

Name \_\_\_\_\_

**FINAL EXAMINATION**  
**Law 391: Civil Procedure II**  
**Professor Janutis**  
**Fall 2001**

**Instructions**

1. Please put your name, and **not** your exam number, at the top of this. Put your exam number, and **not** your name, on the computer readable answer sheet. Also, if you are handwriting your exam, put your exam number, and **not** your name, on each blue book.
2. At the end of the exam, please **turn in both the exam questions and your answers**. Failure to turn in the exam questions may result in a significant grade reduction. Place the exam questions in one stack and the blue books in another. **Do not put the exam questions inside your blue book.**
3. You will have **3 hours** to complete this exam. You **must** stop writing or typing when time is called. If you continue writing or typing after time is called, your grade may be significantly reduced.
4. This exam is closed book. You may refer to the statutory material provided with this exam only.
5. To help ensure legibility, please write on only one side of a page.
6. This exam consists of two parts. You must complete **both** parts. Part I consists of 25 multiple choice questions. For each question, choose the best alternative and fill in your answer on the computer readable answer sheet with a No. 2 pencil. Part II consists of two essay questions based on one fact pattern. You must answer **both** questions. To assist you in managing your time, a suggested time allotment is listed below. The suggested time allotment for each question also appears below the question.

**Part I**

25 Questions: 1 hour total

**Part II**

Question 1: 1 hour

Question 2: 30 minutes

Question 3: 30 minutes

**Good Luck!**

Thank you for a wonderful semester. Have a great winter break!

## **PART II**

### **Fact Pattern**

Alvin Baites is a 22-year-old student at Leeland University, a small private university located near San Francisco, California. Alvin suffers from a severe personality disorder. During the 4 years he has been enrolled at Leeland, Alvin has been treated by Dr. Anna Froid, a psychiatrist on staff at the Leeland student health center. Froid has been treating Alvin with medication and psychotherapy. During the course of his treatment, Alvin has expressed repeatedly to Froid his hatred of his widower father who lives in Arizona.

The holidays are a time of particular unhappiness and frustration for Alvin. During two prior holiday seasons, Alvin became violent and irrational after drinking heavily at fraternity holiday parties. Though he did not harm anyone, Alvin was institutionalized for several months after the second episode. Alvin was under Froid's care at the time of both episodes.

This past fall, Alvin seemed to be making progress. His new medication was helping, and his level of anger toward other people decreased modestly as therapy continued. However, shortly before winter break, Alvin suffered a set back. Froid linked this regression to the impending holidays and Alvin's plans to spend winter break at home in Phoenix, Arizona with his father. Froid increased the dosage on his medication, but she did not warn Alvin about mixing alcohol with the medication, since a warning label was affixed to the outside of the vial.

Alvin returned home to Arizona for winter break. The visit reintroduced old family tensions. Unhinged by a combination of medication, alcohol and stress, Alvin lost control and struck his father, Mr. Baites. Mr. Baites was seriously injured. As a result of his injuries, Mr. Baites was permanently blinded in one eye and will suffer sporadic migraine headaches for the rest of his life. Alvin became physically ill as a result of the interaction between the medication and alcohol. Alvin was hospitalized in Arizona. At his request, Froid flew to Arizona to see him there. Froid consulted with Alvin's doctors and talked to Alvin for 50 minutes. Froid left Arizona the next morning.

Alvin and Mr. Baites have retained you to file a lawsuit against Leeland University and Froid. Alvin seeks \$80,000 in damages for the injuries he suffered as a result of the interaction of the medication and alcohol. He alleges that Froid negligently failed to warn him of the interaction. Mr. Baites seeks \$1 million in damages for the injuries he suffered when Alvin struck him. Mr. Baites' damages include damages for pain and suffering, loss of enjoyment of life, past and future medical expenses and diminished earning capacity. Mr. Baites contends that Froid had a duty to warn foreseeable plaintiffs such as himself about Alvin's violent tendencies.

