**THIS DOCUMENT HAS ANSWERS AND EXPLANATIONS FOR MULTIPLE CHOICE. SEE VERSION WITHOUT EXPLANATIONS AND TAKE THE EXAM BEFORE USING THIS DOCUMENT TO SCORE YOURSELF.**

# FINAL EXAMINATION: CIVIL PROCEDURE

Wednesday, Dec. 2, 2020—4.0 hours

Professor Ira Steven Nathenson, St. Thomas University School of Law

***Read the instructions carefully. When time expires, all work must cease.***

**Note that multiple-choice question one requires you to certify that you did not seek, receive, offer, or provide any assistance from or to anyone else in the taking of this exam. Make sure you look at question one before beginning this examination. It is found on page eight (8).**

**Time and scoring.** The examination has been written as a three-hour exam, but I am giving you four hours to complete it. You may not write anything on, or erase anything from, any examination materials after time runs out.

- *Essay questions (three questions, 120 minutes total):* The suggested time for each essay question is 40 minutes. Write your answers using **Exam4**. You may not exceed 5000 words for all answers combined. Since Exam4 counts all words towards the limitation, I suggest that you do not include your outline in the exam submission. You would be better advised outlining on paper or outlining on computer and then turning your outlines into your essay answer.

- *Multiple-choice (20 questions, 60 minutes total):* Answer the questions using **Remark**. Do not enter your multiple-choice answers into Exam4, you will waste words and your multiple-choice answers will not get any credit. The only thing that matters for multiple choice is what you enter into Remark.

## *ESSAY QUESTIONS*

**Three questions, suggested total of 120 minutes for all three questions**

**Instructions for essay questions.**

- Some of the questions may make statements about the content of the substantive law of various states. These statements are hypothetical and for purposes of this examination only.

- Despite the names used in the essay fact pattern, all litigants (Atticus Dog, Luci Rabbit, and Shelly Turtle) are human. The peacock, however, is a bird.

- The essay portion of this examination asks you to act as the Judicial Law Clerk to a federal district judge. The judge's memorandum provides three (3) questions you are asked to answer using the information found in the memorandum and related pleadings and papers.

- *Exam4*. You must use **Exam4**.

- *Writing*. Proper spelling, grammar, and organization are expected and are part of your score.

- *How to address essays.*

    - Read the call of the questions and materials carefully—twice—before you outline and write. The call of each question will guide you on what to discuss, and whether some issues should not be addressed.

    - Raise, discuss, and decide all issues reasonably raised by the call of the question, whether or not they are dispositive, and whether or not resolution of one issue makes discussion of other issues technically unnecessary. However, do not engage in negative issue-spotting, which is discussing: 1) issues or parties falling outside of the call of the question, or 2) tangential issues that, although technically falling within the call of the question, are nonetheless frivolous.

    - If you believe you have discovered an error, then expressly identify the error in your written answer and resolve it in a reasonable manner.

    - If—and only if—you believe that it is absolutely necessary to assume additional facts, then state what those facts would be and how they would affect your analysis.

**THE RELEVANT ESSAY MATERIALS CAN BE FOUND ON PAGES 3-7.**

**READ THEM CAREFULLY BEFORE YOU BEGIN TO OUTLINE AND WRITE.**

**MEMORANDUM**

From: The Hon. Ira Steven Nathenson, U.S. District Court for the Southern District of Florida

To: My esteemed new Judicial Law Clerk

Re: Pending motions in *Dog v. Rabbit* and joined third-party complaint of *Rabbit v. Turtle*

Date: Dec. 2, 2020

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Dear Judicial Law Clerk:

Welcome to your first day working as a law clerk for the United States District Court for the Southern District of Florida! Your first day will be busy, as I have a number of motions pending in the case of *Dog v. Rabbit*, which includes a third-party claim filed by Rabbit against a fellow by the name of Turtle. Apparently, the case involves a vintage car from a TV show as well as a pesky peacock.

There are three (3) motions pending. Treat them as three separate inquiries. I would like you do write an objective memo on each, making recommendations on how I should rule on each motion. For relevant information, review this memo along with the pleadings and other court filings, which can be found on the pages that follow (this page through page 7).

**Motion one (question one, 40 minutes).** Defendant Rabbit answered Dog's complaint and has now moved to dismiss Dog's complaint for failure to state a claim pursuant to FRCP 12(b)(6). She has included an affidavit in support of her motion, which struck me as odd. I want you to determine whether I can properly consider Rabbit's affidavit in the context of her 12(b)(6) motion, and regardless of your conclusion to that question, make a recommendation on whether her 12(b)(6) motion to dismiss should be granted. Also, if I do grant the motion, should it be with or without prejudice? Don't bother analyzing FRCP 12(c) or FRCP 56. Stick to the 12(b)(6) issue, thanks.

**Motion two (question two, 40 minutes).** As mentioned above, Rabbit also filed and served a third-party complaint against Shelly Turtle, who has timely moved to dismiss for lack of personal jurisdiction. Assume for purposes of this assignment that the Florida long-arm statute extends to the full extent of the United States Constitution. Address FRCP 4(k)(1)(A), which in turn requires you to address the Florida long-arm statute as well as whether there is specific jurisdiction over Turtle. Do not spend time discussing other bases for personal jurisdiction; I've already considered them and they are not worth addressing.

**Motion three (question three, 40 minutes).** Turtle has also moved to dismiss Rabbit's third-party complaint against him for lack of subject-matter jurisdiction. Should I grant the motion?

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF FLORIDA**

**MIAMI DIVISION**

| | |
|---|---|
| ATTICUS DOG,<br>Plaintiff,<br>v.<br><br>LUCI RABBIT<br>Defendant. | Case No.: CA-No.-2020-5150CV/ISN<br><br>**COMPLAINT FOR NEGLIGENCE**<br><br>**JURY TRIAL DEMANDED** |

## COUNT I (NEGLIGENCE) AGAINST DEFENDANT LUCI RABBIT

1. Plaintiff Atticus Dog ("Plaintiff," or "Dog"), a citizen of Florida, is the owner of a vintage black 1967 Chevrolet Impala that he bought in August 2020 for $75,000. Prior to Dog's purchase, the Impala had been prominently featured on the popular television show *Super-Duper-Natural*. According to an appraisal conducted in October of 2020, Dog's Impala was worth at least $82,000.

