minutes)**

Green Biotech Company, Inc. (“Green”) has its principal place of business in Miami, Florida and is incorporated under Florida law. In 2003, Green decided to expand its business by opening an office in California. After Green found a location in Los Angeles it turned to trying to equip the new office.

One of the things Green needed for the California Office was scientific equipment for the labs. After conducting a comprehensive search for the best deal for such equipment, Green’s purchasing directory chanced upon an Internet website for Montgomery Scientific Equipment, Ltd. (“Montgomery”). Montgomery is a corporation incorporated in Scotland with its principal, and indeed only, place of business in Glasgow, Scotland. It is in the business of selling high-end scientific equipment at reduced rates. It is able to do so, in part, by reducing its marketing expenses. One way in which Montgomery reduces its marketing expenses is by totally avoiding traditional advertising. It obtains almost all of its business through its Internet website.

The Internet website provides information about the various products that Montgomery has for sale at any given time. For each product there is a streaming video providing details concerning the piece of equipment. You cannot purchase any products over the Internet. Rather, a person interested in a piece of equipment would fill out a form on-line. The form asks for the following information: the piece of equipment the person is interested in; the price range the party is looking for; the delivery date; and contact information including name, company, address and phone number.

A Green company representative filled out the Montgomery form. Shortly thereafter, a representative of Montgomery called the Green headquarters in Florida. This conversation lasted about one half-hour and focused principally on the technical requirements of the equipment Green sought. As a result of the conversation, representatives of the companies agreed to meet and discuss whether they could reach a business deal.

The representatives of Green and Montgomery meet at a hotel near Dulles International Airport in Virginia. At this meeting, the parties reached a business deal concerning the equipment Green needed. Under the contract the parties each signed at the end of the meeting, Green agreed to pay Montgomery \$500,000. In exchange, Montgomery agreed to provide Green

with 3 pieces of lab equipment. Montgomery would ship the equipment directly from Scotland to the Green office in Los Angeles. The contract itself provided that “the parties agree that the Contract will be governed pursuant to the laws of the State of Florida.”

Green paid the money as required by the contract. However, the time for Montgomery’s delivery came and went without any equipment being delivered to the Los Angeles office. Thereafter, Green filed a lawsuit against Montgomery in the United States District Court for the Southern District of Florida (in Miami). In the suit, Green claimed that Montgomery had breached the contract to supply the lab equipment.

**Montgomery has moved to dismiss the case against it on the grounds that it is not subject to personal jurisdiction in Florida. You are the district judge assigned to the case. How do you rule on the motion and why? If you think it would be useful, the Florida long-arm statute is attached to this examination as Exhibit A. You should address only personal jurisdiction in your answer.**

**TURN PAGE FOR SECTION II**

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**SECTION II :**        **(Thirty (30) Total Points (three (3) points per question);**  
**Suggested Time: One Hour)**

**Facts for Questions #1 - #4**

Boris Becker is a former tennis star. He continues to live in his native Germany, where he retains his citizenship and residency. In 2000, Boris decided to go into the business of selling tennis balls by forming a partnership called Bouncing Partners. There were two partners in Bouncing Partners, Boris and Andy's Tennis Balls, Inc., a corporation incorporated in Delaware with a principal place of business in Maryland. Bouncing Partners set up its principal and only office in New York City.

Bouncing Partners entered into a contract with the New York Athletic Club ("NYAC"), a corporation incorporated in New York with its principal place of business in New York. The contract provided that Bouncing Partners would provide the NYAC with all its tennis balls for a year. NYAC usually buys over \$250,000 worth of balls in a year. NYAC was very interested in the contract because Bouncing Partners had a special ball for sale, one that was based on a special patent issued by the United States Patent Office, an arm of the federal government.

Bouncing Partners never delivered any tennis balls. Assume that NYAC has filed a lawsuit against Bouncing Partners in the United States District Court for the Southern District of New York (a federal court). It has asserted a claim for breach of contract.

**Question #1**

Recognizing that it was an "association," NYAC sought a waiver of service of summons from Bouncing Partners. Which of the following statements is NOT CORRECT?

