CIVIL PROCEDURE FINAL EXAMINATION
PROFESSOR GILLES
Spring 2004

{NOTE: some of these questions replicate those on the 2003 exam – but Questions 2, and the Bar Essay use the same facts to ask new quesitons}

1. This examination consists of three parts.
   - Part One consists of 20 multiple choice questions and counts for 1/3 of your score.
   - Part Two consists of three questions (questions 1 and 3 both have three subparts). Part Two counts for 1/3 of your score.
   - Part Three consists of one longer bar type essay and counts for the final 1/3 of your 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 <u>and</u> on the scantron card. Also write "Gilles, Civil Procedure: Rules, Sp 2004" 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, May 13, 2004.

7. *All questions are set in FEDERAL COURT and you should presume that VENUE, PERSONAL JURISDICTION and SUBJECT MATTER JURISDICTION are proper, unless you are EXPRESSLY told otherwise. Also you may ignore preclusion issues in answering the joinder questions, unless expressly toled otehrwise.*
8.

9. Good luck.

EXAMINATION NUMBER: _____

[objections:

PART ONE - MULTIPLE CHOICE

INSTRUCTIONS:

NOT RELEASED

PART TWO – SHORT ANSWER QUESTIONS

1. *Part Two consists of three questions (questions 1 and 3 both have three subparts).*

2 *In each of your answers make sure that you* CITE TO *the relevant Rule or Rules (including subsection) in the space provided, and* EXPLAIN*, using the facts in the question, how the Rule(s) applies. Points will be deducted if you cite to irrelevant Rules.*

3. *It is advisable to read ALL the questions following a fact pattern before answering because points will NOT be given for the "right" answer given in response to the wrong question.*

4. *Write your answer ONLY in the space provided. Do not make up extra lines. 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).*

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. Do not address timing issues - you may presume all actions are taken in a timely manner. Also you may ignore preclusion issues in answering the questions.*

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

FACT PATTERN

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 million dollar 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, a citizen of New York.

At a party six months later, Pamela wears the tiara and Diana spots it. Irate, Diana screams "that's mine." Diana grabs Pamela and rips 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 back is broken and Diana suffers a dislocated hip. Diana hobbles off with the tiara.

QUESTION 1:

Presume that 60 days after the fight, Plaintiff Pamela files suit. Presume that her sole claim is for battery and seeks $80,000 in damages for her broken back (the "battery lawsuit"). Pamela names both Diana and Charles as defendants. Defendant Diana is thinking of asserting several claims in her answer in the battery lawsuit. Discuss the claims set out below.

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

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Question 1(b): Six years ago, in an unrelated transaction, Defendant Charles had borrowed Defendant Diana's car and never returned it. Presuming Defendant Diana asserts the claim set out above in 1(a), may/must she also assert this car claim against Defendant 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 Plaintiff Pamela. Plaintiff Pamela described the fight, called Defendant Diana "a danger to civilized society, who should be committed" and "a thief who stole my tiara," and stated that she (Plaintiff Pamela) was so distraught that she would "leave for Paris forever" as soon as "this whole thing is over."

A week later, when Defendant Diana reads the story, she is furious. Defendant Diana now wishes to assert a tort claim for libel (based on these remarks) against Plaintiff Pamela in the battery lawsuit. May/must Defendant Diana assert this libel claim in the battery lawsuit?

RULE(s)_____

QUESTION 2: **For the purposes of this question, presume** that Plaintiff 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. Plaintiff Pamela moves for summary judgment on her battery claim against Defendant Charles. To her motion Pamela attaches several affidavits (of party guests) and her own deposition which present overwhelming evidence that Charles acted volitionally and that his acts resulted in a harmful contact (he broke her back). Plaintiff Pamela's motion does not present any evidence of Charles' intent (an essential element of plaintiff's battery claim on which the plaintiff bears the burden of proof under state law).

Defendant Charles opposes the motion, pointing to the facts set out in his answer as evidence that Plaintiff Pamela was not really hurt, and to a hearsay statement by his cousin Vinny (asserting that Vinny had heard on the street that plaintiff is faking her back injury). Should Plaintiff Pamela's motion for summary judgment be granted? In your answer make sure you address **both** whether Plaintiff Pamela met her initially burden and whether Defendant Charles' response was proper under the rules.
RULE(s) _____

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QUESTION 3: **For the purposes of this question, presume** that Plaintiff Pamela's summary judgment motion is denied. Her lawsuit against Defendant Charles (which contains only a tort action for battery seeking $80,000 in money damages) is set for trial. 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 Plaintiff Pamela's claim against Defendant Charles.
>
> Order B. granting d]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 3(a): **Is order A correct ?**
Legal authority _____

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Question 3(b): **Is order B correct ?**

RULE(s)_____

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Question 3(c): **Is order C correct ?**

RULE(s)_____

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PART THREE – BAR STYLE ESSAY QUESTION

1. *Part Three consists of ONE essay question.*

2. *In each paragraph of your answer,* CITE TO *the relevant Rule or Rules (including subsection) and* EXPLAIN*, using the facts in the question, how the Rule(s) applies.*

3. *Write your answer ONLY in the space provided on the attached sheet. Do not make up extra lines. 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. ***In answering this question you may presume that personal jurisdiction and venue are proper in Ohio, but do NOT presume subject matter jurisdiction is proper. It is also permissible to discuss preclusion if called for to resolve this question.***

FACT PATTERN

For the purposes of this question, recall the dispute between Pamela and Diana over the ownership of the tiara, and that it is Diana who now has possession of the tiara. Presume that Plaintiff Pamela (a citizen of New York) sues only Defendant Diana (a citizen of Ohio) and seeks a declaratory judgment declaring that Plaintiff Pamela is the sole owner of the tiara (valued at $1 million) and ordering Defendant Diana to return the tiara to Plaintiff Pamela.

Plaintiff Pamela elects to file suit in federal court in Ohio (although she could have properly brought her claim in Ohio state court). In answering this question you may presume that personal jurisdiction and venue are proper, but NOT subject matter jurisdiction.

The director of a New York Art Museum (the "Museum") reading the People Magazine story about the fight, the tiara, and Pamela's intent to leave the country once she gets "her" tiara back. The director recognizes the tiara as the "Gilles Tiara," a unique and irreplaceable item stolen from the Museum over 60 years ago. Museum writes a letter to Diana asserting that Museum owns the tiara and demanding she return it. (Museum is a citizen of New York).

Defendant Diana thinks that Museum should be a party to the Pamela v. Diana lawsuit. Defendant Diana files a motion to dismiss arguing that the lawsuit should be dismissed because Plaintiff Pamela has failed to join Museum as a defendant. Will Defendant Diana's motion be granted?

ANSWER ON ATTACHED SHEET.

THE END