QUESTION ONE

While using www.ilearn.com, a well known internet website, John Lisas of Petersburg, Maine saw a notice for a Bluetootheyeglasscomputer made by Bluetootheyeglasscomputer, Inc., a Delaware corporation with a principal place of business in Roanoke, Virginia. Lisas had also read about the Bluetootheyeglasscomputer that serves as a minicomputer, TV and cell phone in an advertisement in The New York Times when the company first began manufacturing the Bluetootheyeglasscomputer. While it looks like a simple pair of eyeglasses, the Bluetootheyeglasscomputer allows the user to have complete access to the system through voice command with the requested information then shown on the eyeglass lens.

He then further investigated it at Bluetootheyeglasscomputer.Com, a website owned and operated by the retail distributor of the Bluetootheyeglasscomputer, BTU.Com, Inc., a corporation headquartered and incorporated under New York law. He also researched Fung Wa Products Inc. through their website as well. The Bluetootheyeglasscomputer had a
component piece manufactured in China by Fung Wa Products Inc., a Chinese corporate citizen. The advertisement described the Bluetootheyeglasscomputer as being the finest such device available in the world and was guaranteed it to be safe at all times. John called the telephone number listed in the New York Times ad and ordered the Bluetootheyeglasscomputer from his home in Petersburg. He sent a check for $2100 directly to the company as specified at the website.

It arrived a little more than one month later, and Lisas was the envy of everyone in his college classes and at work at the 99. John decided to take his wife, Jen, to work with him so they could celebrate the end of the semester. However, tragedy struck at the 99 when they were eating some boneless buffalo wings. The Bluetootheyeglasscomputer exploded sending shards of glass and hot sauce throughout the dining room seriously injuring John and Jen and injuring all of the patrons at the 99. Many of the 99’s employees were seriously injured, including the bartender Tom who died from his injuries. John is now blind as a result of this incident while Jen suffered only minor injuries.

A permanently injured John Lisas returned home and then spent the next six months in Arizona receiving treatment at Arizona General Hospital and Arizona Rehabilitation Center. The Lisas fell in love with the area and learned that Arizona laws are extremely beneficial to injured parties in that they provide for awards of punitive damages. They hired an attorney and decided to stay in Arizona.

Based upon a complaint by John Q. Citizen to the Kentucky Attorney General it was determined that the Bluetootheyeglasscomputer was defective in that the piece manufactured by Fung Wa overheated after use. The administrative proceeding fined both BTU Inc. and Bluetootheyeglasscomputer $100,000 when it determined that the companies failed to meet safety standards.

The Lisas consult you regarding these issues. How would you advise them to proceed and why?

**QUESTION TWO**

Bob Bankerz, a resident of Salem, Massachusetts, attended a conference at Neck Inn in Portland, Maine. Bob was injured when he was assaulted at the hotel.

Neck Inn was a corporation wholly owned and operated by IHospitality, Inc. (“IHospitality”), a Delaware corporation with its principal place of business in Delaware. Neck Inn had a website on the internet linked to IHospitality’s website, which described Neck’s amenities, rates and services. Reservations at Neck could be made over the internet
and, in fact, Bob’s accommodations at Neck were made over his internet and paid for by his employer, the Massachusetts School of Law. On January 10, 2006, Bob sued IHospitality and Neck in the Suffolk Superior Court. In the complaint, Bob alleged that his severe injuries were caused by the negligence of Neck’s agents, employees and servants in maintaining security. He claimed damages for his injuries, lost wages and permanent disability.

Please define fully each concept below and explain how each of the following concepts affects Question Two. Please appropriately tie that concept to the facts of the case or explain why the concept is not applicable to the fact pattern contained in Question Two.

FederalCourtJurisdiction:

The Three Testing Motions:
Equitable Remedies:

Res Judicata and Collateral Estoppel:

Erie and the Outcome Determinative Test:
Counterclaims:

Amending Pleadings:

Well Pled Complaint Rule:
SNOWYSLOPES.COM Inc is a Delaware Corporation that operates an Internet based advertising service for ski areas, hotels, motels, restaurants and travel related services which in any way concern skiing or winter travel. For a set fee, SNOWYSLOPES.COM accepts an advertisement and a link to the site so that all who visit SNOWYSLOPES.COM will be able to immediately visit the website of the ski area, hotel, restaurant or travel agency. The visitor will then be able to view availability, prices and make reservations.

In just three years, SNOWYSLOPES.COM has become the largest vacation related website existing on the Internet. It boasts that it will increase traffic to an establishment's website by 1000% and triple a company's revenues.

During 1998 Sally Slopes, the president of SNOWYSLOPES.COM Inc, visited Mike's Ski Hill and Resort, Inc. at their headquarters in Newburyport, Massachusetts and solicited their business. Mike's then entered into a five-year contract which required it to pay SNOWYSLOPES.COM the sum of $35,000.00 per year. The contract allowed Mike's to place advertisements on the SNOWYSLOPES.COM's website and a link to Mike's website would appear at SNOWYSLOPES.COM.

During the first year of the agreement, things could not have gone better for Mike's. Its rate of usage rose dramatically and its revenues increased by over $10,000.00 per month. Unfortunately,
Mike's Ski Hill and Resort, Inc. and Sally Slopes had a falling out in the Summer of 1999 when Sally Slopes fell at Mike's Ski Hill and Resort, Inc. and fractured her leg.

Sally Slopes terminated the contract the following week and refused to accept any more advertising from Mike's.

Mike's consults you regarding this situation. It is terribly concerned that its removal from SNOWYSLOPES.COM is having a terrible effect on its revenues and winter of 2000 bookings. Its revenues are now down $15,000.00 from the previous month, bookings are very poor for the upcoming winter and things look pretty bleak.

What would you advise Mike's Skil Hill and Resort, Inc. to do?
“No system of justice can rise above the ethics of those who administer it.”
Report of the National Commission 1929

Please answer the short answer questions on page two first.

Please review this question, reflect on it and consider solutions to the problem. Please address the issues and propose a solution to this problem.

Use only your social security number on this examination and blue book. Please answer this problem in no more than five handwritten pages. Your answer will be evaluated on your knowledge of the law, ability to recognize issues and your analysis of these issues.

The Martinelli Corporation, a corporation headquartered and incorporated under Massachusetts law, manufactures ladders at its plant in Andover, Massachusetts. For many years, it called itself the largest manufacturer of ladders in New England in its advertisements in The Boston Globe. The ladders were made with aluminum obtained by an aluminum distributor in Virginia called USA Aluminum, Inc. USA Aluminum, Inc. is incorporated under Delaware law. Both the Martinelli Corporation and USA Aluminum, Inc. have websites respectively called Martinelli.com and USAAluminum.com.

Paul Plaintiff purchased a ladder from the Martinelli Corporation and had it delivered to his home in Maine. He used the ladder in Maine for one year before selling his home and moving with his wife to Florida.

Paul was seriously injured when the ladder he was using collapsed at his new home. The ladder buckled and sent Paul some 18 feet to the ground where he fell on his wife, Selma, who was holding the ladder. Selma is a sturdy woman and was not seriously injured by Paul's fall although all of her teeth were knocked out when Paul fell on her.

In its informal investigation of this incident, the Florida Product Safety Commission determined that the Martinelli Corporation's ladder was poorly designed and made from inferior grade aluminum.

Paul and Selma visit you to discuss their options. What is your advice to them?
In the space provided, please briefly explain the following:

Personal Jurisdiction: ______________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

The Erie Problem: _________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

Class Action: _____________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

Equitable Relief: __________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
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Attorneys Fees: __________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
QUESTION ONE

Doug and Dale Doe and their two children, Dan and Dee, decided to fly NewWorld Airways special flyer program to Dino World Arizona as a result of an advertisement in the national edition of the New York Times by World Tours of Boston Inc. The Does booked their vacation with World Tours and took the train from their home in Salem, New Hampshire to Boston's Logan Airport. NewWorld Airways principal place of business is in New York and it is incorporated under Delaware law.

On the way to Dino World, the plane made an unexpected stop in Utah. The Does did not mind stopping for the 10 minutes because they had never been to Utah. While getting a martini, Doug Doe was served with a civil summons and complaint by a disgruntled former customer of his insurance business.

The Does continued on their trip and had a great time in Dino World. Everyone was very sad to be going home. Little did they know it would only get worse. The plane crashed on the Logan Airport runway while landing and upon impact, a tire manufactured and sold by Rubber Inc., a California corporation which is headquartered in that state, exploded. Rubber Inc. sells tires directly to the makers of airplanes and to individuals through its catalog and internet site. Bodies were thrown everywhere. Doug and Dale Doe suffered severe injuries and the children suffered minor injuries.

An attorney, Robert Armano, who happened to be at the airport, spoke to the Does and Tom Tupa regarding the plan crash and agreed to represent them. Armano entered a suit on Tupa's behalf within days of the accident.

Unknown to Armano, Tupa was not injured in the crash, was not on the airplane and was
only on the scene because he was picking up his cousin who had flown on another airline.