- A. If Bouncing Partners does not agree to waive formal service, it will be required to pay for the cost of formal service unless it shows good cause for its failure to agree.
- B. NYAC was not required to seek a waiver from Bouncing Partners. It could instead have served Bouncing Partners formally.
- C. If Bouncing Partners believes it is not subject to personal jurisdiction in New York, it should not agree to waive service in order to preserve that defense.
- D. There is no need for the waiver request be personally delivered to the defendant.
- E. It is not necessary to know the rule in the N.Y. State courts have a procedural rule allowing waiver of service in order to determine what NYAC must do to seek a waiver in the federal case.

**Question #2**

Bouncing Partners has moved to dismiss the suit for lack of subject matter jurisdiction. Which of the following statements is MOST ACCURATE concerning the likely outcome of Bouncing Partners' motion?

- A. The motion will likely be denied because jurisdiction is proper under 28 U.S.C. § 1331 based on the fact that the subject of the contract was a federally patented product.
- B. The motion will likely be denied based on the case meeting the requirements of 28 U.S.C. § 1332.
- C. The motion will likely be denied because this case is a clear example of supplemental jurisdiction under 28 U.S.C. § 1367.
- D. The motion will likely be granted because there is no guarantee that the NYAC will recover greater than \$75,000 in the case.
- E. The motion will likely be granted because there is not complete diversity of citizenship among the parties because NYAC is incorporated and has its principal place of business in New York and Bouncing Partners also has its principal place of business in New York.
- F. The motion will likely be granted based on the doctrine of forum non conveniens.

**TURN THE PAGE FOR QUESTION #3 and #4**

### **Question #3**

Assume for purposes of this question only that the case continues in federal court in the Southern District of New York. Which of the following statements is MOST ACCURATE assuming that Bouncing Partners has already filed an Answer to NYAC's Complaint?

- A. NYAC may not amend its Complaint without obtaining either the court's permission or that of Bouncing Partners.
- B. NYAC may not dismiss the case without assent of the court or Bouncing Partners.
- C. Bouncing Partners may no longer file a motion under Rule 12(b).
- D. Bouncing Partners may properly file a motion for judgment on the pleadings.
- E. None of the statements in A through D above are accurate.
- F. All of the statements in A through D above are accurate.

### **Question #4**

Assume that Bouncing Partners filed a motion for summary judgment in which it claimed that while it never delivered any tennis balls, it was excused from performance because the partnership needed the money it would have used to make the balls in order to contribute to a disaster relief fund. The NYAC believed this argument had no support under the relevant law. Which of the following statement is MOST ACCURATE?

- A. If NYAC files a Rule 11 motion immediately after receiving Bouncing Partners' Summary Judgment Motion it should be granted based on a violation of Rule 11(b)(2).
- B. If NYAC files a Rule 11 motion immediately after receiving Bouncing Partners' Summary Judgment Motion it should be granted based on a violation of Rule 11(b)(3).
- C. The court may enter an order describing conduct it believes violates Rule 11 and directing a response. The court must wait at least 21 days after reviewing the motion to issue such an order.
- D. For efficiency's sake, the NYAC should include an argument in its summary judgment response seeking sanctions against Bouncing Partners under Rule 11.
- E. None of these statements is accurate.

### **Facts for Questions #5 - #7**

Professor Plum owned an apartment house just on the Vermont side of the New York/Vermont border. Professor Plum himself was a citizen of the State of New York. The apartment house tenants, all of whom were citizens of the State of Vermont, included Colonel Mustard and Miss Scarlet. In addition to being a tenant, Col. Mustard also served as Professor Plum's handyman around the apartment house. Mustard's activities included ensuring that all the light bulbs in the stairwells were in working order.

One evening Miss Scarlet was coming home from dinner with her boyfriend Mr. Green. As she was going up the stairs in the hall on the way to her apartment she tripped on a wrench. It turns out the light on the landing was broken. When she heard the racket in the hall Mrs. White, a visitor in the building, came out to help. White was a citizen of New York State. While trying to help, it turned out that White accidentally stepped in Miss Scarlet's hurt ankle causing even more of an injury.

