CIVIL PROCEDURE FINAL EXAMINATION
PROFESSOR GILLES
MAY 2000

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 essay questions and counts for ½ of your total score.

2. You have TWO HOURS and 15 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.

5. Good luck.

EXAMINATION NUMBER: **_____**

[objections:

PART ONE - MULTIPLE CHOICE

INSTRUCTIONS:

1. *Part One consists of a series of 20 multiple choice questions. It counts for ½ of your total score.*

2 *Mark your answers in PENCIL on the scantron card. Make sure that your examination number appears on the card.*

3. *Mark only one answer. Do not qualify your answer in anyway.*

4. *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 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.*

5. *Any reference to a "rule" or the "Rules" is a reference to the Federal Rules of Civil Procedure as in force, today, May 4, 2000. Any reference to an "Appellate Rule" is a reference to the Federal Rules of Appellate Procedure as in force, today, May 4, 2000.*

6. *All questions are set in FEDERAL COURT and, for this part of the examination ONLY, presume that VENUE, PERSONAL JURISDICTION and SUBJECT MATTER JURISDICTION are proper, unless you are expressly told otherwise.*

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

MULTIPLE CHOICE QUESTIONS

NOT RELEASED

PART TWO – ESSAY QUESTIONS

1. *Part Two consists of ONE FACT PATTERN followed by 3 questions (several with subparts). Part Two counts for one HALF of your total score.*

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 how the language of the Rule(s) 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). To allow you to allocate your time, please note the line limits attached to each question:*

Question 1	*25 lines*
Question 2(a)	*1 line*
Question 2(b)	*22 lines*
Question 2(c)	*32 lines*
Question 3(a)	*2 lines*
Question 3(b)	*25 lines*

4. *Any reference to a "rule" or the "Rules" is a reference to the Federal Rules of Civil Procedure, as in force, today, May 4, 2000.*

5. *Presume that all the questions are set in FEDERAL COURT and that venue and personal jurisdiction are proper.*

6. ***You should address subject matter jurisdiction when called for by the question**. Presume there is no Federal Question jurisiction. On Supplemental jurisdiction, you need only address 1367(a) and (b), not (c) -- in other words you should not to address whether the court will exercise its discretion to assert supplemental jurisdiction.*

7. *Do not address timing issues – you may presume all actions are taken in a timley manner.*

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

FACT PATTERN FOR ESSAY QUESTIONS

Professor Onel (a citizen of Ohio) is severely injured when the "white board" in room 245 falls on her head as she dramatically points to an answer on the board. She files a tort action in federal court for $1 million against the manufacturer of the board, Defendant Best Boards ("BB")(a citizen of Nebraska). Professor Onel claims that BB defectively designed the board because it had only two fasteners to keep it attached to the wall.

Defendant BB believes that the board fell (in part) because Capital University Law School ("Capital")(a citizen of Ohio) was negligent when it failed to properly affix the board to the wall. State law gives a right of contribution among joint tortfeasors, although it does not allow one tortfeasor (Tortfeasor A) to collect from the other (Tortfeasor B) until Tortfeasor A has actually paid out on any judgment in the victim's favor.

Question 1: May BB file a third party complaint and implead Capital? Is there subject matter jurisdiction?

RULE(s) _____

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<u>Question 2</u>: For purposes of Question 2 {i.e., questions 2(a), 2(b) and 2(c)}, presume that any problems you identify above are rectified and that Defendant BB properly files a third party complaint and impleads Capital claiming that Capital negligently affixed the board to the wall.

<u>Q.2(a)</u>: What name does the Rule give to Capital?
RULE(s)_____

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<u>Q.2(b)</u>: When the board collapsed it destroyed computer and video equipment housed in the podium and valued at $80,000. Capital wants to assert a claim against BB for this damage. May or must Capital assert this claim? Is there subject matter jurisdiction?

RULE(s)_____

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<u>Q. 2(c</u>): Capital (now impleaded into the lawsuit) believes that it has two claims against Professor Onel. First,[claim 1] that Onel was improperly using the white board causing it to fall and that she owes Capital the $80,000 for the damaged equipment. Secondly, [Claim 2] Capital asserts that Onel is liable for $100,000 for the tort of conversion (she has been illegally taking highlighters from the supply cabinets and selling them to students at cut rates). Capital wishes to assert both of these claims against Onel in this lawsuit. May or must Capital assert these claims? Is there subject matter jurisdiction?

RULE(s)_____

<u>Question 3</u>: For the purpose of questions 3(a) and 3(b), presume that BB does NOT implead Capital. Thus the lawsuit is *Onel (for personal injury) v. BB*. Answer the following questions under the Rules – do <u>NOT</u> discuss subject matter jurisdiction.

<u>Q 3(a</u>): May Professor Onel file a third party complaint and implead Capital ?

RULE(s)_____

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<u>Q 3(b</u>): May Capital intervene as a defendant in Professor Onel's lawsuit against BB ?

RULE(s)_____

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THE END