The day after the accident, Buck Rogers, the pilot of the plane, was arrested at his home for flying the aircraft while under the influence of intoxicating liquors.

Discuss the civil issues presented including the entry of the Doe's suit.

**QUESTION TWO** (Answer Questions Fully)

1. Collateral estoppel and res judicata apply when ____________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________

2. Injunctions are granted if ____________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________

3. Personal Jurisdiction is based upon ________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________

4. The Erie Doctrine requires _________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________

5. Discovery allows _________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
   ________________________________________________________________________________
6. A complaint can be amended if ________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________.

7. The principle forms of alternative dispute resolution are ___________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________.

8. Summary judgment is appropriate when ________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________.

9. In order to enter a complaint, you must determine ________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

10. The principle methods of receiving attorneys' fees in class action and similar types of
    litigation are
    ____________________________________________________________
    ____________________________________________________________
    ____________________________________________________________
    ____________________________________________________________
    ____________________________________________________________.

(Myfiles/civproexam.f97)
Reputation and learning are akin to capital assets, like the goodwill of an old partnership. For many, they are the only tools with which to hew a pathway to success.

Cardozo

Use your social security number on the exam and blue book. Write legibly and coherently.

You will be graded on your knowledge of the law, ability to analyze the issues and your treatment of the issues.

No more than six pages handwritten, one side only, or five, typed double-spaced pages. I will not read anything that exceeds the limit.

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**QUESTION ONE**

When reading the New York Times, Peter and Paula Mology of Andover, Massachusetts saw an advertisement for Coast To Coast Train Tours, Inc., a New York corporation with a principle place of business in New York, and decided to tour the southwestern United States. They checked its website at coasttocoast.com and found all the particulars including special pricing if the tour was booked online. The train service was provided by World Trains, Inc., a Delaware Corporation with a principle place of business in Texas. World Trains, Inc. is the largest passenger train company in the United States. The Mologys boarded the train at South Station in Boston, Massachusetts.

As the train traveled through Illinois, Pete Mology was served with a summons and complaint. The complaint was filed by Attorney Harold Ickes on behalf of Kay Summersby. Kay Summersby was a disgruntled former employee of the Mology Corporation in Massachusetts. Harold Ickes knew that he had no case against Mology individually but felt Mology would settle the case if named individually rather than
defend the action.

While traveling through Texas, two of the train's windows shattered, sending glass everywhere. Many passengers were injured including Pete Mology who lost his right eye because of the flying glass. The window was made and installed by Glass, Inc., a Connecticut corporation.

One year earlier, Glass, Inc. was found guilty of reckless endangerment in criminal court and fined for selling glass that was highly dangerous because it was improperly manufactured.

As a result of his injuries Pete Mology spent two months at a rehabilitation hospital in Maine and stayed there to recuperate. Pete fell in love with the area and also learned that Maine's Laws are extremely beneficial to injured parties.

Discuss the issues presented in the blue book provided to you.

**QUESTION TWO** (Answer Questions In The Space Provided)

1. Due process requires _____________________________________________  
   _____________________________________________________________________  
   _____________________________________________________________________  
   _____________________________________________________________________  
   _____________________________________________________________________  
   _____________________________________________________________________.

2. Removal Jurisdiction is ____________________________________________  
   _____________________________________________________________________  
   _____________________________________________________________________  
   _____________________________________________________________________  
   _____________________________________________________________________  
   _____________________________________________________________________  
   _____________________________________________________________________.

3. The Erie Doctrine requires _________________________________________  
   _____________________________________________________________________  
   _____________________________________________________________________  
   _____________________________________________________________________
4. Collateral estoppel and res judicata apply when
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________

5. A complaint can be amended if _____________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________

6. The principle forms of alternative dispute resolution are _________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________

7. Injunctions are granted if __________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________

8. Summary Judgment is appropriate when ______________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________

9. The methods of Discovery are _____________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
10. Judgment as a Matter of Law is

______________________________________________________________________

______________________________________________________________________

______________________________________________________________________

______________________________________________________________________

______________________________________________________________________

______________________________________________________________________

(civprocexam98dps)
To no one will we sell, to no one will we refuse or delay, right or justice.  
Magna Carta

Use your social security number on the exam and blue book. Write legibly and coherently.

You will be graded on your knowledge of the law, ability to analyze the issues and your treatment of the issues.

No more than five (5) pages handwritten, one side only, or four (4), typed double-spaced pages. I will not read anything that exceeds the limit. Happy Holidays!

__________________________

QUESTION ONE

CYBERU.COM, INC., a Delaware Corporation with a principal place of business in California, is the premiere website for education and self-development on the Internet. It is the leader in online education and has experienced explosive growth in the last year. It owns the trademark to the name CYBERU and closely protects its trade secrets, new products and other intellectual property.

Some four months ago, a former employee of CYBERU.COM, INC., Mike Malaguti, left CYBERU.COM to form his own Internet company called CYBERU.NET, INC. CYBERU.NET, INC is a New York based corporation which is also engaged in the online education business, although at present, it is not a serious competitor to CYBERU.COM. Mike Malaguti is the President and Chief Executive Officer of CYBERU.NET, INC. Mike Malaguti signed a noncompetition agreement with CYBERU.COM prohibiting him from competing with the company for one year from the time he was no longer employed by the company.

Malaguti has recently hired two key employees of CYBERU.COM, Diane Rudnick and Connie Sullivan, and is actively soliciting other employees in the company to follow suit. Malaguti took a customer list and catalog of new products from the company when he quit. He also immediately began fraudulently telling people that the company was in serious
financial difficulty.

Malaguti says his noncompetition agreement is invalid because another former employee, Joe Divlin went to court in California and had that court declare his agreement with the company null and void since the agreement was overbroad.

The company is very concerned that Malaguti’s fraud, theft of company secrets and use of a name very similar to its trademark is causing a serious decline in its revenues and wants you to aggressively pursue this matter. The company president has told you to “crush Malaguti like the bug he is” and “proceed asap.”

How will you proceed and why?

**QUESTION TWO** (Answer Questions In The Space Provided)

1. Class actions are __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________

2. Summary Judgment is appropriate when __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________

3. The principle forms of alternative dispute resolution are __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________

4. A complaint can be amended if __________________________________________
   __________________________________________
2. Rule 11 requires __________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________

3. The methods of discovery are _________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________

4. The Erie Doctrine requires ___________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________

5. Forum Non Conveniens is ____________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________

6. Counterclaims are __________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________

7. Injunctions are granted if ____________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
   ____________________________________________________________________
QUESTION ONE

SANDYSHORES.COM Inc. is a New York Corporation that operates an Internet based advertising service for beach clubs, hotels, motels, restaurants and travel related services which in any way concern the beach. For an annual fee, SANDYSHORES.COM accepts an advertisement and place a link on its site so that all who visit SANDYSHORES.COM will be able to immediately visit the website of the beach club, hotel, restaurant or travel agency that has paid for its services. The visitor will then be able to view availability, prices and can make reservations.

In just three years, SANDYSHORES.COM has become the largest vacation related website existing on the Internet. It boasts that it will increase traffic to an establishment's website by 1,000 percent and triple a company's revenues.

In late 2000, Ms. Shore, the president of SANDYSHORES.COM Inc., visited Jerry's Bahama Beach Club and Resort, Inc. at their headquarters in Orlando, Florida and solicited their business. Jerry's then entered into a ten year contract requiring it to pay SANDYSHORES.COM the sum of $50,000.00 per year. The contract allowed Jerry's to place advertisements on the SANDYSHORES.COM's website and a link to Jerry's website would appear at SANDYSHORES.COM.

During the first 6 months of the agreement, things could not have gone better for Jerry's. Its rate of usage rose dramatically and its revenues increased by over $15,000.00 per month. Unfortunately, Jerry's Bahama Beach Club and Resort, Inc. and Sandi Shore had a falling out in the summer of 2001 when Sandi drove her car into the restaurant at Jerry's Bahama Beach Club and Resort, Inc., causing $10,000.00 worth of damage and then refused to pay for the repairs. Shortly thereafter, Sandi Shore terminated the contract for advertising on its website and
refuses to accept any more advertising from Jerry's.

Jerry's Bahama Beach Club and Resort, Inc. consults you regarding this situation. It is very concerned that its removal from SANDYSHORES.COM is having a terrible effect on its revenues and 2002 bookings. Its revenues are already now down $15,000.00 from the previous month and bookings are very poor for the upcoming season and things look pretty bleak and Jerry's wants you to “bury them in paper.”

What would you advise Jerry's Bahama Beach Club and Resort, Inc. to do? Please explain its litigation options.

QUESTION TWO

In the space provided, briefly explain the following terms:

Personal Jurisdiction: ____________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

The Erie Doctrine: _______________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

Damages: ______________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
Class Actions: 

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

Supplemental Jurisdiction: 

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

myfiles/CivPro.MidtermFall2001
QUESTION ONE

While surfing the internet, Joe Lynn saw an advertisement on NESKI.INFO, a company he had read about in Time magazine when it launched its website last month. The advertisement described a bus tour of New England's largest ski areas. This tour is conducted by Trailways Bus Lines, Inc., a Delaware Corporation, which is headquartered in Illinois and NESKI.INFO, Inc., a New York corporation. Joe called NESKI.INFO's 800 telephone number and booked the tour for his wife, his 12 year old twins, Joe Bob and Jody, and himself. He charged the $10,000 fee to his BankMontana credit card and the travel passes and tickets were sent to him at his home in New York City.