As a result of tripping on the wrench and being stepped on, Miss Scarlet was required to have surgery. All told, her medical bills and lost wages totaled \$80,000. After this incident, Miss Scarlet filed a lawsuit against Professor Plum and Mrs. White in the United States District Court for the District of Vermont claiming that Plum was negligent in the maintenance of the apartment house and White was negligent in stepping on her, seeking damages greater than \$75,000 as to each defendant.

#### **Question #5**

Which of the following statements concerning Professor Plum's options is NOT CORRECT under the Federal Rules of Civil Procedure (the "Rules")?

- A. As far as the Rules are concerned, Professor Plum can file a counterclaim against Miss Scarlet in connection with Miss Scarlet's unpaid rent.
- B. As far as the Rules are concerned, Professor Plum can file a counterclaim against Miss Scarlet claiming that she damaged the stairs when she fell.
- C. As far as the Rules are concerned, Professor Plum can file a crossclaim against Mrs. White claiming she damaged his car when parking her car in the lot.
- D. As far as the Rules are concerned, Professor Plum can implead Col. Mustard based on his failure to perform the necessary work on the light fixtures.
- E. As far as the Rules are concerned, Professor Plum can file two claims against Col. Mustard in the case, one based on his failure to perform the necessary work on the light fixtures and one based on Mustard's failure to pay rent.

#### **Question #6**

Assume that the lawsuit proceeds as Scarlet versus Plum and White. Which of the following statements is MOST ACCURATE concerning discovery in this case?

- A. Professor Plum will have to give Miss Scarlet information concerning the insurance covering accidents in the apartment house even if Miss Scarlet does not ask for the information.
- B. Professor Plum will be able to compel Mr. Green to answer interrogatories about what happened on the night of the accident so long as he does not ask Mr. Green more than 25 interrogatories and those interrogatories seek information that is relevant and not privileged.
- C. Professor Plum could not compel Mr. Green to testify at a deposition in the case if Green refused to testify.
- D. If Miss Scarlet sought to depose Professor Plum, he would likely be able to successfully object that Miss Scarlet should wait until she has reviewed other relevant discovery in the case before questioning such a central witness as Professor Plum.
- E. None of these statements are accurate.

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**Question #7**

Assume that after all required disclosures have been made, Miss Scarlet serves interrogatories on Mrs. White. One of the interrogatories asked Mrs. White to state whether she had been drinking the evening of the incident. Mrs. White responded to that interrogatory by objecting. When she received the objection, Miss Scarlet filed a motion to compel an answer. The court granted the motion and Mrs. White has still refused to answer the interrogatory. Miss Scarlet then filed a motion with the court for sanctions against Mrs. White. Which of the following statements is MOST ACCURATE?

- A. The court may enter an order to the effect that Mrs. White had been drinking on the evening of the incident.
- B. The court may order Mrs. White to pay the reasonable attorney's fees of Miss Scarlet caused by White's failure to obey the order.
- C. The court may order Mrs. White's lawyer to pay the reasonable attorney's fees of Miss Scarlet caused by White's failure to obey the order.
- D. The court may strike Mrs. White's Answer and enter a default judgment against her.
- E. All of the above statements are correct.

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**Facts for Questions #8 - #10**

Sandra and Ruth are identical twin sisters who were driving to a tennis match in Sandra's car. They stopped at a red light. Sandra started to proceed through the intersection after, she claims, the light turned green. Her car was hit by a truck driven by William. Both Sandra and Ruth were injured in the collision. Sandra filed a suit against William claiming that he was negligent in his driving by proceeding into the intersection when the light was red. The suit is pending in a federal court.

**Question #8**

Which of the following statement is MOST ACCURATE?

- A. Sandra would be within her procedural rights to serve a motion for summary judgment on William at the same time as she served her complaint.
- B. William would be within his procedural rights to serve a motion for summary judgment on Sandra immediately after he received the complaint.
- C. If William believes that venue is inappropriate in the court in which Sandra has filed the action, he must file a motion to dismiss under Rule 12 in order to preserve that defense.
- D. If William files a motion under Rule 19 claiming that Ruth is a party to be joined if feasible, William will likely win that motion and the court will order that Ruth must be joined.
- E. None of these statements are accurate.