2. On November 17, 2020, Dog was driving eastbound in his Impala on the Palmetto Expressway in Miami Gardens, Florida.

3. As Dog neared the 37th Avenue exit, a VW Rabbit automobile ran into Dog's vehicle, causing Dog to lose control. As a result, Dog's Impala was destroyed. The Impala is now worthless, except for scrap parts worth about $2500.

4. The VW Rabbit automobile that struck Dog's Impala was driven by Defendant Luci Rabbit ("Defendant" or "Rabbit"), a citizen of New York.

5. Rabbit breached a duty of reasonable care, proximately and actually causing damage to Dog's vehicle.

6. At all relevant times, Dog acted lawfully, and did not engage in any contributory or comparative negligence.

7. Rabbit is liable for negligence.

WHEREFORE, Plaintiff Dog requests that this Honorable Court order Defendant Rabbit to pay damages for Dog's destroyed 1967 Chevrolet Impala in an amount exceeding $75,000 to be determined at trial, along with damage for pain and suffering, punitive damages, attorney's fees, costs, and such other and further relief that the Court deems just and proper.

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF FLORIDA**

**MIAMI DIVISION**

ATTICUS DOG,
Plaintiff,
v.

LUCI RABBIT
Defendant.

Case No.: CA-No.-2020-5150CV/ISN

**DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

## DEFENDANT LUCI RABBIT'S MOTION TO DISMISS

Defendant Rabbit admits that her rental car struck Plaintiff Dog's vehicle. However, at no time did Rabbit breach any duty of reasonable care, nor does Dog effectively plead any breach, so Dog's claim is not plausible. Accordingly, this Honorable Court should grant Rabbit's motion to dismiss for failure to state a claim upon which relief can be granted. Please see Defendant Rabbit's affidavit for details.

## AFFIDAVIT OF LUCI RABBIT

1. I, Luci Rabbit, am an adult over the age of 21. I am competent and of sound mind, and if called to testify, would attest to the following under oath based on my own personal knowledge.

2. On Nov. 14, 2020, I rented a VW Rabbit car in Brooklyn, NY, with the intention of driving it to Florida. I drove safely from New York to Miami Beach, FL.

3. On Nov. 17, 2020, while operating the rented VW Rabbit vehicle on the Palmetto Expressway in Miami Gardens, FL, a large peacock jumped onto my windshield, obstructing my view.

4. I tried to make the peacock go away by using the vehicle's windshield wipers. However, the wipers were inoperative. Prior to this moment, I was unaware that the windshield wipers were inoperative.

5. Before I could slow and safely stop the vehicle, my vehicle struck another vehicle that allegedly belongs to Plaintiff Dog. This was solely due to an Act of God (or an Act of Peacock), and not due to any breach by me. A true and correct photo of the trouble-making peacock is shown below.

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF FLORIDA**

**MIAMI DIVISION**

LUCI RABBIT,
Defendant/Third-Party Plaintiff,

v.

SHELLY TURTLE
Third-Party Defendant.

Case No.: CA-No.-2020-5150CV/ISN

**THIRD-PARTY COMPLAINT FOR CONTRIBUTION AND BREACH OF CONTRACT**

**JURY TRIAL DEMANDED**

## COUNT I (CONTRIBUTION) AGAINST TURTLE

1. Defendant/Third-Party Plaintiff Luci Rabbit ("Rabbit") is a citizen of New York.

2. Third-Party Defendant Shelly Turtle ("Turtle") is a citizen of New York.

3. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 and/or § 1367. It also has personal jurisdiction pursuant to FRCP 4(k)(1)(A), the Fourteenth Amendment of the United States Constitution and the Florida Long-Arm Statute.

4. In the Fall of 2020, Rabbit needed a rental car to drive from New York to Florida and back.

5. Turtle advertises rental cars in the *New York Post* and *New York Times*. His ads state: "Rent-a-car and drive a clean, safe car to Chicago, Philadelphia, Boston, even Sunny Miami!" His advertisements regularly appear in major New York City newspapers as well as on their websites, all of which are available for people to access and read in Florida. The advertisements state that car rentals must be made by personally visiting Turtle's place of business in Brooklyn, NY.

6. On or about Nov. 14, 2020, Rabbit went to Turtle's place of business to rent a 2009 VW Rabbit. She gave Turtle her credit card information and prepaid a $400 fee for the cost of the vehicle rental. Rabbit asked Turtle whether the vehicle was fit for a long road trip to Florida. He said, "it's like new, it'll get you anywhere you want to go." He also gave Rabbit a voucher for a free day of theme park hopping at Universal Studios in Orlando.

7. On Nov. 17, 2020, Rabbit was driving the rental car on the Palmetto Expressway in South Florida when a large peacock jumped onto the windshield, obstructing Rabbit's view. She attempted to make the bird go away by using the vehicle's windshield wipers, but the windshield wipers would not move. A later inspection showed that the motor for the windshield wipers was inoperative and from the amount of rust, had been defective for months.

8. Because of the obstructed view, the rental vehicle driven by Rabbit ran into another vehicle operated by Plaintiff Atticus Dog, who has sued Rabbit for negligence in the original complaint in this civil action.

9. The vehicle rented to Rabbit by Turtle was inoperative, due to either fraud, negligence, or breach of warranty.

10. Turtle is liable to Rabbit under Florida law by way of contribution to cover any liability or other relief in any form that Rabbit may be deemed to owe Plaintiff Dog in this civil action.

**COUNT II (BREACH OF CONTRACT) AGAINST TURTLE**

11. Plaintiff Rabbit incorporates paragraphs 1-10 as if fully stated herein.

12. Turtle promised Rabbit a "a clean, safe car," for which Rabbit paid good and valuable consideration, constituting an enforceable contract.

13. The vehicle Turtle rented to Rabbit was defective, having a non-functional windshield wiper that was the sole cause of an accident involving Rabbit and Dog.