When the bus made its first stop in Quechee, Vermont, Mike Olson, former employee of Mr. Lynn's bankrupt company, Lynn Inc., served him with papers for a sexual harassment suit. Mr. Lynn feels this suit is baseless and only brought to embarrass him and cause him great expense in defending a suit so far from his home.

As the bus tour concluded its visit to the ski areas in New Hampshire, the bus went off the road in Salem, New Hampshire. Many passengers were badly injured, including Joe...
Lynn whose left leg was severed in the crash and was not able to be reattached. This was so despite the heroic efforts of his wife, Rosa, who lost her own pinky finger in the accident, but suffered few other injuries.

The driver of the bus, Ed Bitter, was subsequently arrested for driving while under the influence of intoxicating liquors and failure to have a Class III license. A Class III license is needed to drive a passenger bus on an interstate basis. Bitter was convicted of both offenses and sentenced to ten years in jail.

The Lynns spent the next six months in Massachusetts, while Mr. Lynn received treatment at Massachusetts General Hospital and then Spaulding Rehabilitation Hospital in Boston. They fell in love with the area and learned that Massachusetts laws are extremely beneficial to injured parties. They decided to stay in Massachusetts.

Federal law requires that all passenger bus or motorcoach tour operators obtain a permit to operate and requires that a bus or motorcoach driver have a Class III license.

The Lynns consult you regarding these issues. What is your advice to them?

QUESTION TWO

Pete's Wicked Quiz Beer, Inc. is a Massachusetts corporation is being sued by Pete's Wicked Ale, Inc., a New Jersey corporation, for various claims in the state court of New Jersey. Pete's Wicked Ale claims that for the last 20 years, Pete's Wicked Quiz Beer has infringed on its good name and confused the public by using a name too similar to its own. Pete's Wicked Ale seeks monetary and equitable relief. Pete's Wicked Quiz Beer, Inc. filed an answer and counterclaim to the complaint. Pete's Wicked Quiz Beer, Inc. strongly believes that if it is not allowed to continue selling its beer, many of its satisfied customers will be seriously affected. Some of their customers have already begun to picket the corporate headquarters of Pete's Wicked Ale, Inc.

Discovery has not yet been completed, but Pete's Wicked Ale, Inc. recently filed a motion for summary judgment.
Please address in detail how each of the following issues affects this matter, making sure that you properly define each issue, and then appropriately tie that issue to the facts of the case.

Removal Jurisdiction:

Equitable Relief:
Judgment as a matter of law:

Affirmative Defenses:

Counterclaims:

Amending Pleadings:
Outcome Determinative Test:

Class Action:

Discovery:
Summary Judgment:
CIVIL PROCEDURE and CONFLICT RESOLUTION
MIDTERM FALL 2002
Professor Coyne

SOCIAL SECURITY NO:

*Lawyers cannot remain empty of head and pure of heart . . . . a lawyer has a duty to investigate or take some steps to inform himself.*

Barry Salberts 2000

Use your social security number on the exam and blue book. Write legibly and coherently.

You will be graded on your knowledge of the law, ability to analyze the issues and your treatment of the issues.

No more than five (5) pages handwritten, one side only. I will not read anything that exceeds the page limitation.

---------------------------------------------------------------------------------------------------------------------

QUESTION ONE

The Pilgrim Nuclear Power Plant in Plymouth, Massachusetts provides electricity to its customers and is owned and operated by Entergy Corporation of New Orleans, Louisiana. Entergy operates nuclear power plants in Plymouth, Texas, Louisiana and Pennsylvania. The Plymouth plant has a history of shoddy operations and has been shut down numerous times by the Nuclear Regulatory Commission for a variety of problems.

Recently, a serious explosion occurred at the plant when some spent nuclear fuel rods were improperly placed in a storage shed by the plant superintendent, Joseph Malaguti, of Plymouth, Massachusetts. Malaguti put 100 rods in a storage shed on the advice of their consultant, Hotwires, Inc., a New York Corporation that provides management and consulting services to utility companies throughout the United States. The rods then became exposed to the air and exploded, sending debris throughout Manomet, which ultimately caused respiratory problems and some minor burns to people living in the Manomet section of Plymouth. Brian and Ann Wiseman claim they now suffer from respiratory problems as a result of this explosion.

Ann and Brian Wiseman have come to see you to complain about this "serious health" hazard and want you to pursue this situation. They explain to you that this situation has made them so uneasy that they sold their house in Manomet and moved to Maine where they now feel safe. They are very angry about this situation and want you to "punish" Entergy, "bury them in paper" and "just drive them out of business."

They also explain to you that they have successfully lobbied the Nuclear Regulatory Commission to sanction Malaguti and Entergy for violating the Federal statute that makes it unlawful to place spent nuclear rods in anything other than an approved holding facility.
What is your advice?

**QUESTION TWO** (25 percent of grade) (Please *define* the term or terms below and explain how, *if* at all, this concept applies to Question One.)

1. Notice Pleading

2. Supplemental Jurisdiction

3. Removal Jurisdiction

4. Class Action

5. Outcome Determinative Test
QUESTION ONE

While reading *USA Today*, Peter Pan of Portland, Maine saw an advertisement for Beef247.com Inc., a Delaware corporation with a principal place of business in Iowa. Beef247.com is a company Pan had also read about in *The Boston Globe* when it launched its website three months ago. The advertisement described the beef as being the finest available in the United States and was guaranteed to be shipped fresh to your door by Xpress Meats, Inc. of Illinois. Peter called Beef247.com's 800 telephone number and ordered $500.00 worth of steaks for himself, his brother, Jerry, and his boss, Diane Sultan. He charged the $1,500 fee to his credit card.

The beef arrived a week after the order. The Pan brothers had a cookout and invited many of their neighbors. Within minutes of eating the beef, some people began to vomit violently and soon ambulances arrived and took a number of people to the hospital.

It was later discovered that Beef247.com was selling animals that were not cattle and that the processing plant was kept in an extremely unsanitary condition. Some of the animals had even been fed garbage prior to their demise. The Board of Health immediately issued a
cease and desist order shutting down Beef247.com.

Many of the consumers who purchased beef from Beef247.com were badly injured, including Peter Pan, whose left leg had to be amputated to stop a rapidly-advancing infection.

Diane Sultan was so upset at getting sick, that she fired Peter Pan from his job as a salesman and filed suit against him in Billhill County state court in Arkansas, where she lives and her company headquarters are located.

The chief operating officer of Beef247.com.Inc., Dave Beefy, was subsequently arrested for intentionally selling household pets as beef and failing to maintain a clean food-handling facility. Dave Beefy was convicted of both offenses and sentenced to two years in jail.

Peter Pan spent the next six months in New Hampshire receiving treatment at New Hampshire General Hospital and Green Mountain Rehabilitation Center in Portsmouth. Pan fell in love with the area and learned that New Hampshire laws are extremely beneficial to injured parties. He decided to stay in New Hampshire.

Federal law requires that all beef sold to consumers be inspected by federal regulators to insure that outbreaks of food poisoning do not take place. None of the meat sold by Beef247.com had ever been inspected by federal regulators.

The Pan brothers consult you regarding these issues. How would you proceed and why?

QUESTION TWO

WorldWide Trucking Company, Inc., a New York corporation, is being sued in the state court of Massachusetts by Mike's Trucks, Inc., a Massachusetts corporation, for various claims. Mike's Trucks claims that WorldWide Trucking has been stealing its employees and customers and causing it to lose hundreds of thousands of dollars in revenue. Mike’s Trucks seeks monetary and equitable relief in its action filed in Massachusetts. This is just the latest suit in a long battle between these two companies. The last suit resulted in a judgment for WorldWide with the Judge in the Federal District Court for New York criticizing Mike's Trucks for continuing this heated battle.

WorldWide Trucking brings you the summons and complaint that was recently served upon it.

Please address in detail how each of the following issues affects Question Two, making sure that you properly define each issue first, and then appropriately tie that issue to
the facts of the case.

Removal Jurisdiction:

Outcome Determinative Test:
Preliminary Injunction:

Res Judicata and Collateral Estoppel:

Discovery:

Amending Pleadings:
General and Specific Jurisdiction:

Well Pled Complaint Rule:

Forum Non Conveniens:
The Three Testing Motions:

Jen Pino purchased a computer at [www.webcomputers.com](http://www.webcomputers.com) and had it delivered to her home in New York. She used the computer in New York for a brief period of time before it exploded, sending pieces of glass throughout the room in which she was working.

Jen Pino was injured as a result of the explosion and lost her right eye. Her live in boyfriend Gene Simmons was slightly injured when he cut his finger on one of the pieces of glass as he came to help her.

