

**IIT CHICAGO-KENT COLLEGE OF LAW  
FINAL EXAMINATION IN CIVIL PROCEDURE**

**INSTRUCTIONS**

1. This examination consists of 8 pages. Please check to make certain you have the complete examination, including the appendix.
2. Read these instructions carefully, read each question, and read the appendix carefully. As you answer each question, make use of any materials in the appendix that are pertinent. Think each problem through before you write and treat every appropriate issue in each question. Be direct and concise.
3. Answers will be graded upon the reasons given as well as the conclusions drawn. If more than one reason is pertinent to an answer, state every reason.
4. While you have been permitted to bring materials into the examination room, answering the questions appropriately will put time pressure on you. You should not do extensive research during the examination. Credit will be weighted according to the time allocations shown. Manage your time accordingly.
5. You may decide, in answering one or more questions, that a complete answer would require legal research. If this is so, you should identify the specific issue that you would research. If you have a mastery of the basic concepts, you will be able to frame research issues very narrowly and precisely.
6. It also may be that more factual information is required to answer a question. If this is the case, you should say what factual information is required and why you need it. A mastery of the underlying concepts will permit you to frame any factual inquiries very narrowly and link them precisely to the legal issue involved.
7. Organization and clarity are very important. A shorter answer that is well organized and evidences a clear understanding of basic concepts and their interrelationships is better than a long answer with disconnected fragments of information.
8. Do not write outside the margins of your bluebook pages, but write clearly. If it's not legible, it will not get credit.
9. Write your examination number on your bluebook(s) and on each page of this examination. Do not use your name.
10. When you have finished the examination place it inside your bluebook(s) and deposit them in the appropriate box in the examination room.

**MATERIALS WHICH MAY BE TAKEN INTO THE EXAMINATION ROOM**

Any material including any outlines whether commercially prepared or not, whether accessible by computer or not. No communication by e-mail, blog or Facebook posting, cell phone, voice-over-IP, or any form of instant- or text-messaging is permitted during the exam.

**GOOD LUCK!**

## QUESTION I

Tony Hutton is an actor-model. After playing football in high school and going to acting school, his career is finally taking off after hundreds of auditions. He has proven quite popular in a new series of beer and energy-drink commercials in which he performs a variety of extreme physical activities such as skydiving and bungee jumping. All the photography and performances for the commercials have taken place in Iowa.

Tufline Inc., a Virginia corporation, manufactures bungee-jumping cords and recently decided to extend its technology into waterskiing ropes. Tufline's headquarters and only manufacturing and sales facility is in Fairfax, Virginia.

After completion of principal photography for a new ad campaign with the beer company, Tony has a break before undertaking an energy drink series. He and his boyfriend, Cam Brookfield, decide to do some waterskiing at a small resort on Lake Geneva, in Wisconsin. Tony has been intrigued with the elasticity of bungee jumping cords and gets the idea that it would be fun to use one of them as a ski rope. He and Cam spend several hours working through ways in which a waterskier could increase his drag through the water to stretch the ski rope and then use the energy in the stretched rope to propel himself out of the water.

Tony emails Debra Flannigan, the CEO of Tufline, and asks her if she would make fifty feet of her line available, explaining his idea. Debra is enthusiastic and tells Tony that she would be a glad to accede to his request and expects to launch a new ad campaign in which he will be the talent. They talk about Tony's and Cam's plans and also discuss the new ad campaign. She suggests that principal photography be conducted on Lake Michigan just off of Navy Pier in Chicago.

Cam has a business trip scheduled for Northern Virginia, where he is a contractor for the National Security Agency, developing new techniques for spying on individual computers. He interrupts his trip briefly to drive to the Tufline plant to pick up the length of line.

He returns to Chicago, and he and Tony pack up for their vacation to Lake Geneva. On the first day, after settling in, they go out for an excursion on the water. Cam is driving the ski boat with a GoPro video camera on his head. Tony also has a GoPro camera on his head. They've agreed that Cam will drive the boat near a dock.