14. Turtle breached his contract with Rabbit.

15. Turtle is liable to Rabbit under Florida and/or New York law for breach of contract.

WHEREFORE, Defendant/Third-Party Plaintiff Rabbit requests that this Honorable Court order Third-Party Defendant Turtle to pay contribution to Rabbit for any amounts that Rabbit may be deemed to owe Plaintiff Dog for negligence; and additionally that Turtle provide restitution to Rabbit for all monies that she paid for the rental vehicle, along with all consequential and incidental damages, along with any applicable punitive damages, along with attorney's fees, costs, and such other and further relief that the Court deems just and proper.

## ***MULTIPLE-CHOICE QUESTIONS***

Suggested total time for 20 multiple-choice questions: 60 minutes.

Read these rules carefully before proceeding:

- *Remark:* You must use **Remark** for your multiple choice. If you enter your multiple choice using Exam4, you will not receive credit.
- *Choose the best answer:* If more than one answer seems to be correct, choose the best answer.
- *References to state law:* Some of the questions make statements about the content of the substantive law of various states. These statements are hypothetical and for purposes of this examination only.
- *Unless a question expressly provides otherwise:*
    - The facts of each multiple-choice question stand on their own.
    - All suits take place in federal court.
    - The relevant long-arm statute states: "A court of this state may exercise personal jurisdiction to the full extent permitted by the Constitution of the United States."

**Note – correct answers are highlighted in blue, and incorrect answers in red. At the bottom of each question is a breakdown of what answers were chosen by students from the two sections together. Since you have the exam, you should be able to score yourself.**

**1.** I certify that I did not seek, receive, offer, or provide any assistance from or to any other person in taking this examination.

**A. True.**

B. False.

*As an attorney, your word is your bond. See Cf. FRCP 11. You are additionally bound by the STU honors code. Along similar lines, the instructions of the examination stated (in red) that "Note that multiple-choice question one requires you to certify that you did not seek, receive, offer, or provide any assistance from or to anyone else in the taking of this exam." The purpose of this question was based in psychological studies that suggest that "promises could be a powerful way of encouraging and sustaining honest behaviour in an academic context." See University of Plymouth, Promises found to reduce cheating in large study of adolescents, SCIENCEDAILY, Aug. 3, 2020, available at https://www.sciencedaily.com/releases/2020/08/200803105244.htm.*

**2.** Paul sued Deborah for negligence. He served the summons and complaint on Deborah on February 1. On February 10, Deborah served an answer that included the defenses of lack of personal jurisdiction and insufficient service of process. On February 15, she amended her answer to add the defenses of improper venue and failure to state a claim. On Feb. 18, she amended again to add the defenses of insufficient process and lack of subject-matter jurisdiction. Which defenses, if any, have been waived?

A. Insufficient process, improper venue, failure to state a claim, and lack of subject-matter jurisdiction.

*Incorrect. Only insufficient process was waived. See explanation for D.*

B. Insufficient process, improper venue, and failure to state a claim.

*Incorrect. Only insufficient process was waived. See explanation for D.*

C. Insufficient process and improper venue.

*Incorrect. Only insufficient process was waived. See explanation for D.*

**D. Insufficient process.**

*Preserved defenses from the original answer are lack of PJ (initial response) and insufficient service of process (initial response). D amended as a MOC on Feb. 10. Her defense of improper venue is therefore preserved. Her defense of failure to state a claim can be raised through trial and is also preserved. Her final amendment is not as a matter of course (it would have to be by written consent or by leave of court), but lack of SMJ can be raised anytime. However, it is too late to raise insufficient process, which has been waived. D is therefore correct.*

**3.** Penny sued Donald and Deborah for negligence for a car accident that happened in Tallahassee, Florida. She filed the suit in federal court in Tallahassee in the Northern District of Florida. Donald was the driver of the car that hit Penny. Deborah owned a brake repair shop in nearby Thomasville, Georgia. Penny alleged that Donald drove negligently, and that Deborah did a negligent job of repairing Donald's brakes. Deborah was served with process at her brake shop in Thomasville, GA, which is less than 100 miles from the federal courthouse in Tallahassee. Deborah moved to dismiss for lack of personal jurisdiction. Should the court grant Deborah's motion to dismiss?

A. No, because Deborah could reasonably foresee that a bad repair job might cause an accident in Florida, which is nearby.

*Incorrect because Deborah (who is a Rule 20 defendant joined by P) has no contacts with Florida. Yes, she repaired Donald's brakes but that was in Georgia. It was Donald who drove the car into Florida, not Deborah.*

**B. Yes, because Deborah has no ties, contacts, or relations with Florida.**

*Correct because Deborah (who is a Rule 20 D in Georgia) has no contacts with Florida.*

C. No, because Deborah was served in a judicial district of the United States not more than 100 miles from the federal court that issued the summons.

*Incorrect. If you chose this, you went for the red herring of the "bulge" rule under FRCP 4(k)(1)(B). But the bulge rule only allows PJ over persons joined under rules 14 or 19. Deborah is not a TPD brought in by the defendant, she is an original D sued under Rule 20 by the original P. To recognize this, you'd need to understand the basics of PJ (especially the MC test), the bulge rule under 4(k)(1)(B), and the difference between FRCP 14 and 20 joinder.*

D. Yes, because a State may not assert jurisdiction over persons or property found outside the State.

*Incorrect. This incorrectly states the law of Pennoyer (specially the second principle of public law), which was partially overruled by International Shoe.*

**4.** Albert, Betty, Charlie, and Debbie got into an automobile wreck in Tijuana, Mexico. Albert is domiciled in New York City (Southern District of New York). Betty is a French citizen domiciled in Paris, France. Charlie is a French citizen and lawful permanent resident of the United States who is domiciled in Philadelphia, PA (in the Eastern District of Pennsylvania). Debbie is a United States citizen domiciled in Pittsburgh, PA (in the Western District of Pennsylvania). If Albert sues Betty, Charlie, and Debbie, in which district or districts would venue be appropriate?