As a result of its informal investigation of this incident, the New York State Police believe that the computer was poorly designed and made of inferior electrical components. Their investigation also revealed that many others who purchased these computers also have been injured, although none as seriously as Pino.

Pino and Simmons visit you to discuss their options. What is your advice? How would you proceed? And why?
In the space provided, please briefly explain the following and describe how, if at all, it applies to the essay question on page 1:

Statutes of Limitation
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

The Outcome Determinative Test
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

Supplemental Jurisdiction
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

Injunctive Relief
____________________________________________________________________________
____________________________________________________________________________
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Forum Non Conveniens
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While reading *Time Magazine*, Paul Peters of Bristol, Connecticut saw an advertisement for an electric car made by Rambler, Inc., a Delaware corporation with a principal place of business in Detroit, Michigan. Peters had also read about the vehicle in an article in *The Boston Globe* when it began manufacturing the vehicle and then further investigated it at Ramblers4u.Com, a website owned and operated by the retail distributor of the car, Ramblers4u.Com, Inc., a corporation headquartered and incorporated under New York law. The advertisement described the vehicle as being the finest electric car available in the United States and was guaranteed to be delivered to your door within 8 weeks of your order by Xpress Trucks, Inc. of Illinois. Peter called the telephone number listed in the ad and ordered the vehicle. He sent a check for $15,000 directly to Detroit as Ramblers4u.Com, Inc. had specified.

The vehicle arrived a little more than two months later, and Peters was the envy of everyone in the neighborhood. Many of his neighbors were very impressed with the vehicle. Peter decided to take his wife, Pam and daughter, Paula, to Florida in his new vehicle. However, tragedy struck while driving through Georgia. The electric engine exploded sending high voltage electricity throughout the vehicle, immediately killing Pam and ...
seriously injuring Paul and Paula.

The Peters spent the next six months in Florida receiving treatment at Florida General Hospital and Orlando Rehabilitation Center in Orlando, Florida. The Peters fell in love with the area and learned that Florida laws are extremely beneficial to injured parties in that they provide for generous awards of punitive damages. Paul and Paula decided to stay in Florida.

Federal law requires that all electric vehicles advertised or sold in the United States be inspected and approved by federal regulators. None of the vehicles sold by Rambler, Inc. had ever been inspected or approved by federal regulators. After an administrative proceeding instituted by the Transportation Safety Bureau, Rambler, Inc. and Ramblers4u.Com, Inc. were fined $100,000 for failing to have the electric vehicles meet certain safety standards.

The Peters consult you regarding these issues. How would you proceed and why?

QUESTION TWO

Frank Flynn, a resident of Boston, Massachusetts, attended a conference at Great Resort in New Jersey. On October 14, 1999, Frank was injured when he slipped and fell while getting out of Great Resort's hot tub.

Great Resort was a corporation wholly owned and operated by Hospitality, Inc. (“Hospitality”), a Delaware corporation with its principal place of business in New Jersey. Hospitality was not registered to do business in Massachusetts and does not own or operate any business in Massachusetts. Great Resort had a website on the internet linked to Hospitality's website, which described Great Resort's amenities, rates and services. Reservations at Great Resort could be made over the internet and, in fact, Frank's accommodations at Great Resort were made and paid for by his employer, located in New Hampshire, through Great Resort's website on the internet. Frank's employer subsequently had the credit card company void that payment.

On January 10, 2003, Frank sued Hospitality and Great Resort in the Suffolk Superior Court. In the complaint, Frank alleged that his severe injuries were caused by the negligence of Great Resort's agents, employees and servants in maintaining and servicing the hot tub and he claimed damages for his injuries, lost wages and permanent disability.

Please address in detail how each of the following concepts affects Question Two, making sure that you properly define each concept first. Then appropriately tie that issue to the facts of the case or explain why the concept is not applicable to the fact pattern contained
in Question Two.

Removal Jurisdiction:

Erie Doctrine:
Equitable Remedies:

Res Judicata and Collateral Estoppel:

Counterclaims:

Affirmative Defenses:
General and Specific Jurisdiction:

Well Pled Complaint Rule:

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

On February 1, 2002, Britt Hart purchased a flatscreen television for $2,500 at [www.EFlatscreens.com](http://www.EFlatscreens.com) and had it delivered to her home in Massachusetts. She used the flatscreen in Massachusetts for a brief period of time before it exploded sending pieces of glass throughout the room in which she was working. Britt Hart was injured as a result of the explosion and lost her right eye. Her mother and sister, Rita and Maggie, were slightly injured when they cut themselves on the pieces of the glass as they came to her aid.

As a result of its informal investigation of this incident, the Massachusetts State Police believe that the flatscreen television was poorly designed and made of substandard parts. Their investigation also revealed that many others who purchased these flatscreen televisions also have been injured, although none as seriously as Hart.

Hart and her mother and sister visit you to discuss their options. What is your advice? How would you proceed? And why?
In the space provided, please briefly explain the following and describe how, if at all, it applies to the essay question on page 1:

Well-Pled Complaint Rule

The Outcome Determinative Test

Subject Matter Jurisdiction
A people that values its privileges above its principles soon loses both.

Eisenhower

Use your social security number on the exam and blue book. Write legibly and coherently.

You will be graded on your knowledge of the law, ability to analyze the issues and your treatment of the issues.

Please take the time to think about and organize your answer. Please do not just define the issue of law, but think about how it applies to the facts and what the ramifications of your conclusion are. Please limit your answer to six pages and write on only one side of each page.

QUESTION ONE

While watching the Poker Channel on cable television, Eliza Edmunds of Amherst, New Hampshire saw an advertisement for a poker tournament run by Pokertrips, Inc., a Delaware corporation with a principal place of business in Atlantic City, New Jersey. Edmunds had also read about the Pokertrips in an article in USA Today, and then further investigated it at PokerWorld.com, a website owned and operated by Fleece, Inc., a corporation headquartered and incorporated in the Bahamas. The advertisements described the trips as safe, secure and profitable ways to gamble and visit the finest casinos in New Jersey. Edmunds used her credit card to pay for the trip for her husband Ed and her daughter Ellen.

The credit card payments were processed by MCVISA Processing, Inc., a Canadian corporation that processes payments for various merchants. Unknown to the Edmunds was that MCVISA Processing, Inc. has a long-standing practice of adding an additional $5.00 per transaction to the credit card of each person who provides the information to them. It will refund the $5.00 if the individual complains, but more often than not, it goes unnoticed by the credit cardholder. MCVISA was previously fined $50,000 by the Federal Trade Commission for this practice, as it violates Federal law.
The Edmunds departed from the airport at Manchester, New Hampshire and the flight to New Jersey was uneventful. Upon arriving in New Jersey, the Edmunds stayed at the Biltless Hotel Corporations’ Sweet Suites. Biltless Hotel Corporation is organized under Delaware law. The rooms were disgraceful, the food simply terrible, and except for a good run of luck at the gaming tables, the entire trip was a disaster. On the last night of their stay at Sweet Suites, armed intruders broke into their hotel room, stole their casino winnings and shot Ed Edmunds in the head, killing him instantly, killed their dog Toto and wounded Mrs. Edmunds. The intruders were never captured.

Mrs. Edmunds recuperated in New Jersey from her wounds and received treatment for many months at Garden State Hospital before returning home to New Hampshire. Mr. Edmunds and Toto were buried together at sea.

Eliza and her daughter Ellen consult you regarding these issues. How would you proceed and why?

**QUESTION TWO**

Mike Martin, a resident of Boston, Massachusetts, owned Blue Valley Resort in New Hampshire. On October 14, 1999, Billy Bobs, a minor, was seriously injured when he slipped and fell off a cliff at the resort after being served an excessive amount of alcohol. The Resort’s main attraction was that it provided an “all you can eat and drink weekend.”

Blue Valley Resort was a corporation wholly owned and operated by Parties, Inc. (“Parties”), a Delaware corporation with its principal place of business in New Hampshire. Parties was not registered to do business in Massachusetts and does not own or operate any business in Massachusetts, although its website is available in Massachusetts and elsewhere for people to book trips. Reservations at Blue Valley could be made over the Internet and, in fact, a 10% discount is given for trips booked over the Internet.

On January 10, 2002, Billy Bobs and his parents sued in the Suffolk Superior Court. The Defendants immediately removed that action to Federal Court where they had successfully defended two previous injury cases filed by minors. In the complaint, Billy Bobs alleged that his severe injuries were caused by the negligence of Blue Valley Resort’s agents, employees and servants.
Please address in detail how each of the following concepts affects Question Two, making sure that you properly define each concept first. Then appropriately tie that issue to the facts of the case or explain why the concept is not applicable to the fact pattern contained in Question Two.

Amending Pleadings:

Erie Doctrine:

Injunctive Relief:
Res Judicata and Collateral Estoppel:

Counterclaims:
Class Action:

General and Specific Jurisdiction:

Rule 11:
Discovery:

The Three Testing Motions:
QUESTION ONE

While using www.google.com, a well known internet search engine, Darius Devine of New London, Connecticut saw a notice for a Laptop 4N1 made by Laptop 4N1 R us, Inc., a Delaware corporation with a principal place of business in Seattle, Washington. Devine had also read about the laptop that serves as a computer, organizer, TV and cell phone in an article in *The Boston Globe* when the company first began manufacturing the laptop.

