CIVIL PROCEDURE FINAL EXAMINATION
PROFESSOR GILLES
December 2000

1. This examination consists of two parts.

Part One consists of 20 multiple choice questions.
It counts for 1/3 of your grade on the exam.

THESE QUESTION ARE NOT RELEASED

Part Two consists of two fact patterns.
The first pattern is followed by

Question 1 approximately 100 lines
Question 2A 16 lines
Question 2B 5 lines
Question 2C 5 lines

The second fact pattern is followed by:

Question 3 approximately 80 lines

Part Two counts for 2/3 of your grade on the exam.

2. You have THREE HOURS 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.

5. This is a closed book examination. You are bound by the honor code.

EXAMINATION NUMBER: _____

[objections:

PART ONE - MULTIPLE CHOICE

INSTRUCTIONS:

1. Mark your answers in PENCIL on the scantron card. Mark only one answer.

2. At the end of the examination there will be an additional 5-minute "objection period." During these 5 minutes, if you think that a multiple choice question was inherently misleading or contained an internal inconsistency, you may so state on the front page of this examination [under "objections"]. Identify the question by number and briefly give your reasons. If I agree with you, I will discard the question for the entire class. Even if you feel that a question should be discarded, answer it anyway. You may NOT change any answer OR write anything other than the objection during the 5-minute objection period.

3. Any reference to a "rule" or the "Rules" is a reference to the Federal Rules of Civil Procedure as in force, today, December 11, 2000.

4. Unless instructed otherwise in a specific multiple choice question, presume that the case is in federal court. In addition, presume for venue purposes that each state has only one judicial district.

PART TWO - ESSAY QUESTIONS

INSTRUCTIONS:

1. Part Two consists of two fact patterns. The first pattern is followed by

Question 1 *approximately 100 lines*
Question 2A *16 lines*
Question 2B *5 lines*
Question 2C *5 lines*

The second fact pattern is followed by:

Question 3 *approximately 80 lines*

2. *WRITE YOUR ANSWERS ONLY ON THE LINES PROVIDED. DO NOT WRITE IN THE MARGINS, ON THE REVERSE SIDE, etc. Of course if you delete part of your answer you may use a comparable number of lines. You have limited space so* ***THINK*** *before you write. Points will be deducted for lack of organization and illegibility.*

3. *Do not take the exam out of the room.* ***DO NOT SEPARATE THE PAGES LEAVE THEM STAPLED TOGETHER AND TURN IN THE ENTIRE EXAM.***

4. *Do not assume facts not given, and do not change the facts.*

5. ***Answer the questions asked****. Discuss each issue fairly raised by the question, even if your conclusion on one issue seems to make discussion of another issue unnecessary. For example, if you conclude a defendant lacks minimum contacts, it would nonetheless be prudent to also discuss fair play.*

FIRST FACT PATTERN

Pike (P), a citizen of California, while on a business trip, ate dinner at a restaurant owned and operated by Malcolm Marvel(MM), a citizen of Columbus, Ohio. The restaurant is a small, local hangout, situated about ½ mile from the airport in Columbus, Ohio. Apart from the occasional tourist who happens to wander in, MM caters almost exclusively to a regular crowd of locals. MM does not advertise.

Two days later after Pike returned to California, he started to feel sick. He consulted local doctors, who after running several tests, concluded that he was infected by a rare parasite that lives in shrimp. An investigation by state officials conclusively traced the parasites to the shrimp served in MM's restaurant and established that the shrimp were infected by improper handling prior to reaching MM. In fact, five other patrons of MM's have filed separate lawsuits in Columbus, Ohio alleging that they too were infected.

Pike filed suit against MM in federal court in California claiming $5 million in damages for his infection. Ironically, on the day the lawsuit was filed MM was paying his first visit to the large ranch in Dead End, California (valued at $20 million), that MM had inherited a month earlier from his father. MM intended to sell the property as soon as possible and was meeting with a real estate agent that day. However the knock on the ranch door revealed, not the expected real estate agent, but the local sheriff who promptly served MM with process in the Pike lawsuit. In addition, the sheriff handed MM a notice of attachment of the ranch in the same lawsuit.