A. No district would have venue because the case should be heard in a Mexican court.

*Incorrect because we can use section 1391(b)(1) to find several districts with proper venue.*

**B. Western District of Pennsylvania or Eastern District of Pennsylvania.**

*For venue under 1391(b)(1), we need to ask if all Ds are residents of the same state. We therefore ignore the residence of Ps. Under section 1391(c)(3), we also ignore the residence (as measured by domicile) of people residing outside the United States, so we ignore Betty's residence. The facts show that Charlie and Debbie are both domiciled—and thus reside—in districts in PA. Thus, venue is proper in either of those districts.*

C. Any district where any defendant is subject to personal jurisdiction.

*Incorrect because this alludes to fallback venue under 1391(b)(3), which can only be used if 1391(b)(1) and (b)(2) are inapplicable. But 1391(b)(1) is applicable.*

D. Western District of Pennsylvania, Eastern District of Pennsylvania, or Southern District of New York.

*Incorrect because it is looking to the residence of the P, which is irrelevant to 1391(b)(1) venue.*

**5.** Petunia sued Demitrius for stealing her expensive Stradivarius violin valued at more than $2 million. During discovery, Petunia admitted she had not seen Demitrius steal the violin, but instead believed that Demitrius must have been the thief "because he knew I had the violin and now it's gone." Demitrius moved for summary judgment, stating in an affidavit that he had not stolen Petunia's violin and that Petunia had no evidence to the contrary. May the court grant Demitrius' motion?

A. No, because a jury is needed to decide whether Demitrius is telling the truth, and credibility is a quintessentially factual issue.

*Incorrect. D has met his initial burden of production by swearing in an affidavit that he had not stolen and that P had no evidence to the contrary. To avoid summary judgment in D's favor, P must put forth something—either evidence or something reducible to evidence a trial—from which a reaosonable factfinder could conclude that D stole the violin. P's statement that she had the violin and now it's gone, that is insufficient to create a genuine dispute as to material fact. Accordingly, D's motion should be granted.*

B. Yes, because Petunia's allegations are not credible.

*Incorrect. Whether P or D's allegations in the complaint are credible or not is irrelevant. The question in summary judgment is whether a jury is needed to find facts that are genuinely in dispute. Additionally, a court may not resolve credibility in the summary judgment context.*

C. No, because Demitrius' knowledge of Petunia's violin creates a triable dispute of fact over whether he stole the violin.

*Incorrect. Such a fact standing alone would not permit a reasonable factfinder to determine that D stole P's violin. Additionally, federal courts generally reject the "scintilla" standard upon which this answer appears to be based.*

**D. Yes, because there is no need for a trial unless Petunia can show why a jury is needed to decide whether Demitrius stole the violin.**

*Correct. See answer for A for the explanation. How could P avoid SJ? If she could point to something, such as her own affidavit saying that she saw D steal the violin, or an affidavit from somebody else to that same effect, or even perhaps a letter from someone to that effect, so long as the letter-writer's statements could be reduced to admissible evidence. Another option might be information (from affidavits, depositions, etc.) showing that the only person besides P with access to the violin was D and the only way it could have disappeared is if D had stolen it.*

**6.** Albert sued Betty and Charlie for battery, seeking $1 million against each defendant. Albert is a citizen of France. Betty is a citizen of Michigan. Charlie is a citizen of California. The fight occurred in Philadelphia, PA (in the Eastern District of Pennsylvania). Albert filed the lawsuit in state court in Los Angeles, California. Betty and Charlie removed the case to the U.S. District Court for the Eastern District of Pennsylvania. Were removal and venue proper?

A. The case was properly removed and it was removed to a district with proper venue.

*Incorrect. The case was not properly removed and venue was improper. See explanation under D.*

B. The case was properly removed, but to a district with improper venue.

*Incorrect. Removal was not proper. See explanation under D.*

C. Venue was proper, but the case should not have been removed.

*Incorrect. Venue was not proper. See explanation under D.*

**D. The case shouldn't have been removed and it was removed to a district with improper venue.**

*Correct. Re improper removal: Removal requires that there be OJ in the removed case. That would exist since the parties are completely diverse and the AIC exceeds $75K. However, the forum defendant rule prevents removal when the only basis for removal is diversity, and any D is a citizen of the state where the state-court lawsuit was filed. Here, diversity is the only basis for this state-law claim of battery, and Charlie is a citizen of CA, where the suit was filed in state court. So removal was improper. Re improper venue: under 1441(a), the only proper initial venue for a removed case is the district and division corresponding to the state court. Here, the state court was in CA, so removal to the ED PA is improper. Section 1441(a) is an exception to 1391 venue. See the preamble to 1441(a), which indicates that 1441 is the general section for venue unless another provision applies. Interestingly, although the case could not be removed to the ED PA, it could be transferred there from the federal court in California pursuant to section 1404(a), if all parties consent or the court concludes that transfer is appropriate.*

**7.** Paul (citizen of Oregon) sued Big Drug Co., Inc. for negligence per se, arguing that pain relief pills made by Big Drug Co. made his headaches worse, not better. His complaint argued that the labels on the bottles did not disclose that the pills might make headaches worse, and that the omission of this information constituted a breach of a duty of reasonable care due to the labels violating federal regulations administered by the Food and Drug Administration governing what information ought to appear on medicine labels. Big Drug Co. is incorporated in Delaware. Its headquarters are based in Portland, Oregon, and its main manufacturing facility and most of its employees are located in Seattle, Washington. Paul seeks $100,000 in good faith for his pain and suffering. What is Paul's best argument that a federal court has subject-matter jurisdiction?