He then further investigated it at Laptop 4u.Com, a website owned and operated by the retail distributor of the laptop 4N1, Laptop 4u.Com, Inc., a corporation headquarterd and incorporated under New York law. The advertisement described the laptop as being the finest such device available in the world and was guaranteed to be delivered to your door within 2 weeks of your order by Jet Air and Cargo, Inc. of Florida. Darius called the telephone number listed in the Boston Globe article and ordered the laptop from his home in New London to serve as his computer, organizer, TV and cell phone. He sent a check for $1100. directly to New York as Laptop 4u.Com, Inc. had specified.
It arrived a little more than one month later, and Devine was the envy of everyone in his classes in Massachusetts. Darius decided to take his girlfriend, Darla, to school with him so she could see how great a student he was in class. He thought she would be so impressed that she might finally accept his marriage proposal. However, tragedy struck while attending the property class. The laptop 4N1 exploded sending shards of glass throughout the room seriously injuring Darius and Darla and injuring all of the students in the classroom. When the accident initially happened, the flash of light was so intense that it blinded everyone in the room for more than 5 minutes. Two students are now deaf as a result of the explosion. The professor, who had been playing with Darius’ laptop, ran from the room immediately before the explosion and was uninjured. He later left the country and is now a “freedom fighter” living in Iraq.

A permanently injured Darius Devine returned home and spent the next six months in Florida receiving treatment at Florida General Hospital and Orlando Rehabilitation Center in Orlando, Florida. Darla finally agreed to marry Darius and they were wed at Disney’s MarriageLand. The Devines fell in love with the area and learned that Florida laws are extremely beneficial to injured parties in that they provide for generous awards of punitive damages. They hired an attorney and decided to stay in Florida.

Federal law requires that all laptops that function as multiple devices and are advertised, distributed or sold in the United States be approved by federal regulators. Darius’ laptop had never been approved by federal regulators. After an administrative proceeding, the Consumer Product Safety Commission in Washington D.C. fined Laptop 4N1 R us, Inc. and Laptop 4u.Com, Inc. $100,000 when it determined that the laptop failed to meet certain federal safety standards.

The Devines consult you regarding these issues. How would you advise them to proceed and why?

QUESTION TWO

Bob Boyce, a resident of Andover, Massachusetts, attended a conference at Great Neck Inn in Ogunquit, Maine. Bob was injured when he was assaulted by the bellman while getting out of Great Neck’s pool.

Great Neck Inn was a corporation wholly owned and operated by Hospitality, Inc. (“Hospitality”), a Delaware corporation with its principal place of business in New York. Great Neck Inn had a website on the internet linked to Hospitality’s website, which described Great Neck’s amenities, rates and services. Reservations at Great Neck could be made over the internet and, in fact, Bob’s accommodations at Great Neck were made over his internet
and paid for by his employer, the Massachusetts School of Law. On January 10, 2005, Bob sued Hospitality and Great Neck in the Essex Superior Court. In the complaint, Bob alleged that his severe injuries were caused by the negligence of Great Neck’s agents, employees and servants in hiring the bellman and in maintaining security. He claimed damages for his injuries, lost wages and permanent disability.

In the last 5 years the bellman was convicted of assaulting three other hotel guests in this manner. One of those injured guests successfully sued Great Neck and the two others are now considering pursuing claims.

Please define fully each concept below and explain how each of the following concepts affects Question Two. Please appropriately tie that concept to the facts of the case or explain why the concept is not applicable to the fact pattern contained in Question Two.

Removal Jurisdiction:

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The Three Testing Motions:

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Injunctive Relief:


Res Judicata and Collateral Estoppel:
Three Standards of Proof:

Affirmative Defenses:

Intervention:
Well Pled Complaint Rule:


Discovery:


Rule 11:


The secret of success in life is to be ready for the opportunity when it comes.

Benjamin Disraeli

Use your social security number on the exam and blue book. Write legibly and coherently.

You will be graded on your knowledge of the law, ability to analyze the issues and your treatment of the issues.

Please take the time to think about and organize your answer. Please do not just define the issue of law, but think about how it applies to the facts and what the ramifications of your conclusion are. Please limit your answer to six pages and write on only one side of each page.

QUESTION ONE

While using www.ilearn.com, a well known internet website, John Lisas of Petersburg, Maine saw a notice for a Bluetootheyeglasscomputer made by Bluetootheyeglasscomputer, Inc., a Delaware corporation with a principal place of business in Roanoke, Virginia. Lisas had also read about the Bluetootheyeglasscomputer that serves as a minicomputer, TV and cell phone in an advertisement in The New York Times when the company first began manufacturing the Bluetootheyeglasscomputer. While it looks like a simple pair of eyeglasses, the Bluetootheyeglasscomputer allows the user to have complete access to the system through voice command with the requested information then shown on the eyeglass lens.

He then further investigated it at Bluetootheyeglasscomputer.com, a website owned and operated by the retail distributor of the Bluetootheyeglasscomputer, BTU.com, Inc., a corporation headquartered and incorporated under New York law. He also researched Fung Wa Products Inc. through their website as well. The Bluetootheyeglasscomputer had a
component piece manufactured in China by Fung Wa Products Inc., a Chinese corporate citizen. The advertisement described the Bluetootheyeglasscomputer as being the finest such device available in the world and was guaranteed it to be safe at all times. John called the telephone number listed in the New York Times and ordered the Bluetootheyeglasscomputer from his home in Petersburg. He sent a check for $2100 directly to the company as specified at the website.

It arrived a little more than one month later, and Lisas was the envy of everyone in his college classes and at work at the 99. John decided to take his wife, Jen, to work with him so they could celebrate the end of the semester. However, tragedy struck at the 99 when they were eating some boneless buffalo wings. The Bluetootheyeglasscomputer exploded sending shards of glass and hot sauce throughout the dining room seriously injuring John and Jen and injuring all of the patrons at the 99. Many of the 99’s employees were seriously injured, including the bartender Tom who died from his injuries. John is now blind as a result of this incident while Jen suffered only minor injuries.

A permanently injured John Lisas returned home and then spent the next six months in Arizona receiving treatment at Arizona General Hospital and Arizona Rehabilitation Center. The Lisas fell in love with the area and learned that Arizona laws are extremely beneficial to injured parties in that they provide for awards of punitive damages. They hired an attorney and decided to stay in Arizona.

Based upon a complaint by John Q. Citizen to the Kentucky Attorney General it was determined that the Bluetootheyeglasscomputer was defective in that the piece manufactured by Fung Wa overheated after use. The administrative proceeding fined both BTU Inc. and Bluetootheyeglasscomputer $100,000 when it determined that the companies failed to meet safety standards.

The Lisas consult you regarding these issues. How would you advise them to proceed and why?

QUESTION TWO

Bob Bankerz, a resident of Salem, Massachusetts, attended a conference at Neck Inn in Portland, Maine. Bob was injured when he was assaulted at the hotel.

Neck Inn was a corporation wholly owned and operated by IHospitality, Inc. ("IHospitality"), a Delaware corporation with its principal place of business in Delaware. Neck Inn had a website on the internet linked to IHospitality’s website, which described Neck’s amenities, rates and services. Reservations at Neck could be made over the internet
and, in fact, Bob’s accommodations at Neck were made over his internet and paid for by his employer, the Massachusetts School of Law. On January 10, 2006, Bob sued IHospitality and Neck in the Suffolk Superior Court. In the complaint, Bob alleged that his severe injuries were caused by the negligence of Neck’s agents, employees and servants in maintaining security. He claimed damages for his injuries, lost wages and permanent disability.

Please define fully each concept below and explain how each of the following concepts affects Question Two. Please appropriately tie that concept to the facts of the case or explain why the concept is not applicable to the fact pattern contained in Question Two.

Federal Court Jurisdiction:

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The Three Testing Motions:

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Equitable Remedies:


Res Judicata and Collateral Estoppel:


Erie and the Outcome Determinative Test:


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Counterclaims:

Amending Pleadings:

Well Pled Complaint Rule:
Discovery:

Alternative Dispute Resolution:
CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2006 Mid-Term Question
Professor Coyne

 Lawyers cannot remain empty of head and pure of heart....

A lawyer has a duty to investigate or take some steps to inform himself in a situation where he believes that there is client perjury.
Barry S. Alberts

Please answer the short answer questions on page two first.

Please review this question, reflect on it and consider solutions to the problem. Please address the issues and propose a solution to this problem.

Use only your social security number on this examination and blue book. Please answer this problem in no more than five handwritten pages. I will evaluate your answer on your knowledge of the law, ability to recognize issues and your analysis of these issues.

Internet Cellphones, Inc., a corporation headquartered and incorporated under Connecticut law, manufactures Internet Cellphones at its plant in Albany, New York. It calls itself the first manufacturer of Internet Cellphones in the northeast in its advertisements in USA Today, a newspaper distributed throughout the country. Internet Cellphones Inc. sells the Cell phones through its retail stores in Andover, Massachusetts, Groton, Connecticut and Providence, Rhode Island and over the internet at www.InternetCellphones.com through a distributor called EInternet Cellphones.com, Inc., a Delaware corporation.