## Question 1

(Suggested Time Allotment: 1 hour)

Through interviews with your clients, factual investigation and legal research, you learn the following:

1. Mr. Baites has lived and worked in Phoenix, Arizona for the past 35 years. He owns a home there, and has no intention to leave Phoenix.

2. Alvin Baites lived with Mr. Baites in the family home in Phoenix until he enrolled in Leeland University four years ago. Since enrolling in Leeland, Alvin has lived in his fraternity house on campus during the school year but has returned home to Phoenix during summers and semester breaks. Alvin has an Arizona drivers license. Alvin has “no idea what he intends to do after he graduates,” but he tells you “there is no way I am going back to that dead-end, sleepy hollow of a town, Phoenix.”

3. Froid owns a condo in San Francisco. She has lived there for the past 15 years and has been working at Leeland for the past 20 years. Other than her visit while Alvin was hospitalized, Froid has never set foot in Arizona. She owns a ¼ interest in rental property there but has never visited it.

4. Leeland University is a non-profit corporation. It was incorporated in Delaware but maintains its principal place of business in California. Leeland recruits top high school seniors from all over the country, including Arizona. Leeland mails information to students who score in the 90th percentile and above on the SAT and the ACT, including students who reside in Arizona. Leeland maintains a booth at college informational fairs in Phoenix, Tucson and Flagstaff every year and sends recruiters to college nights at two elite high schools in Phoenix. Leeland also maintains a website which is accessible to prospective students. Prospective students can access information about Leeland and its admission process. Likewise, students can download a copy of Leeland’s student application. However, students may submit completed applications by mail only. Currently, about 10 % of Leeland’s student body comes from Arizona.

5. Both the Arizona Rules of Civil Procedure and the California Code of Civil Procedure authorize the exercise of personal jurisdiction to the maximum extent permitted by the Constitution of the United States.

- A. Can Alvin and Mr. Baites bring their claims in Arizona?
- B. In which Arizona courts—state or federal—can Alvin and Mr. Baites bring their claims?

## Question 2

(Suggested Time Allotment: 30 minutes)

Additional legal research reveals the following:

1. Both Arizona and California recognize a psychiatrist's duty to warn foreseeable victims of a patient with violent tendencies.

2. Section 3333.2 of the California Civil Code provides:

(a) In any action for injury against a health care provider based on professional negligence, the amount of damages for noneconomic losses shall not exceed two hundred fifty thousand dollars (\$250,000).

(b) Damages for noneconomic losses shall include damages to compensate for pain, suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary damage.

\* \* \*

3. California has adopted an interest analysis approach to conflicts of law issues in all cases. Arizona follows the First Restatement of Conflicts in tort cases.

In which jurisdiction--Arizona or California—should you file Mr. Baite's claims to provide Mr. Baite with the most advantageous choice of law? Why?

### Question 3

(Suggested Time Allotment: 30 minutes)

Section 12-2602 of the Arizona Revised Statutes provides:

- A. If a claim against a licensed professional is asserted in a civil action, the claimant or the claimant's attorney shall certify in a written statement that is filed and served with the claim whether or not expert opinion testimony is necessary to prove the licensed professional's standard of care or liability for the claim.
- B. If the claimant or the claimant's attorney certifies pursuant to subsection A that expert opinion testimony is necessary, the claimant shall serve a preliminary expert opinion affidavit with the initial disclosures that are required by rule 26.1, Arizona rules of civil procedure.\* \* \*

Federal Rule of Procedure 8 provides:

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

\* \* \*

Federal Rule of Civil Procedure 26 provides:

(a) Required Disclosures; Methods to Discover Additional Matter.  
(1) Initial Disclosures.\* \* \*[A] party must, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

\* \* \*

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraph (1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence.

\* \* \*

(B) \* \* \* [T]he disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial\* \* \*.

If the case is resolved under Arizona law, will a federal court require Alvin and Mr. Baites to comply with A.R.S. § 12-2602?