A. The parties are completely diverse and the amount in controversy is satisfied.

*Incorrect. D is a corporation with its HQ in Oregon, making it a co-citizen with P (also OR). So diversity cannot apply.*

B. The federal labeling regulation is a federal cause of action.

*Incorrect. The fact pattern expressly states that the federal law is administered by the FDA. There is nothing in the fact pattern suggesting that the FDA regulation provides a private right of action to aggrieved victims. Indeed, recall that federal regulations are contained in the CFR (Code of Federal Regulations), which generally provides law administered by federal administrative agencies. In addition, the fact pattern does not state that P is asserting a federal cause of action but rather negligence per se, which is a state-created cause of action.*

**C. The federal labeling regulation is a substantial issue of federal law.**

*Correct. This fact pattern involves a potential state-law claim (negligence per se) that might arguably rely on a necessary federal ingredient (the FDA regulation). Paul's argument would be that by violating standards administered by the FDA, Big Drug Co. has breached a duty of care owed to Paul under state negligence law. Under the Grable/Gunn test, Paul would have to satisfy several elements, including that the federal issue (the duty of care under FDA regs) is "substantial" to the "federal system as a whole." This is a weak argument of SMJ and likely a losing argument as well (see Merrell-Dow), but this is the only non-frivolous argument listed that Paul could use to argue that there is FQ SMJ.*

D. Paul's well-pleaded cause of action was created by federal law.

*Incorrect for reasons similar to answer B. The regulation is a matter of federal law, but it is not federal cause of action, and thus the Holmes test is inapplicable. In addition, negligence per se is a state-created cause of action for purposes of the Holmes test.*

**8.** On Feb. 1, 2018, Paul was run over by a Suzuki motorcycle. Paul erroneously believed that the motorcycle was driven by Debbie. On January 31, 2020 (just one day before the expiration of the two-year statute of limitations), Paul sued Debbie for negligence. A few days later, Debbie was served with the summons and complaint. Debbie was furious because she knew she had not hit or hurt anybody with her motorcycle. She remembered that her friend Donald once had an identical Suzuki motorcycle and that Donald had mysteriously "gotten rid of" the motorcycle around the time of the alleged accident. On Feb. 8, 2020, Debbie showed the summons and complaint to Donald. At that moment, Donald's face turned beet red, and Donald said he "had to go." Debbie's attorney contacted Paul's attorney to report this information. Paul subsequently amended his complaint to drop Debbie and substitute Donald as the defendant. Donald has moved to dismiss, arguing that Paul's claim is barred by the statute of limitations. Should the court grant Donald's motion to dismiss?

**A. No, because Donald learned about the suit within 90 days of the date the lawsuit against Debbie was filed.**

*Correct. This is an example of relation-back (RB) under FRPC 15(c)(1)(C). Donald is being substituted and Debbie dropped as D. The SOL already expired by the time P amended his complaint, but all elements of RB are met. First, there is a change to a party (Donald for Debbie). Second, the amended complaint is for the same exact claim (negligence for the Suzuki). Third, within 90 days of Paul filing of the complaint against Debbie, Donald learned that Debbie had been mistakenly sued by P for events for which Donald was likely at fault. It doesn't matter that he learned after the SOL had expired, so long as the original complaint was timely (it was) and that he got notice and knowledge within the 90-day period. He turned beet red, showing that he realized that a suit had been filed for his misconduct and that P had sued the wrong person. This gives him notice such that he can prepare a defense (no prep prejudice), and Donald knew that P had made a mistake in naming Debbie instead of Donald.*

B. Yes, because the statute of limitations has expired.

*Incorrect. The purpose of RB is to prevent the SOL from barring a claim so that the D does not get a windfall when they timely got all the info and notice they need.*

C. No, because Donald knew all along that he was the person who hit Paul.

*Incorrect. 15(c)(1)(C) has strict timing requirements for the new D's notice-to-prevent-prejudice and the knowledge-of-mistake. If the timing requirements are not met, then there is no RB.*

D. Yes, because Donald was not formally served with notice within the statute of limitations period.

*Incorrect. RB does not require formal service of process. Indeed, since Donald had not been formally sued, why would the law require a non-party to be served with process?*

**9.** On January 1, 2020, Penny filed a complaint against Donald for negligence. Several days later, Penny amended her complaint unilaterally without seeking court or party permission. Penny's amended complaint was served on Donald on Feb. 1, 2020. On Feb. 20, 2020, Donald served a pre-answer motion on Penny for failure to state a claim. On Feb. 28, 2020, Penny served on Donald a further amended complaint that attempted to address the problems that Donald had identified in his motion to dismiss. Donald filed a motion with the court, complaining that it was too late for Penny to amend her complaint unilaterally and that she would either need Donald's consent (which he was unwilling to provide), or that she would have "to bug this Honorable Court for permission." Is Donald correct?

A. Yes, because a litigant may only amend as a matter of course within 21 days after serving the pleading.

*Incorrect. A litigant may also amend up to 21D after being served with an opposing motion to dismiss, as here. But there can only be one amendment as a MOC, and P already used hers.*

B. No, because a litigant may amend as a matter of course up to 21 days after the service of an opposing motion to dismiss.

*Incorrect. It is true that a party can amend as a MOC up to 21 days after being served an opposing MTD. But you still only get one amendment as a MOC. Here, P already amended once as a MOC. Now she needs D's written consent, or leave of court. The latter should be easy to obtain, unless the court concludes that amendment would be futile (or that amendment would be unfairly prejudicial to D or that P had unduly delayed).*

**C. Yes, because Penny may only amend once as a matter of course, something that she did earlier.**

*Correct. You only get one amendment as a MOC.*

D. No, because Donald has not yet answered the complaint, giving Penny the right to cure any defects in her complaint.

*Incorrect. You only get one amendment as a MOC. Here, the court is likely to grant leave to amend, unless amendment would be futile.*

**10.** Pam sued Daria for negligence for a car accident. During discovery of Wilma (a witness), Pam's lawyer asked Wilma if anybody had seen Daria drinking the day of the accident. Wilma started to answer that her friend Willard had told her that he and Daria had "gotten totally toasted" earlier in the day of the accident. However, Daria's lawyer objected, "IRRELEVANT AND INADMISSIBLE HEARSAY!" The lawyer argued that Wilma was not allowed to testify to Willard's out-of-court statements, and that the deposition should end due to abuse of process by Pam's attorney. Is Daria's lawyer correct?