On April 1, 2006, Braxton Kim purchased an Internet Cellphone for $1,000 at www.InternetCellphones.com. He had it delivered to his home in Salem, New Hampshire. He used the Internet Cellphone at a 75th birthday party for his mother where it exploded sending pieces of glass and plastic throughout the room. Kim was severely injured and his cat, Puffy, who went everywhere with him, was killed instantly in the explosion. His mother, Pearl, suffered permanent disfiguring injuries because of the explosion and was hospitalized for many months.

Through its formal investigation of this incident, the New Hampshire Attorney General's office discovered that the Internet Cellphones were poorly manufactured and a dangerous product. Their investigation also revealed that the phone had never received approval from the Federal Trade Commission as an approved electronic device. It ordered a recall of the product.

Kim visits you to discuss this matter. What is your advice? How would you proceed and why?
In the space provided, please briefly explain the following and describe how, if at all, it applies to the essay question on page 1:

Forum Non Conveniens__________________________________________________________

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The Erie Doctrine____________________________________________________________

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Removal Jurisdiction__________________________________________________________

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A leader is a dealer in hope. Napoleon Bonaparte

Use your social security number on the exam and blue book. Write legibly and coherently.

Your knowledge of the law, ability to analyze the issues and your treatment of the issues will form the basis for your grade.

Please take the time to think about and organize your answer. Please do not just define the issue of law, but think about how it applies to the facts and what the ramifications of your conclusion are. Please limit your answer to six pages and write on only one side of each page.

QUESTION ONE

Webtoday.com Magazine, a corporation incorporated and headquartered in Boston, Massachusetts, is the finest online magazine on the web. It first went online in 2005 and has grown steadily since that time. Starki Vietzke of Salem, Maine went online to Webtoday.com’s shops which are run by X Corp., a Delaware corporation with a principal place of business in London England to purchase diet drugs, specifically the diet drug VOXPOPULI, manufactured by Johnson & Johnson of New Jersey. Vietzke had also read about the diet drug in an article in The Boston Globe and then further investigated it by googling more information about it at the search engine www.google.com that is headquartered and incorporated under New York law. The drugs were described as wonder drugs and guaranteed to achieve great results. Starki purchased a 6-month supply of the drugs online using his MasterCard.
Vietzke was the envy of everyone in the neighborhood as he started to lose weight immediately. Many of his neighbors were very impressed with the results and asked Vietzke to obtain the drugs for them as well which he agreed to do, becoming a distributor of VOXPOPULI. However, tragedy soon struck when Starki had a heart attack 6 months after starting the drug. He has lost sight in his left eye and now walks with a limp. His wife Tu has quit her job as physician in charge of Maine Medical Center to help nurse him back to health. A few of his neighbors have also suffered adverse side effects.

The Vietzke’s moved to Alabama so Starki could get treatment at Alabama General Hospital and Birmingham Rehabilitation Center in Birmingham, Alabama. The Vietzke’s learned that Alabama laws are extremely beneficial to injured parties in that they provide for generous awards of punitive damages. Starki and Tu decided to remain in Alabama during treatment.

After a three day administrative hearing held by the Federal Drug Safety Bureau, it recalled VOXPOPULI for failing to meet certain safety standards.

Federal law mandates that all drugs be properly labeled or any injured party may sue the distributor and manufacturer for twice the actual damages plus attorney’s fees. Johnson & Johnson denies that the drug was mislabeled.

The Vietzke’s consult you regarding these issues. How would you proceed and why?

QUESTION TWO

The Museum of Modern Art and the Solomon R. Guggenheim Foundation filed suit in U.S. District Court in New York asking the court to declare them the rightful owners of two Picasso paintings that a Jewish scholar claims were the rightful property of a relative persecuted in Nazi Germany.

The two institutions took the step to fend off an expected lawsuit from Julius H. Schoeps, a German who has been waging a relentless legal fight to recover artwork and property once owned by his great uncle. Schoeps demanded that the museums hand over both works, "Boy Leading a Horse," which is in MoMA’s collection, and "Le Moulin de la Galette," in the Guggenheim’s collection.

MoMA director Glenn D. Lowry and Guggenheim Foundation director Thomas Krens in a joint statement said the paintings were not obtained under Nazi duress. Summary Judgment was granted for the defendants in a previous class action filed in state court after lengthy discovery in the United States and Europe.
The Museum of Modern Art and the Guggenheim Museum take the issue of restitution very seriously. They claim that evidence from their extensive research makes clear the museums' ownership of these works and that Mr. Schoeps has no basis for his claim. Both paintings were originally owned by Paul von Mendelssohn-Bartholdy, an aristocratic German banker and descendent of composer Felix Mendelssohn. Mendelssohn-Bartholdy died in 1935, two years after Adolf Hitler came to power.

The family sold the two paintings, now owned by the museums, in 1934 or 1935 to Jewish art dealer Justin Thannhauser, who himself fled Germany and spent much of the war in Switzerland. Thannhauser kept "Le Moulin de la Galette" until 1963, when he gave it to the Solomon R. Guggenheim Museum. He sold "Boy Leading a Horse" to former MoMA chairman William Paley in 1936.

Please address in detail how each of the following concepts affects Question 2, making sure that you properly define each concept first. Then appropriately tie that issue to the facts of the case or explain why the concept is not applicable to the fact pattern contained in Question Two.

Discovery: ____________________________________________

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Erie Doctrine and the Outcome Determinative Test: ________________________________

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Motions for a New Trial and To Vacate Judgment: _________________________________

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Res Judicata and Collateral Estoppel: _________________________________________

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Counterclaims:


Amending Pleadings:


General and Specific Jurisdiction:


Well Pled Complaint Rule: ________________________________

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Intervention: ________________________________

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The Three Testing Motions: ________________________________

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Phone produced. The students were hospitalized in order to receive treatment for their injuries.

Shortly after phoning it into the nearest outlet, the smoke detectors sounded an alarm. After a lengthy and painful hospitalization, Corson, the smoke detector company, would have to pay the cost of the medical bills.

On April 1, 2007, Paula Paing purchased an E-Phone for 2,000 at the Providence Place.

E-Phone, Inc., a corporation headquartered and incorporated under Pennsylvania law, knew of the law, ability to recognize issues and your analysis of these issues. Use only your social security number on this examination and this book.

Please answer the short answer questions on pages two and three first.

Please answer the short answer questions on pages two and three first.

Professor Corene

Fall 2007 Mid-Term Question

CIVIL PROCEDURE AND CONFLICT RESOLUTION

But the legal one is not quite worthy of much else.

Without any objective legal scale is a terrible one indeed. But a society with no other scale

I have spent all my life under a Communist regime, and I will tell you that society.
In the space provided, please briefly explain the following and describe how, if at all, it applies to the essay question on page 1:

The Outcome Determinative Test

Discuss the issues presented.

Some even suffered some minor brain damage.
CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2008 Final Examination
Professor Coyne

Where law ends, there tyranny begins.
William Pitt

Please answer the short answer questions on page two first.

Please review this question, reflect on it and consider solutions to the problem. Please address the issues and propose a solution to this problem.

Use only your social security number on this examination and blue book. Please answer this problem in no more than five handwritten pages. I will evaluate your answer on your knowledge of the law, ability to recognize issues and your analysis of these issues.

Internet Law Student Aids, Inc., a corporation headquartered and incorporated under Delaware law is a company that promises law students a one stop fix for getting through law school and passing the bar examination. Its two biggest products are Law School Flash and Studenttutors Keyz. It manufactures the Studenttutors in hard copy at its plant in Tampa, Florida. It calls itself the biggest tutoring service in the United States and it claims the Studenttutors will ensure that you successfully complete law school and pass the bar.

Internet Law Student Aids sells its products, including the Studenttutors, over the Internet at www.InternetStudenttutors.com through a distributor called Internet Studenttutors.com, Inc., an Alaska corporation founded by Sarah Parker and Alex Bissell and at the outlet store at its plant in Tampa, Florida. Parker and Bissell were first year law students at the University of Alaska when they founded the companies 5 years ago. Parker and Bissell never
completed law school. The companies do no print or other traditional media advertising and instead rely on chat groups, online postings and word of mouth marketing to spread their story over the internet. Sales have grown dramatically and last year the companies grossed in excess of $3,000,000.

On December 1, 2007, Peter Putz and his study group partners, Mitch and Kathy Martin were at their condominium near Lazy U Law School in Boston, Massachusetts. Lazy U boasts that it is the first law school in the country with an annual tuition of $50,000. The study partners visited a few websites offering various “student services” while desperately hoping to make up for a semester of too much alcohol and too little studying. At that time, they stumbled across information about Internet Law Student Aids, www.InternetStudenttutors.com and Internet Studenttutors.com, Inc.

