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ST. MARY'S UNIVERSITY SCHOOL OF LAW

CIVIL PROCEDURE – SECTIONS C&D
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FINAL EXAM
FALL 2002

INSTRUCTIONS

1. This examination consists of 20 pages, including this page as the first.
2. You will have three (3) hours in which to complete the examination. Please write on the exam paper itself in the space provided for each question. No blue books are to be used. This exam consists of three parts. Part I consists of longer questions worth 90 points, Part II consists of short answer and multiple guess worth 65 points, and Part III consists of true/false worth 24 points.
3. St. Mary's Law School prohibits the disclosure of information that might aid the professor in identifying the author of an examination. Any attempt by a student to identify himself or herself in an examination is a violation of this policy and of the Code of Student Conduct.
4. A student may not remove a copy of the examination from the room during exam time.
5. This is a closed book examination. No notes or books are allowed. Your answers to the longer discussion questions should be organized and responsive. Do not simply quote general principles of law, but rather analyze the facts and the question and direct your response to the question. If there is more than one reasonable outcome on any given issue, you should analyze all reasonable conclusions.
6. At the end of the examination, return your completed examination to the front of the room and place it in the marked box. Be sure that your **exam number is on the examination.**
7. After reading the oath below, place your exam number in the space below. If you are prevented by the oath from placing your exam number in the space below, notify the proctor of your reason when you turn in the examination.

I HAVE NEITHER GIVEN NOR RECEIVED UNATHOURIZED AID IN TAKING THIS EXAMINATION, NOR HAVE I SEEN ANYONE ELSE DO SO.

EXAM NUMBER _____

PART I

1. Plaintiff, Tic Tac Corporation (“Tic Tac”), has filed a three count complaint against Tic Tac Dot Com, Inc., (“Tic Tac Dot Com”) in the U.S. Federal District Court for the Eastern District of Virginia (Virginia is divided into two Federal Districts - Eastern and Western) alleging trademark dilution, infringement, and false designation under the Federal Trademark Act. Tic Tac is a Virginia corporation with its principal place of business in Richmond, Virginia. Tic Tac produces the well-known Tic Tac mints. Tic Tac Dot Com is a California corporation with its principle place of business in Atherton, California. The Chief Executive Officer (CEO) for Tic Tac Dot Com is a Mr. Sherck. Tic Tac Dot Com operates an Internet web site and an Internet news service and has obtained the exclusive right to use the domain name “tictac.com” on the Internet. (Per agreement with the National Science Foundation once a domain name is registered with Network Solutions, it may not be used by another user.) Tic Tac Dot Com maintains no offices in Virginia and its contacts with Virginia have occurred exclusively over the Internet. Tic Tac Dot Com’s advertising for its Internet news service involves posting information about its services on its web page, which is accessible to Virginia residents (and the general public) via the Internet free of charge. However, Defendant has approximately 250,00 paying subscribers to its news service worldwide. Approximately 5,000 of those subscribers are Virginian residents who contracted to receive Tic Tac Dot Com’s services by visiting its web site, filling out an application, and paying a fee of \$29.99 per year via credit card.

The basis of the trademark claims regard Tic Tac Dot Com’s use of the words “Tic Tac” in the domain name it holds, in numerous locations in its web site and in the heading of Internet messages posted by Tic Tac Dot Com subscribers. In a pre answer motion, Tic Tac Dot Com has moved to dismiss for lack of personal jurisdiction and improper venue pursuant to Fed. R. Civ. P. 12(b)(2) and (3) or, in the alternative, to transfer the case pursuant to 28 U.S.C. §1404.

Virginia’s long-arm statute provides:

A court of this State may exercise jurisdiction over a party on any basis not inconsistent with the U.S. Constitution.

1. (20 points) How should the Judge rule on the personal jurisdiction motion? Why?

12. (5 points) Eire v. Thompkins, the U.S. Supreme Court reversed the long-standing precedent of Swift v. Tyson. Although the Court gave several reasons in Erie for its belief that Swift was incorrect, the Court said that its decision to overrule Swift was based primarily on which of the following reasons?

- a. The ruling in Swift had led to inequitable administration of the laws to the extent that parties who were not residents of a State could discriminate against residents by suing them in Federal court subject to different laws.
- b. Historical research showed that, contrary to the holding in Swift, Congress intended for the Rules of Decision Act to apply to State judicial decisions as well as State statutes.
- c. Swift did not lead to a more uniform, national common law as had been hoped.
- d. The Swift decision violated the Rules of Decision Act.

13. (5 points) Lee sues Grant in Federal District court for negligence. Grant defends by denying negligence. The case goes to trial and Lee wins. Grant then sues Lee in Federal Court for his (Grant's) injuries sustained in the same accident. Which of the following is most correct?

- a. Grant is not precluded from bringing the second action, because his obtaining relief would not nullify Lee's judgment.
- b. Grant is not precluded from bring the second action, because he did not litigate his negligence claim in the first action.
- c. Grant may bring the second action, but he will be estopped from relitigating the issue of his (Grant's) negligence under the doctrine of collateral estoppel (issue preclusion).
- d. Grant is precluded from bringing the second action by FRCP 13 (which pertains to counterclaims and cross claims).

8. (5 points) The descendents of French citizens Pierre Custou and Andre T. Giant file a law suit in the U.S. Federal District Court for the Western District of Virginia against Otis Elevator, Inc., for the deaths of the two French citizens in an elevator accident on the ski slopes of Austria. The elevator was manufactured by Otis Elevator, Inc., a Missouri corporation with its principle place of business in Oklahoma. The elevator in question was operated and maintained by a French Company named Corsant Transports. Lawyers for Otis Elevator make a motion for dismissal under the doctrine of forum non conveniens. What will the Federal Judge most likely do if she grants the motion? Why?

9. (5 points) In 1999, Milton a resident of Ohio, purchased a home from Samuels Builders, Inc., a Florida corporation with its principle place of business in Georgia, and gave a promissory note for \$150,000, payable on June 2, 2002 for the unpaid balance of the purchase price. In July 2002, alleging numerous defects in the house, Milton sues Samuels Builders, Inc., for breach of contract and breach of warranty. Is Samuels Builders', Inc., claim on the unpaid promissory note a compulsory counterclaim? Why?