A. No, lawyers can ask anything they want during a deposition, as the purpose of a deposition is discovery.

*Incorrect. Lawyers cannot ask "anything." For example, questions about privileged communications would be objectionable.*

B. Yes, because hearsay testimony is prohibited from use at trial unless a proper exception to hearsay exists, which is not the case here.

*Incorrect. Discovery can seek information about things inadmissible at trial, so long as the information is likely to lead to admissible information.*

**C. No, because the hearsay about what Willard supposedly said to Wilma might lead to discoverable information that is relevant to the lawsuit.**

*Correct. Discovery can seek information about things inadmissible at trial, so long as the information is likely to lead to admissible information.*

D. Yes, because asking irrelevant questions is a basis for ending a deposition.

*Incorrect. The bases for ending a deposition are narrow. See FRCP 34.*

**11.** Penny sued Dexter for running into Penny's Ferrari 458 automobile, previously worth $250,000 but now totally destroyed. Dexter brought in Tanya as a third-party defendant, alleging that Tanya had damaged Dexter's own car (a 2012 Fiat 500 Sport) by hitting it from behind, causing $1000 damage, and that Tanya had hit Dexter's car so hard that she shoved Dexter's car into Penny's car, causing damage to Penny's car. Dexter demanded that the court order Tanya to pay Dexter for his own $1000 damages as well as any damages (up to $250,000) that he might owe Penny. Assuming that the parties are completely diverse, are Dexter's claims against Tanya properly joined?

**A. Yes, because Dexter's $250,000 claim against Tanya is a proper third-party claim, his $1000 claim against her for his own damages does not need to be justified by Rule 14.**

*Correct. Note how the Q does not ask about SMJ, but only about joinder. A proper R14 third-party claim is asserted by a defending party against a new third party for all or part of the claim asserted against it. Here, Dexter seeks recovery in contribution from Tanya for all or part of the $250K that Penny is suing Dexter for, making that a proper third-party claim. Although the $1000 negligence claim for Dexter's damaged Fiat is not a proper third-party claim, Dexter can "pile it on" under R18(a), since Dexter has already asserted a proper R14 third-party claim.*

B. No, because Dexter's $1000 claim against Tanya is for his own damages, which is not permitted by Rule 14.

*Incorrect. Dexter can pile on his $1000 claim under R18(a). See explanation for A.*

C. Yes, because subject matter jurisdiction exists over all parties and claims.

*Incorrect. Proper SMJ does not guarantee proper joinder.*

D. No, because the amount in controversy for Dexter's $1000 claim against Tanya is too low and cannot be aggregated with his $250,000 claim.

*Incorrect. Again, the Q asks about joinder and not SMJ. And regardless, Dexter could aggregate his separate $1000 Fiat negligence claim against Tanya with his $250,000 Ferrari contribution claim.*

**12.** Petyr, from Warsaw, Poland, got into a bar fight in Scotland with Daniela, Demitrius, and Dustin. Petyr spent several weeks in a Scottish hospital recovering. Petyr filed suit in California State court because he thought he could get more money in an American court than a Scottish court. Also, although Demitrius and Dustin were from Scotland, Daniela was actually from Los Angeles. The defendants appeared in court and argued that the case should be heard in Scotland, since most of the evidence and witnesses were there. The defendants did not, however, object to personal jurisdiction or California state-court venue. The California court, after careful analysis, concluded that personal jurisdiction and venue had been waived, and that the California court had subject-matter jurisdiction. What should the court do?

A. It should hear the case on the merits. A court does not have the power to decline to exercise proper subject-matter jurisdiction.

*Incorrect. A court does have the power to decline jurisdiction under the doctrine of forum non conveniens.*

**B. The court should dismiss the case pursuant to the doctrine of forum non conveniens.**

*Correct. This court does have the power to decline jurisdiction under the doctrine of forum non conveniens. Most of the parties are from outside the US and the bar fight happened in Scotland. Even if the California court has SMJ and PJ and venue, it could still conclude that it would be far more convenient to the parties (private interest factors), and the judicial system (public interest factors) for the case to be dismissed so that it can be refiled in Scotland.*

C. The court should engage in a transfer of venue to a Scottish court.

*Incorrect. A California state court does not have the power to transfer a case to a court system in another country.*

D. The court should sue sponte remove the case to federal court, which could then transfer the case to Scotland pursuant to international treaties.

*Incorrect. A state court does not have the power to "remove" a case to federal court. Nor does a federal court have power to "transfer" a case to a court system in another country.*

**13.** Peter, a citizen of California, was hit in Arkansas by a car driven by Daniel, an Arkansas citizen. Peter sued Daniel in federal court in Arkansas. Daniel argued that Peter was not watching what he was doing while crossing the street, namely, that Peter was too busy looking up photos of bunny rabbits on Instagram. Both litigants agreed that *if* any's state's substantive law applied to this civil action, it would be Arkansas law. However, the parties disagreed on whether the federal court should apply Arkansas law or federal law. Daniel argued that Arkansas state law must be applied. He further argued that Arkansas state courts consistently dismiss a negligence claim based on a "contributory negligence" defense that totally bars a plaintiff from recovery, even if the plaintiff is only 1% negligent. Daniel noted that the Arkansas Supreme Court had in just the past year reaffirmed its commitment to the contributory negligence rule. Peter argued that the "Arkansas Supreme Court might change its mind," and that federal courts have the discretion to disregard erroneous state law when an opportunity emerges to articulate a better view of the law. Peter concluded that the federal court should use a "comparative negligence" standard that might reduce, but not totally bar any recovery for him. Peter also noted that most other states had decided to adopt the more flexible comparative negligence rule rather than contributory negligence. Which rule should the federal court apply?

**A. Contributory negligence because the Arkansas Supreme Court has recently spoken on the issue, and the federal court has no reason to believe that the Arkansas Supreme Court is likely to change its mind.**

*Correct. In* Erie v. Tompkins *(U.S. 1938), the Supreme Court held that federal courts sitting in diversity had to use state law where state law provided the rule of decision. Where the relevant state law was state common law, the federal court would have to use the common law as articulated by the highest court of the relevant state. Here, the Arkansas court had made clear—repeatedly and recently—that it used contributory negligence, making that the relevant law that the federal court was required to use.*

B. Comparative negligence because it is the better rule and we are not in state court, we are in federal court. Article III of the U.S. Constitution implies the power for federal courts to develop a body of practice, procedure, and rules of general law.

