CIVIL PROCEDURE FINAL EXAMINATION
PROFESSOR GILLES
April 2003

1. This examination consists of two parts. The Part One consists of 20 multiple choice questions and counts for ½ of your total score. The Part Two consists of a series of 4 essay questions (with a series of subparts) and counts for ½ of your total score.

2. You have TWO HOURS AND TEN MINUTES to take the exam. In addition, as explained in the multiple-choice instructions, you will have a 5-minute "objection period" to be used solely for objecting to questions.

3. Do not take the examination apart. Return it in its entirety at the end of the examination.

4. Make sure that you put your examination number in the space provided below and on the scantron card. Also write "Gilles, Civil Procedure: Rules" on your scantron.

5. This examination is a closed examination (you may NOT use an outline, notes, your casebook etc.); **EXCEPT** that you may use a copy of the Federal Rules of Civil Procedure during the examination.

6. Any reference to a "rule" or the "Rules" is a reference to the Federal Rules of Civil Procedure as in force, today, April 26, 2003.

7. Good luck.

EXAMINATION NUMBER: _____

[objections:

PART ONE - MULTIPLE CHOICE

INSTRUCTIONS:

NOT RELEASED

PART TWO – ESSAY QUESTIONS

1. *Part Two consists of ONE FACT PATTERN followed by 4 questions (with a series of subparts). Part Two counts for ½ of your total score.*

2 *In each of your answers make sure that you* CITE TO *the relevant legal provision or Rule(s) (**including subsection**) in the space provided, and EXPLAIN how the language of the provision or Rule applies to the given facts. Points will NOT be given for the "right " answer given in response to the wrong question.*

3. *Write your answer ONLY in the space provided. If you write elsewhere (including in the margins) it WILL BE IGNORED. (Of course if you cross out part of an answer, you may use an equivalent amount of space).*

4. *To allow you to allocate your time, please note the line limits attached to each question:*

Question 1(a)	*4 lines*
Question 1(b)	*7 lines*
Question 1(c)	*14 lines*
Question 1(d)	*6 lines*
Question 2	*12 lines*
Question 3	*24 lines*
Question 4(a)	*10 lines*
Question 4(b)	*4 lines*
Question 4(c)	*2 lines*

5. *Presume that all the questions are set in FEDERAL COURT and that venue, personal jurisdiction AND subject matter jurisdiction are proper. Do not address these issues.*

6. *Do not address timing issues - you may presume all actions are taken in a timely manner, except for Question 4(b) when you are expressly told that an action is not timely.*

7. *Also you may ignore preclusion issues in answering the questions.*

8. *Apply the majority position on all issues.*

FACT PATTERN FOR ESSAY QUESTIONS

Grandma Megabucks is lying on her death bed. Her granddaughter Pamela comforts her with recollections of happier days. Pamela recalls that she had always thought of her grandmother as "a queen" because of the beautiful tiara that her grandmother wore to parties. Choking back tears, Megabucks whispers, "I want you to have the tiara," and hands the diamond tiara over to Pamela who takes it with her.

After Megabucks' death, her will is read, including the provision which leaves all her jewelry to her sister, Diana. At a party six months later, Pamela wears the tiara and Diana spots it. Irate, Diana screams "that's mine." Diana grabs Pamela and tries to rip the tiara off Pamela's head. Cousin Charles tries to break up the fight, but only makes it worse, tripping and falling on both of them. Pamela's arm is broken and Diana suffers a dislocated hip. Diana hobbles off with the tiara.

Presume that 60 days later, Pamela files suit. Presume that her sole claim is for battery and seeks $80,000 in damages (the "battery lawsuit"). Pamela names both Diana and Charles as defendants.

QUESTION 1: Defendant Diana is thinking of asserting several claims in her answer in the battery lawsuit. Discuss the claims set out below.

Question 1(a): Diana wants to assert a battery claim against Charles for her own injuries. May or must Diana assert this claim?
RULE(s)_____

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Question 1(b): Six years ago, in an unrelated transaction, Charles had borrowed Diana's car and never returned it. Presuming Diana asserts the claim set out above in 1(a), may/must she also assert this car claim against Charles?

RULE(s)_____

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Question 1(c): Two days after the fight, People Magazine, fascinated by this high society drama, had interviewed Pamela. Pamela described the fight, called Diana "a danger to civilized society, who should be committed" and "a thief" who "stole my tiara," and stated that she (Pamela) was so distraught that she would "leave for Paris forever" as soon as "this whole thing is over."

Diana reads the story. She is furious. Diana wishes to assert a tort claim for libel (based on these remarks) against Pamela in the battery lawsuit. May/must Diana assert this libel claim in the battery lawsuit?

RULE(s)_____

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Question 1(d): **How would your answer to Question 1(c) change if** the libel occurred three months after the fight (five weeks after Diana had filed and served her answer in the battery lawsuit)? May/must Diana still assert her libel claim against Pamela in the battery lawsuit ?

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QUESTION 2: Defendant Charles believes that his insurance company, Capital Life, should pay the entirety of any judgment obtained by Pamela against him in the battery lawsuit. Capital Life disputes coverage (arguing it has no obligation under the terms of the insurance contract to indemnify Charles, because the policy excludes "malicious or intentional acts.")

May Charles implead Capital Life?

RULE(s) _____

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QUESTION 3**:**

For the purposes of this question, presume that Pamela's lawsuit names only Diana as a defendant and seeks a declaratory judgment declaring Pamela the sole owner of the tiara and ordering Diana to return the tiara to Pamela.

The director of a New York Art Museum, the Guge, is reading the People Magazine story about the fight, the tiara, and Pamela's intent to leave the country. He recognizes the tiara as the "Gilles Tiara," a priceless item stolen from the museum over 60 years ago. May the Guge intervene as a defendant in this Pamela v. Diana lawsuit?

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QUESTION 4: **For the purposes of this question, presume** that Pamela's lawsuit names only Charles as a defendant and contains only a tort action for battery seeking $80,000 in money damages from Charles. You clerk for newly appointed federal judge Max. He is preparing to try the case. He is thinking of issuing the following orders:

> Order A. holding that there is a constitutional right to a jury trial of Pamela's claim against Charles.
>
> Order B. granting defendant Charles's motion for a jury trial, even though neither party had made a timely demand for one under Rule 38.
>
> Order C. seating a jury of 8 persons.

He asks your advice as to whether each of these orders is corect.

Question 4(a): **Is order A correct ?**

Legal authority _____

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Question 4(b): **Is order B correct ?**

RULE(s)_____

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Question 4(c): **Is order C correct ?**

RULE(s)_____

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THE END