Knowing that they were in deep trouble on their final examinations, Putz ordered the DELUXE A+ Studenttutors Keyz for $2700 online using his credit card with the study partners agreeing to copy the materials and share the cost equally. Studenttutors Keyz is copyrighted material and under the terms of the electronic contract, any individual violating that copyright agrees to pay the company $10,000 for each known copyright violation. Putz downloaded the material onto his computer and then made DVDs for his study group.

Peter Putz, Mitch Martin, Kathy Martin and their friend Caleb James all started using the materials immediately. Despite their efforts, they did miserably on almost all their examinations. As it turned out, there were numerous misstatements of the law in the poorly written materials. The school placed Putz and Caleb James on academic probation. They also had to repeat their first year of law school. Mitch Martin was able to save his semester with an outstanding performance on his Civil Procedure examination. Kathy Martin was asked to leave law school.
Kathy Martin grew despondent and died 6 months later. Her death is under investigation.

In early 2007, law students in Texas, Missouri and California filed complaints with the Federal Trade Commission complaining that the study materials were in violation of Federal Law, specifically 28 United States Code section 1339. 28 USC 1339 prohibits the electronic distribution of false and misleading information over the internet for profit. After an emergency hearing, the Federal Trade Commission issued a cease and desist order forbidding Internet Law Student Aids, www.InternetStudenttutors.com and Internet Studenttutors.com, Inc. from making any further false claims about the success of its products or distributing false and misleading information over the internet. It fined Parker and Bissell $100,000 each.

Putz, Martin and James visit you to discuss this matter. What is your advice? How would you proceed and why? What discovery steps would you take and why.

**Fact Pattern for Short Answer Questions**


On April 1, 2005, Brianna Blakely purchased a Message Pilot organizer for $2,500 at www.EMessagePilot.com. She had it delivered to her home in Massachusetts. She used the Message Pilot for a brief period of time before it exploded sending pieces of metal throughout the room in which she was working. Blakely lost her right eye and her dog Rover was killed instantly when the organizer exploded. Her mother and sister, Nikita and Swon, were slightly injured when they cut themselves on the pieces of the metal as they rushed to her aid.

As a result of its informal investigation of this incident, the Massachusetts State Police believe that the Message Pilot organizer was poorly designed and a dangerous product. Their investigation also revealed that many others who purchased these Message Pilot organizers also have been injured, although none as seriously as Blakely. They ordered a recall of the product.

In the space provided, please explain the following and describe how, if at all, it applies
to the fact pattern:

The Three Testing Motions

Well Pled Complaint Rule

Collateral Estoppel and ResJudicata
Class Actions

The Erie Doctrine/Outcome Determinative Test
Counter Claims


Equitable Remedies


Specific and General Jurisdiction


Standards of Proof

Amended Pleadings
Caroline James and Kathy Demetria were best of friends. A few years ago they began making investment decisions together. Caroline lives in Boston, Massachusetts and until a few months ago, Kathy lived in Salem, New Hampshire. Recently, as her fortunes waned, Kathy moved to Caroline’s apartment while she looked for her own place. “I’m so glad to be out of cow country forever, and feel at home here with you in Boston, who knows how long I’ll stay,” she told Caroline. She continued to have most of her mail delivered to her parent’s house in Salem, New Hampshire.

Caroline and Kathy both worked at the law firm of Dewey, Cheatem, & Howe in downtown Boston. On the recommendation of one of the partners Dan Dewey, they started using a financial consultant, Adam Absconds Inc., who was a client of the firm and who has offices in Manhattan, Boston and Concord, New Hampshire to advise on their investments. Absconds is well known in the area as he lives on the ocean in Rye, New Hampshire

After viewing the firm’s website www.AbscondsFastMoney.com, they each invested a substantial amount of money with Absconds in a private real estate investment trust run by TrojanWarrior, Inc. Absconds, who said it was a “guaranteed” 17% return per year, pushed it
very heavily. He presented them with very impressive written material provided by TrojanWarrior. Absconds indicated that he had invested in a different TrojanWarrior real estate trust a year ago, and was doing “fabulous, just fabulous.” TrojanWarrior, Inc. is a Connecticut corporation, with offices in Princeton, New Jersey and in Dallas, Texas. Their Chief Investment Officer works in the Bahamas and manages some overseas investment accounts from there. What real estate trust investments that were actually made, were made exclusively in Texas real estate ventures, and were managed and supervised by the Dallas office. While approval to start a new real estate venture comes from Princeton, all the actual work, financing and control is set in Dallas or the Bahamas.

Within a few months of investing, the economy hit the skids and something appeared terribly amiss with their investments. Caroline and Kathy learned that TrojanWarrior, Inc. was in real trouble with the Texas regulators over phony real estate investments, including those invested in by them. The Texas regulators had summarily issued a cease and desist order against Trojan Warrior preventing them from doing business in Texas because of fraudulent business practices. The Federal Securities Exchange Commission also did the same for violating the SEC Consumer Disclosure Act.

Kathy and Caroline quickly discovered that they were not alone and that many investors had lost their life savings. Absconds took his money and fled to an island in the Bahamas living fat and happy. The women lost hundreds of thousands of dollars. The Massachusetts Attorney General has recently filed suit and obtained an injunction preventing further violations of the Massachusetts Consumer Protection Statute or G.L. 93A.

TrojanWarrior’s overseas investments are doing fine. Kathy in particular was devastated by the loss of her life savings, and suffered a heart attack. Caroline and Kathy now consult you regarding this matter. What is your advice to them? How would you proceed and why?

Fact Pattern for Short Answer Questions

I Pilot, Inc., a corporation headquartered and incorporated under California law, manufactures I Pilot organizers at its plant in Portland, New Mindiana. It calls itself the first manufacturer of I Pilot organizers in the world in its advertisements in US, a national magazine. I Pilot Inc. sells the I Pilots through its retail stores in LA, California and Albany, New York and
over the internet at www.EIPilot.com through a distributor called Ei Pilot.com, Inc., a Delaware corporation.

On May 11, 2009, Britt Nicks purchased a I Pilot organizer for $2,500 at www.EIPilot.com. She had it delivered to her home in Massachusetts. She used the I Pilot for a brief period of time before it exploded sending pieces of metal throughout the room in which she was working. Nicks lost her right eye and her dog XMEN was killed instantly. Her father and sister were slightly injured as they rushed to her aid.

As a result of its investigation and hearing, the Massachusetts State Police found that the I Pilot organizer was a dangerous product. They ordered an immediate recall of the product.

In the space provided, please fully define the following concepts and then describe how, if at all, that well defined concept applies to the fact pattern:

The Three Testing Motions


The Erie Doctrine/Outcome Determinative Test


Counterclaims


Equitable Remedies


Specific and General Jurisdiction

Standards of Proof
Amended Pleadings

Discovery
CIVIL PROCEDURE AND CONFLICT RESOLUTION

Fall 2009 Mid-Term Question
Professor Coyne

Use only your exam number on this examination and blue book.
Please answer fully the short answer questions beginning on page two first in the space provided on this examination.

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

Question One
Please review this question, reflect on it and consider solutions to the problem. Please answer this problem in no more than five handwritten pages. I will evaluate your answer on your knowledge of the law, ability to recognize issues and your analysis of these issues.


On his Facebook page (www.facebook.com) on September 1, 2007, Kelly Nichols saw that her next door neighbor, Jobe Johnson, had purchased a Goanywhere GPSNavigator. Jobe’s posting said that it was a great product. Nichols asked Jobe what he liked about it. Jobe commented back, “EVERYTHING.” Kelly followed the link Jobe posted on his Facebook page and purchased the product for $200 at www.Goanywhere.com. She ordered Federal Express shipping for an extra $25 so Federal Express would deliver it overnight to her home in Massachusetts. She used the Goanywhere GPSNavigator for a brief period before it exploded destroying her new car. Nichols was not seriously injured and missed only 2 weeks of work as a lawyer but her cat Fluffy was seriously injured. After a lengthy series of treatments at the Veterinarian’s office, Fluffy succumbed to her injuries.

As a result of its investigation of this incident, the National Highway Transportation Bureau found that the Goanywhere GPSNavigator was poorly designed and a dangerous product. Their investigation also revealed violations of federal law in that the product was not labeled properly for consumers, the instructions were inaccurate and it was a violation of federal law to ship the product across state lines. The product has since been recalled.

Nichols consults you on this matter. What is your advice? How would you proceed and why?
**Question Two**
In the space provided, please fully define the following concepts and describe how, if at all, it applies to the essay question on page 1:

**Personal Jurisdiction**

**Eire Problem/Outcome Determinative Test**

**Removal Jurisdiction**
Injunctive Relief

Well Pled Complaint Rule
Many of life's circumstances are created by three basic choices: the disciplines you choose to keep, the people you choose to be with; and, the laws you choose to obey.

Charles Millhuff

Use your social security number on the exam and blue book. Write legibly and coherently.

You will be graded on your knowledge of the law, ability to analyze the issues and your treatment of the issues.

Please take the time to think about and organize your answer. Please do not just define the issue of law, but think about how it applies to the facts and what the ramifications of your conclusion are. Please limit your answer to six pages and write on only one side of each page.