*Incorrect. In* Erie v. Tompkins *(U.S. 1938), the Supreme Court held that federal courts sitting in diversity had to use state law where state law provided the rule of decision, and that it was error for federal courts to ignore otherwise binding state common law in favor of federally invented "general federal common law."*

C. Contributory negligence because a federal court must always apply the law of a state.

*Incorrect. This answer overstates the law. For example, a federal court sitting in diversity does not typically apply state procedural law, and instead applies the FRCP.*

D. Comparative negligence because the modern trend is to avoid the harshness of the old contributory negligence rule.

*Incorrect. The facts make clear that the relevant state had reaffirmed its adherence to contributory negligence. The modern trend in other states is therefore irrelevant.*

**14.** Paul owned a patent for a method of chewing bubblegum. Paul sued Daniel for patent infringement when he saw Daniel chewing bubblegum. During the litigation, the parties vigorously fought over every last issue, such as the meaning of the patent, the patent's legal validity, and whether Daniel infringed Paul's patent. After a lengthy jury trial, the jury found that Daniel had in fact infringed Paul's patent. Flush with joy over his victory, Paul filed a new lawsuit against Denorah for infringing the same bubblegum patent in the same way. After discovery established that Denorah had chewed bubblegum in the same exact way as Daniel, Paul made a motion for partial summary judgment, asking the court to use principles of preclusion to find that Paul's patent was valid and that Denorah had infringed. As Paul argued, "those issues were actually litigated and actually decided in the first litigation, and there is no reason to waste this court's time litigating them again." Paul told the court that the only remaining issue should be the amount of damages Denorah owed Paul. May Paul use the factual and legal findings from the first case of *Paul v. Daniel* in the second case of *Paul v. Denorah*?

A. Yes, because the same issues were fully litigated, actually decided, and essential to the final judgment in the first case.

*True but incorrect. See explanation for D.*

B. No, because preclusion may not be used unless both cases involve the same parties or their privies.

*False and incorrect. The Supreme Court has held that issue preclusion can be used non-mutually in limited circumstances. See explanation for D.*

C. Yes, so long as Paul had a full and fair opportunity to litigate the issues in the first litigation, and additionally, so long as Denorah could have, but chose not to, intervene in the first suit.

*False and incorrect. See explanation for D.*

**D. No, because the findings from suit # 1 are being used offensively against somebody who did not participate in that suit.**

*Correct. This is an example of non-mutual issue preclusion, which is when an issue actually litigated and necessarily decide in one case is used, whether offensively or defensively, in a later case. Normally, courts require that issue preclusion be "mutual," involving the same parties or privies. However, federal courts do have the power to sometimes permit issue preclusion between non-mutual parties, i.e., when one of the parties is different. But the Supreme Court has also made clear that such non-mutual preclusion cannot be used at all against a party or privy who was not involved in the first suit. That is the case here.*

**15.** Paxton sued Darius for negligence for a car accident. At trial, Paxton's lawyer called Wilson as a witness. Darius' lawyer was alarmed, as he had never heard of Wilson before. Darius' lawyer asked for a sidebar conference with the judge. Paxton's lawyer told the judge that Wilson would testify that Darius was "rip-roaring drunk" at the time of the accident. Darius' lawyer objected because Paxton's lawyer had never before mentioned that he might use Wilson as a witness. For his part, Paxton's lawyer admitted that he had known about Wilson "since the day of the accident," but argued that defense counsel had "never asked for the names of my witnesses, not by interrogatory nor by any other discovery device." Darius' lawyer admitted that he had not asked for a list of Paxton's witnesses, but nevertheless asked the judge to prohibit Wilson from testifying. May the court prohibit Wilson from testifying?

**A. Yes, the court may prohibit Wilson from testifying because Paxton's lawyer never disclosed the existence of a witness that might help Paxton's claim.**

*Correct. This is an example of a discovery sanction under FRCP 37. Paxton's lawyer had a duty under FRCP 26(a)(1) to disclose Wilson, a witness that Paxton might have used to help Paxton's claim against Darius. By failing to provide the required disclosure, Paxton is open to sanctions under 37(c)(1)(A), which include prohibiting Paxton from using Wilson as a witness.*

B. No, Paxton's lawyer is under no obligation to respond to discovery requests that Darius' lawyer never made.

*Incorrect. Paxton is required under FRCP 26(a)(1) to disclose witnesses that he may use in support of his claim, unless solely used for impeachment.*

C. Yes, the court may prohibit Wilson from testifying because Paxton's lawyer never disclosed the existence of a witness that might be relevant to Darius' defense.

*Incorrect. Paxton is required under FRCP 26(a)(1) to disclose witnesses that he may use in support of his own claim, unless solely used for impeachment. He is not required to disclose witnesses relevant to the opposing party's defense.*

D. No, but the judge must inform the jury that Paxton's lawyer failed to disclose the existence of Wilson to Darius' lawyer.

*Incorrect. FRCP 37(c)(1)(B) says that the judge "may" inform the jury of the failure to disclose, but does not mandate it.*

**16.** Paul decided to open a music school that he would call STRUM ACADEMY. Paul asked his lawyer Louie to check the availability of the name for Paul's new school. Louie did a thorough search of trademarks, business names, trade names, and domain names, and wrote up a detailed clearance memo to Paul advising Paul that it was most likely safe for him to adopt and use the name STRUM ACADEMY, and also detailing Paul's potential litigation strategy if he were ever to be sued for infringement. A few months later, Paul was sued for willfully infringing trademarks by a music school called STRUM MUSIC ACADEMY. Paul answered the complaint by alleging that he was not a willful infringer because he had reasonably relied on the clearance advice of his counsel, Louie. Later, during discovery, STRUM MUSIC ACADEMY requested production of Louie's clearance memo and additionally, requested a deposition of Louie. Louie objected to both on the basis that they sought the discovery of privileged communications between an attorney and his client, and that they sought the discovery of attorney work product. Is Louie correct?