Tony will swing out on a wide arc to the side of the boat, thereby stretching the line. He then will veer back toward the boat. They expect that the sudden relaxation of the drag on the stretched line will allow it to contract and lift him out of the water. At the last minute, Tony decides that he could stretch the line further by briefly grabbing hold of a pole on the dock as he passes it.

Unfortunately, the force on the line is too great and it snaps. The sudden unanticipated impulse throws Tony into the dock and fractures his leg badly. As a result, the beer/energy drink company recasts its commercial, depriving Tony of the job.

Tony and Cam decide to sue Tuflin. Tony cannot travel without difficulty until his leg heals, and so they file suit against Tuflin in the United States District Court for the Northern District of Illinois where they live, naming Tony as the only plaintiff. The only counts in the initial complaint are ones for common-law negligence, premised on (1) improper design, (2) improper labelling, and (3) manufacturing defects.

On his next trip to Virginia, Cam takes a copy of the summons and complaint and delivers it to Debra as she is working out in the exercise room of her condo development.

- A. **(30 minutes)** You represent Tuflin. You wish to challenge personal jurisdiction. What arguments would you make, what counterarguments would you expect, and what do you anticipate the outcome to be?
- B. **(10 minutes)** You represent Tuflin. You wish to challenge venue. What arguments would you make, what counterarguments would you expect, and what outcome would you anticipate? Can you wait to see how the personal-jurisdiction challenge turns out before challenging venue? Why or why not?
- C. **(25 minutes)** Discovery is complete. Support in the record is thin for Tony's claims. You, still representing Tuflin, move for summary judgment. Tony amends his complaint to add a new count for negligence-per-se, based on a new regulation by the Consumer Product Safety Commission, a federal administrative agency, setting labelling standards for waterskiing ropes. What challenge(s) can you make to the new claim? What counterarguments would you expect? Evaluate your prospects for success. Be sure to consider all reasonable challenges.

- D. **(20 minutes)** Has jurisdiction been asserted over Tufline? What arguments would you, representing Tufline, make that it has not? What counterarguments would you expect? Evaluate your prospects for success.
- E. **(20 minutes)** Cam mentions the video cameras in his deposition. Can you, still representing Tufline, get what they recorded, even if Tony and Cam don't want to give them up? What means would you use? Evaluate your prospects for success, considering every reasonable argument against disclosure.

## QUESTION II

Blanche Burton, a citizen of Massachusetts, and Mike Morton, a citizen of Texas, were friends and classmates in engineering school. Both aspired to invent something important. They were having a few beers after they graduated and Mike was lamenting the inconvenience of having to take his dog out for walks. "Wouldn't it be great," he said, "if someone invented a doggy toilet?" He stopped, and the two of them looked at each other. "Let's do it!" Blanche exclaimed.

After much sketching, arguing, and calculating, they come up with a design that rewards the pet for using the toilet and then flushes the result into the regular plumbing system, by sensing weight changes before and after use.

Mike's fraternity brother, Pete, has gone to work for AOL ("American Opportunities Lost"), which has decided to exit the Internet service business and get into manufacturing consumer products. Pete gives Mike \$50,000 in AOL stock for the detailed plans for the doggie toilet. Mike keeps the transaction secret from Blanche. Blanche nevertheless finds out about it and consults you on a possible lawsuit against Mike.

- A. **(10 minutes)** Does the court have subject matter jurisdiction? Why or why not?

For the following questions, assume that the court has both subject-matter and personal jurisdiction:

- B. **(20 minutes)** You file the following complaint in federal district court:
1. *The defendant stole the plaintiff's idea for an invention.*
  2. *Wherefore, the plaintiff demands damages from the defendant.*

What challenges to this complaint would you anticipate? What response by the court do you expect and why? Do *not* rewrite the complaint.