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**Question #9**

Assume that the case of Sandra v. William proceeds to a jury trial. The parties stipulated that the only issue to be tried was whether or not the light was red when William proceeded through the intersection. All other matters have been agreed upon, including damages. At trial, Sandra puts on the testimony of her sister Ruth as well as two bystanders, Anthony and Clarence, both whom witnessed the accident. Sandra also testified herself. Ruth, Anthony, Clarence and Sandra all testify that the light was green for Sandra (and thus red for William) when William proceeded into the intersection and hit Sandra's car. The plaintiff also introduced a traffic photo showing what appeared to be a red light for William at the relevant time. William testified that the light was green for him at the time of the accident. He also argued that the photo was not as clear as the plaintiff claimed. He presented no other testimony concerning the color of the light. The jury returned a verdict in favor of William. Given this state of affairs, which of the following statements is MOST ACCURATE?

- A. If Sandra files a Renewed Motion for Judgment as a Matter of Law within the appropriate time, it is likely the motion will be granted.
- B. If Sandra files a Renewed Motion for Judgment as a Matter of Law within the appropriate time, it is likely the motion will be granted but only if Sandra had moved for Judgment as a Matter of Law at the close of all the evidence.
- C. If Sandra files a Renewed Motion for Judgment as a Matter of Law within the appropriate time, it is likely the motion will be granted but only if Sandra had moved for summary judgment before the trial began.
- D. If Sandra files a Motion for a New Trial within the appropriate time, it is likely the motion will be granted.
- E. If Sandra files a Motion for a New Trial within the appropriate time, it is likely the motion will be granted but only if Sandra has moved for a new trial at the close of all the evidence.
- F. If Sandra files a Motion for a New Trial within the appropriate time, it is likely the motion will be granted but only if the court believes that William was lying.

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**Question #10**

Assume that the verdict in the case of Sandra v. William was in favor of William. Sandra appealed and judgment in favor of William was affirmed. Thereafter, Ruth files a lawsuit against William in connection with the same car accident. Under these conditions, which of the following statements is MOST ACCURATE?

- A. Ruth will be precluded from proceeding with her action based on the doctrine of claim preclusion.
- B. While Ruth would normally not be precluded from proceeding with her action based on the doctrine of claim preclusion, she will be barred in this case because she participated in the trial of Sandra v. William as a witness on Sandra's behalf.
- C. Ruth may be precluded from litigating certain factual matters in the case by the doctrine of issue preclusion.
- D. While Ruth would not normally be precluded from litigating any issues in the case as a result of the doctrine of issue preclusion, she may be precluded from litigating certain matters in this case because she participated in the trial of Sandra v. William as a witness on Sandra's behalf.
- E. Ruth will not be barred in any respect by the doctrines of claim preclusion or issue preclusion in connection with her case against William.

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

**EXAM NO. \_\_\_\_\_**

**END OF EXAMINATION – HAVE A WONDERFUL BREAK!!!**

**EXHIBIT A BEGINS ON THE NEXT PAGE**

## EXHIBIT A

FLORIDA STATUTES 2000

\*\*\* THIS DOCUMENT IS CURRENT THROUGH THE 2000 LEGISLATIVE SESSION \*\*\*

TITLE VI CIVIL PRACTICE AND PROCEDURE

CHAPTER 48 PROCESS AND SERVICE OF PROCESS

Fla. Stat. § 48.193 (2000)

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.

(3) Service of process upon any person who is subject to the jurisdiction of the courts of this state as provided in this section may be made by personally serving the process upon the defendant outside this state, as provided in s. 48.194. The service shall have the same effect as if it had been personally served within this state.

(4) If a defendant in his or her pleadings demands affirmative relief on causes of action unrelated to the transaction forming the basis of the plaintiff's claim, the defendant shall thereafter in that action be subject to the jurisdiction of the court for any cause of action, regardless of its basis, which the plaintiff may by amendment assert against the defendant.

(5) Nothing contained in this section limits or affects the right to serve any process in any other manner now or hereinafter provided by law.

HISTORY: s. 1, ch. 73-179; s. 3, ch. 84-2; s. 3, ch. 88-176; s. 3, ch. 93-250; s. 281, ch. 95-147.

**END OF EXHIBIT A**