California's long arm statute that provides that "any court of this state may exercise jurisdiction to the extent permitted by the due process clause of the 14th Amendment to the Constitution of the United States."

QUESTION 1: Advise MM on whether he is subject to personal jurisdiction in federal court in California. Explore all possible arguments for personal jurisdiction. In addition, advise MM on whether he should appear and defend on grounds of lack of personal jurisdiction in California, or should ignore the complaint and wait for Pike to try to collect in Ohio on any judgment Pike receives in California.

ANSWER:

QUESTION 2: [In addition to the facts set out for Question 1 above, consider the following]
Two weeks after filing the Californian lawsuit and prior to any judgment on the merits, Pike received the final report of the official investigation into the parasites. He learned that the infected shrimp were supplied to MM by Boston Seafood (BS), a partnership located in Boston, Massachusetts, with its processing plant in Maine and its headquarters in Massachusetts. BS's was founded and is owned by four brothers, Joe, John, James and Fred, who are all partners. Joe, John and James all reside and work in Massachusetts, but Fred has recently moved to California where he hopes to make a new start. He does not yet have a job, but has rented an apartment in San Diego and is actively searching for work. He did vote in the recent election in California.

Pike is considering dismissing his lawsuit in California and filing a new lawsuit in Ohio seeking $5 million in damages and naming both MM and BS as defendants. Presume that both BS and MM will consent to personal jurisdiction and venue in Ohio. Pike's lawyer gives him the three pieces of advice set out below. Is this advice correct ? Analyze each question independently and write your answers separately in the spaces set out below.

Questions 2A: Pike can file suit in federal court against MM and BS because subject matter jurisdiction is proper. Is this correct?

Question 2B: Instead of dismissing his Californian case, Pike can transfer the case to state court in Ohio under 28 USC 1404. Is this correct?

Question 2C: If Pike dismisses his Californian case, he is not barred by res judicata from filing a second lawsuit based on the same claim against MM in Ohio state court. Is this correct?

ANSWERS

Question 2A:

_____

_____

_____

_____

_____

Question 2B:

Question 2C:

SECOND FACT PATTERNFACT PATTERN - QUESTION 3

You are a clerk to Justice Hat of the United States Supreme Court. The Court has received a proposed new Federal Rule of Civil Procedure sent to the Court for approval by the Judicial Conference. The Court must determine if the Rule is valid under the Rules Enabling Act. The Rule is as follows:

> Rule 8 ½ : Complaint - Settlement Certification
> In all cases filed in federal court pursuant to 28 USC 1332, plaintiff must attach to the complaint a certification that, prior to filing, plaintiff has sent, by certified mail, a written offer of settlement to the defendant. If a complaint is filed without such a certification, the district court shall dismiss the suit.

The accompanying report of the Judicial Conference states that Rule 8½ is intended to encourage pre-filing settlement in diversity cases. The report notes that while some states have adopted identical mandatory settlement provisions, other states, in a backlash against mandatory settlement, have adopted "Open Courts Acts." Most of these state Open Courts Acts were adopted after a study by the Posner Institute showed that plaintiffs who settle receive on average 28% less than those who take the same case to a jury trial. The express terms of these Open Courts Acts guarantee that "no plaintiff may be forced to negotiate a settlement with the defendant as a condition of filing suit."

Justice Hat hands you a copy of a draft opinion circulated by fellow Justice Seuss. In his draft opinion, Justice Seuss states:

> Rule 8½ is invalid because it violates the twin aims of *Erie*: it will encourage forum shopping and cause the inequitable administration of the laws. The Rule therefore is substantive and violates the Rules Enabling Act.

As he hands you the draft opinion, Justice Hat comments: "the analysis in this opinion is all wrong - even a second year law student knows better than that." He asks you to draft a memo addressing two issues: First, explain why the analysis used by Justice Seuss is erroneous; and, second, apply the correct analysis to Rule 8 ½ .

ANSWER:

THE END - HAPPY HOLIDAYS