- C. **(10 minutes)** You file an amended, well-pleaded complaint for common-law conversion, common-law misappropriation of trade secrets, and common-law breach of fiduciary duty in the United States District Court for the Northern District of Georgia. What source of law must the court apply to resolve these claims? Why?
- D. **(20 minutes)** Mike notices the deposition of your client, Blanche. During the deposition, Mike asks Blanche about the details of a failed romance with Pete. The details are acutely embarrassing to Blanche. What can you, representing Blanche, do to prevent her from having to go into these details in the deposition? Evaluate the pros and cons of your options.
- E. **(15 minutes)** Mike files an answer in which he asserts as a defense the allegation that Blanche told him to accept Pete's offer and also told him that he, Mike, could keep all the money, because she had lost interest in the invention. You quiz Blanche closely and she persuades you that she never said any such thing. Is there anything you, representing Blanche, can do now, without having to wait for discovery, to deal with these allegations? What are your prospects for success?

## Appendix

The Illinois Code provides:

(735 ILCS 5/2-202) (from Ch. 110, par. 2-202)

Sec. 2-202. Persons authorized to serve process; Place of service; Failure to make return.

(a) Process shall be served by a sheriff, or if the sheriff is disqualified, by a coroner of some county of the State. A sheriff of a county with a population of less than 2,000,000 may employ civilian personnel to serve process. In counties with a population of less than 2,000,000, process may be served, without special appointment, by a person who is licensed or registered as a private detective under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 or by a registered employee of a private detective agency certified under that Act as defined in Section (a-5). A private detective or licensed employee must supply the sheriff of any county in which he serves process with a copy of his license or certificate; however, the failure of a person to supply the copy shall not in any way impair the validity of process served by the person. The court may, in its discretion upon motion, order service to be made by a private person over 18 years of age and not a party to the action. It is not necessary that service be made by a sheriff or coroner of the county in which service is made. If served or sought to be served by a sheriff or coroner, he or she shall endorse his or her return thereon, and if by a private person the return shall be by affidavit.

(735 ILCS 5/2-204) (from Ch. 110, par. 2-204)

Sec. 2-204. Service on private corporations. A private corporation may be served (1) by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law. A private corporation may also be notified by publication and mail in like manner and with like effect as individuals.

The Virginia Code provides:

§ 8.01-293. Authorization to serve process, capias or show cause order; execute writ of possession and levy upon property.

A. The following persons are authorized to serve process:

1. The sheriff within such territorial bounds as described in § [8.01-295](#);
2. Any person of age 18 years or older and who is not a party or otherwise interested in the subject matter in controversy. However, in any case in which custody or visitation of a minor child or children is at issue and a summons is issued for the attendance and testimony of a teacher or other school personnel who is not a party to the proceeding, if such summons is served on school property, it shall be served only by a sheriff or his deputy; or
3. A private process server. For purposes of this section, "private process server" means any person 18 years of age or older and who is not a party or otherwise interested in the subject matter in controversy, and who charges a fee for service of process.

Whenever in this Code the term "officer" or "sheriff" is used to refer to persons authorized to make, return or do any other act relating to service of process, such term shall be deemed to refer to any person authorized by this section to serve process.

§ 8.01-299. How process served on domestic corporations generally.

Except as prescribed in § 8.01-300 as to municipal and quasi-governmental corporations, and subject to § 8.01-286.1, process may be served on a corporation created by the laws of the Commonwealth as follows:

1. By personal service on any officer, director, or registered agent of such corporation; or
2. By substituted service on stock corporations in accordance with § 13.1-637 and on nonstock corporations in accordance with § 13.1-836.

§ 13.1-637. Service on corporation.

A. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation. The registered agent may by instrument in writing, acknowledged before a notary public, designate a natural person or persons in the office of the registered agent upon whom any such process, notice or demand may be served and may, by instrument in writing, authorize service of process by facsimile by the sheriff, provided acknowledgement of receipt of service is returned by facsimile to the sheriff. Whenever any person so designated by the registered agent accepts service of process or whenever service is by facsimile, a photographic copy of the instruments designating the person or authorizing the method of service and receipt shall be attached to the return.

B. Whenever a corporation fails to appoint or maintain a registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the corporation upon whom service may be made in accordance with § 12.1-19.1.

C. This section does not prescribe the only means, or necessarily the required means, of serving a corporation.