

Final Examination
Saturday, December 7, 2013

GENERAL INSTRUCTIONS:

1. Be sure to write your anonymous number in the place provided at the top of this page. You are required to turn these test questions in at the end of the examination. Failure to return the test questions will result in a grade of **F** for this examination.
2. This is a limited open book examination. You are permitted to have with you the Rules book.
3. There are two parts to this examination:

PART I - Essay (50%)
PART II - Multiple Choice (50%)
4. Specific instructions for each part are located with that part. Read them carefully!
5. This is a 2 hour exam.
6. If you wish to leave the room during the examination, you may do so. You must, however, leave your test questions and answer sheet in the classroom. Moreover, you may not speak with any member of the class while outside the room.
7. All the examinations at the law school are conducted under the Student Code of Conduct, which forbids cheating or collaborating on examinations. If you witness anyone cheating in any form, it is your responsibility to report this to the Registrar or the Dean of Students. You are required to sign the form indicating compliance with the Student Code of Conduct at the completion of your examination.
8. All students are required to have a Widener University School of Law picture ID card with a validation sticker for fall 2013 on the desk in front of them during the examination.

PART I

ESSAY QUESTION (suggested time: 1 hour)

IMPORTANT

Read the following instructions CAREFULLY:

1. Unless you are using ExamSoft, use the “blue” books provided to write your answer. Be sure to put your anonymous number on each “blue” book. In addition, you **MUST** number each book, e.g., “1 of 1” or “1 of 3,” “2 of 3,” “3 of 3.”
2. If you are handwriting your exam, write only on one side of each sheet of paper. And remember, a legible exam makes a happy professor!
3. If there are any facts you need to know to analyze the problem, indicate what they are and how they would affect your conclusion. Do not, however, rewrite the question!
4. Address only the issues of procedural law. Do not address the substantive law involved.

Josh Patinkin was seriously injured when a tire on his Ford truck blew out, causing him to lose control of the vehicle and slam into a tree. The accident occurred in Wilmington, Delaware, where Patinkin is attending law school. He has brought a suit in the United States District Court for the District of Delaware. Patinkin's suit is based on products liability, and his defendants are Ford Motor Company, a Delaware corporation with its principal place of business in Detroit, Michigan; Firestone Tire and Rubber Company, an Ohio corporation with its principal place of business in Akron, Ohio; and Delta Valve, Inc., an Ohio corporation with its principal place of business in Cleveland, Ohio.

After graduating from the Pennsylvania State University, Patinkin spent a year in Reading, Pennsylvania, working for Boscov's and living with his parents. It was during that year that he bought his Ford. Meanwhile, he applied, and was admitted, to Widener University School of Law. His father has lent Patinkin the money for tuition and living expenses. He has rented an apartment in Wilmington, for which he has a twelve-month lease, but he returned to Reading for the summer break after his first year. In the summer of his second year, he had a clerkship with a small Wilmington firm. His driver's license remains in Pennsylvania. He does not vote. He plans to take the Delaware bar examination upon graduation and he is interviewing with Wilmington law firms, but he has no permanent job at this time.

Delta Valve has contracts to supply valves to numerous manufacturers, including Firestone. Approximately 50,000 Delta valves make their way, in various products manufactured by dozens of companies, annually to Delaware and have for at least a decade. These valves are a standard product marketed throughout the world, with no special design changes or targeting specifically meant for Delaware.

Ford has made a motion to dismiss the claim against it, pursuant to F.R.C.P. 12(b)(1). Delta has made a motion to dismiss the claim against it, pursuant to F.R.C.P. 12(b)(2). You are a clerk for the federal judge assigned to this case. She has asked you to write a memorandum advising her of plaintiff's and defendant's arguments on each motion, along with your recommendation on how she should rule on each.

The Delaware long-arm statute reaches the defendants:

DEL CODE § 3104. PERSONAL JURISDICTION BY ACTS OF NONRESIDENTS.

- (a) The term "person" in this section includes any natural person, association, partnership or corporation.
- (b) The following acts constitute legal presence within the State. Any person who commits any of the acts hereinafter enumerated thereby submits to the jurisdiction of the Delaware courts.
- (c) As to a cause of action brought by any person arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any nonresident, or a personal representative, who in person or through an agent:

....

(4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if the person regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed in the State;

....

BONUS QUESTION (maximum 5 points): Can Firestone file a claim against Delta for indemnity? What is the authority for your answer?

PART II
MULTIPLE CHOICE QUESTIONS
(suggested time: 1 hour)

IMPORTANT

Read the following instructions CAREFULLY:

1. Using a #2 pencil, write your anonymous number on the answer sheet in the first six columns for I.D. number and fully darken the rectangles that correspond with your number. Do not use ExamSoft for this portion of the exam; you must use the answer sheet provided to get credit for your answers.
2. Using a #2 pencil, fully darken the letter “A” under Test Form.
3. There are 20 questions in this part.
4. To be scored, your answers must be recorded on the answer sheet using side 1, numbers 1-20. Do not use the “E” rectangle on the answer sheet. Choose only rectangles “A” through “D.”
5. You must use only a #2 pencil in answering the questions. Fully darken the rectangle for the answer you wish to give.
6. Unless otherwise indicated, assume suit is in federal court.
7. For each question, choose the best answer.