Question One

James and Felicia Jones are Massachusetts residents. They consult you regarding the explosion of their vintage car in which they lost their beloved dog Roy and Mrs. Jones laptop containing confidential information regarding the start of her new diamond business. Luckily, both James and Felicia Jones suffered only minor injuries when the car exploded in the driveway of their home while they were sleeping. Felicea planned to begin a new diamond business after the first of the year. She anticipated grossing more than $1,000,000 a year through a new scientific process she discovered while working at MIT. Unfortunately, the only copy of the process and business plans where on that laptop and it is impossible to recreate that information.
They discuss with you claims they have against EBay Motors, Juan Batista and BigBoys Toys, a Florida corporation, for negligence, fraud and breach of contract arising from the Jones' purchase of an automobile from BigBoys over the web at EBaymotors.com that they saw through EBay Motors, a California corporation operating EBaymotors.com.

While conducting an Internet search of the EBay Motors auction website, James Jones saw a 1975 Dodge Charger automobile offered for sale. The website contained a lengthy description of the car and its features. In addition, it provided an "Ask seller a question" button that, when activated, identified Juan Batista of Puerto Rico as the seller who was using BigBoys Toys to sell the vehicle. Jones began making e-mail inquiries to Batista concerning the car. EBay Motors responded to those emails. In one of them, EBay informed Jones that the car came with a four year/50,000 mile factory warranty and Juan Batista personally completely rebuilt the car in Puerto Rico. Unfortunately one of those modifications appears to be what may have caused the car to explode as a similar explosion happened to a 1967 Mustang convertible that Batista rebuilt and sold in Puerto Rico. The police investigation of that matter some years ago concluded that Batista improperly modified the vehicle and the Plaintiff's estate was successful in recovering a million dollar verdict against Batista.

In reliance on EBay's promises and representations, Jones calculated his winning bid and that, after EBay faxed copies of the purchase agreement to him, he signed the agreement, faxed it back to EBay, and mailed a check to BigBoys in payment of the $45,000 purchase price. There is a clause in the purchase agreement establishing Texas as the forum for any disputes concerning the transaction.

The Jones inform you that they previously went to their cousin, Sandy Shores, for help on this matter. Shores, the Jones' previous attorney, sent BigBoys, EBay Motors, and Batista a demand letter describing the damages and demanding an immediate resolution to the matter or failing a resolution she would enter suit in Massachusetts on behalf of the Jones family.

BigBoys, EBay and Batista responded saying they would not pay the Jones a dime as they are not responsible for any losses and that that they do not have any agents, representatives, officers, or employees in Massachusetts; that they are not licensed to do business in Massachusetts; that they do not own or rent property in Massachusetts; that they do not maintain an office in Massachusetts; and that they have no subsidiaries or business affiliates in Massachusetts. BigBoys maintains that, since its formation 10 years ago, through eBay or otherwise it had made only two web sales to persons in Massachusetts amounting to less than one-half of one percent of its gross revenues. Batista claims he
has never even visited the United States let alone Massachusetts. He claims he has never sold any vehicles in Massachusetts.

They also responded that the first page of the two-page "purchase agreement/bill of sale" signed by Jones contains an acknowledgment that he had read and understood the terms and conditions set forth on the reverse side (or second page) of the agreement; and that, in paragraph 12 on the reverse side of the agreement, the parties agreed that the agreement was made in Florida, that it would be governed by Texas law, and that any action or proceeding arising out of the transaction would be litigated only in a Texas court. Texas law is favorable to the sellers.

Jones tells you that he has not agreed to paragraph 12. To support this assertion, Jones showed you various e-mails between himself and EBay that indicate Jones acknowledged receipt of the purchase agreement with no printed information on the back of it and an email from EBay which stated, "We will send you the printed information on the back of the buyers order although it really does not apply to you as this vehicle comes with factory warranty and that he would fax back "your revised bill of sale once received." James and Felicea Jones are very angry about this situation and are adamant that they "should not have to go to Texas or some other dump." They want you aggressively pursue this.

How would you proceed?

**Part 2**

Please define fully each concept below and explain how each of the following concepts affects Question One. Please appropriately tie that concept to the facts of the case or explain why the concept is not applicable to the fact pattern contained in Question One.

1. Equitable Relief:
2. The Three Testing Motions:
3. Removal Jurisdiction:

4. Res Judicata and Collateral Estoppel:
5. Erie and the Outcome Determinative Test:

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6. Counterclaims:

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7. Amending Pleadings:

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8. Well Pled Complaint Rule:

9. Discovery:
10. Forum Non Conveniens:
All the great things are simple, and many can be expressed in a single word: freedom, justice, honor, duty, mercy, hope.

Winston Churchill

Use your exam number on the exam and blue book. (Your exam number consists of the last 6 digits of your social security number plus the numbers “59,” unless you have been told otherwise.) Write legibly and coherently.

I will grade your exam on your knowledge of the law, ability to analyze the issues and your application of the law to the issues.

Please take the time to think about and organize your answer. Please not only define the issue of law, but clearly express how it applies to the facts and what the ramifications are of your analysis. Please limit your answer to six pages and write on only one side of each page.

Question One

Michael and Campbell Allison and their 7-year-old twins Jaime and Nicole left their home in Florida to visit Campbell’s parents at their home in Worcester, Massachusetts for the 4th of July and to celebrate Campbell’s parent’s 30th anniversary. Campbell’s parents, Sergio and Lauren Patrick were enjoying their 30th anniversary and had invited their family and friends to help them celebrate at a pool party. Family and friends were coming in from all over the United States.

The party started early in the day. Guests continued arriving throughout the day. By noontime, there were over 75 family and friends eating, drinking, and partying out by the pool. Events by Scott Inc. from nearby Keene, New Hampshire catered the event and provided all the food, drink, and servers
for the day’s festivities.

Sometime that afternoon, Rhonda Lyssa, from Sante Fe, New Mexico, who flew in for the party and was visiting New England for the first time, organized a father/son slide/splash contest. The contest required all the dads and their sons to go down the recently installed Ginormous Pool Waterslide head first in pairs in an effort to make the biggest splash. The winning dad would get a bottle of fine Kentucky Bullet Bourbon. Michael loved Bourbon and had commented throughout the day that the Bourbon they were serving was particularly good.

When Michael and Jaime were going down the inflatable waterslide there was a horrible accident. As they reached the end of the slide, the slide bottomed out against the lip of concrete pool, causing Jaime’s head to hit the pool deck as he entered the water. Neck fractures left him a quadriplegic, and after many months of hospitalization, his doctors removed him from life support due to the severity of his injuries. He died from injuries sustained in the accident.

Michael also hit his head when the slide bottomed out against the lip of the concrete pool and was unconscious as he entered the water. Unfortunately, horrified guests stood by leaving Michael underwater for over 4 minutes. A few guests jumped into the water to help Jaime. Some of the guests screamed, passed out and vomited as they watched what was taking place. At least 4 of them were rushed by ambulance to the local hospital. Seeing all of this, Lauren Patrick collapsed and died.

Michael has had a very difficult recovery. He spent a month in the Massachusetts General Hospital incurring over $52,000 in hospital bills and has lost the use of his left arm. Most of his brain function has returned. He has been out of work over 9 months now and his relationship with his wife has suffered as she blames him for contributing to the loss of their son, Jaime. He hopes to return to his job as a college professor at Florida State early next year.

Worcester police investigated the accident and their investigation uncovered a number of facts. The pool was installed 15 years ago by RI Pools Inc., a defunct corporation previously headquartered in Providence, Rhode Island. This is the first serious accident at that pool. The Patricks purchased the Ginormous Pool Waterslide from the local Toys “R” Us, a Delaware corporation with a principal place of business in New York. The Ginormous Pool Waterslide was made by Toyquest Banzai Ginormous Pool Waterslides Corporation of Beijing, China and imported by ChinaUsimports Inc. of New York. It did not comply with federal standards regulating swimming pool slides. Over 10,000 of
those slides had been sold in the United States through Toys R Us and Toyquest’s website, GinormousPoolWaterslides.com.

The Allisons are not the first people to have been injured or even paralyzed by an incident involving the Ginormous Pool Waterslide. According to the findings of the Federal Trade Commission, which ordered a recall of the product, more than 10,000 of the slides were sold nationwide, without having been tested to see if the inflatable slide met federal safety standards. The FTC also found that there were 2 prior reports of paralysis and two deaths caused when the slide bottomed out against the pool.

You represent the Allisons, how would you proceed and why?

Specifically what would you do in discovery?

Part 2

Please define fully each concept below in well-written English sentences. After defining the concept clearly and fully, explain how each concept affects Question 1. Please appropriately tie that concept to the facts of the case or explain why the concept is not applicable to the fact pattern contained in Question 1.

1. Injunctive Relief:
2. Amending Pleadings:

3. Erie and the Outcome Determinative Test:
4. Res Judicata and Collateral Estoppel:


5. Removal Jurisdiction:


6. Counterclaims:

7. The Three Testing Motions:
8. Well Pled Complaint Rule:

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9. Affirmative Defenses:

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10. Class Action:

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