A. Yes, because the document request and notice of deposition both seek discovery of privilege communications and work product.

*Incorrect. Any protection has been waived. See explanation to D.*

B. No, because a plaintiff cannot hide his wrongful conduct by hiding behind the veil of privilege and work product.

*Incorrect. Privilege and work product protection do not hinge on whether the D was liable or not. There are exceptions to privilege that you'll learn about in Evidence or in Pro Rep (such as the crime-fraud exception), but those aren't applicable here. Indeed, if wrongdoers could not assert privilege or work product protection, they might not confide in lawyers, undermining the purpose of legal protection, which relies on the privacy of client communications and attorney work product.*

C. Yes, because a litigant cannot obtain discovery of privileged materials or attorney work product unless the litigant shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

*Incorrect. This answer states the standard for piercing work product protection, but work product protection does not exist if it is waived, as is the case here. See explanation for D.*

**D. No, because Paul waived privilege and work-product protection by asserting that he reasonably relied on advice of counsel.**

*Correct. Louise's clearance memo was indisputably a privileged attorney-client communication, and also arguably attorney work product. However, privilege and work product protections can be waived, such as by putting them "at issue" in litigation. Paul waived any privilege or protection by defending on the basis of Louie's trademark clearance advice.*

**17.** Paola owned a condominium complex of 400 units. Darien and Daxon promised to paint the building for $80,000. However, the paint they used was of poor quality and washed away after a tropical storm. Paola sued Darien and Daxon for breach of contract, seeking restitution and other damages. Darien then crossclaimed against Daxon for breach of contract regarding a 1968 Mustang that Daxon had sold Darien. Are all parties and claims properly joined?

A. Daxon and Darien are properly joined as co-defendants, and Darien's crossclaim against Daxon is proper as a "permissive" crossclaim, even though it is unrelated to Paola's main claim.

*Incorrect. A crossclaim must have a relationship to a main claim or counterclaim. See C for more.*

B. Daxon and Darien are not properly joined as co-defendants, and Darien's crossclaim against Daxon is improper as a "permissive" crossclaim because it is unrelated to Paola's main claim.

*Incorrect. It is true that Darien's crossclaim is improper, but Paola's claims are proper. See explanation to C.*

**C. Daxon and Darien are properly joined as co-defendants, but Darien's crossclaim against Daxon is improper as a "permissive" crossclaim because it is unrelated to Paola's main claim.**

*Correct. Daxon and Darien are proper R20 co-defendants because they are being sued for the same claims arising from the lousy paint job. Thus, there are at least one (and in fact many) common questions of fact and/or law, and the claims arise from the same transaction, occurrence, or series. However, the crossclaim by Darien against Daxon for a car is improper as it bears no relationship to the original claim by Paola.*

D. None of the claims are properly joined.

*Incorrect. Paola's claims are proper. See explanation to C.*

**18.** *Two Men and a Van*, a national moving company, filed suit against another moving company that used the name *A Big Truck and Two Dudes*. The district court granted a preliminary injunction against the defendant. A week after the preliminary injunction was granted, the defendant filed a Notice of Appeal with the United States Court of Appeals. The plaintiff then filed a motion before the Court of Appeals arguing that the defendant's appeal was premature because a trial on the merits had not yet happened and the judgment was therefore not "final." Should the Court of Appeals dismiss the appeal as premature?

A. Yes, because appeal cannot be taken before a judgment is "final."

*Incorrect. Normally appeal is not proper unless the order being appealed from is "final," but there are myriad exceptions, such as in answer B.*

**B. No, because an order granting a preliminary injunction can be appealed even though it is interlocutory.**

*Correct. Although an order granting or denying an injunction is "interlocutory," or non-final, section 1292 permits immediate appeal of orders granting, denying, modifying, or dissolving preliminary injunctions.*

C. Yes, because after a full trial on the merits, the district court might conclude that an injunction is no longer needed, obviating the need for "piecemeal" appeals.

*Incorrect. See explanation for B.*

D. No, because the preliminary injunction implicates the defendant's First Amendment rights of free speech and association, which is a "substantial" issue ripe for immediate appeal.

*Incorrect. Lots of injunctions have nothing to do with First Amendment rights. Regardless, section 1292 permits immediate appeal of a preliminary injunction, making it the better answer.*

**19.** Pedro sued Dyson for negligence. The case proceeded to a jury trial. At trial, after Pedro's lawyer finished the plaintiff's case-in-chief, Dyson's lawyer made a motion for judgment as a matter of law, arguing that Pedro had failed to put on sufficient evidence of a breach of duty from which a reasonable juror could find in Pedro's favor. The judge denied the motion. After Dyson's lawyer presented her own defense case-in-chief, she rested, and eventually the case went to the jury. The jury came back with a verdict in Pedro's favor for $1,000,000. A few days after the judge entered judgment on the jury's verdict, Dyson's lawyer filed a motion for renewed judgment as a matter of law on the basis that the judge had erroneously permitted inadmissible hearsay testimony, and that without that inadmissible hearsay evidence, Pedro should have lost as a matter of law. Dyson's lawyer joined that motion with an alternative motion for a new trial. Assuming that the judge agrees that the hearsay testimony should not have been entered and that it was substantial rather than "harmless" error, what should the court do?

A. Grant the motion for renewed judgment as a matter of law, and in the alternative, conditionally grant the motion for a new trial.

*Incorrect. See B.*

**B. Deny the motion for renewed judgment as a matter of law, but grant the motion for a new trial.**

*Correct. Re RJMAL, you can't move for a "renewed" motion for JMAL after trial unless you made the same motion at a proper time during trial. Here, the basis for RJMAL (inadmissible hearsay) is very different from the basis for JMAL during trial (insufficient evidence of breach). So RJMAL must be denied. However the motion for a new trial should be granted if the hearsay was inadmissible and was not "harmless" error. Note that FRCP 50(b) permits a party moving for RJMAL to move in the alternative for a new trial. That is what happened here.*

C. Deny the motion for renewed judgment as a matter of law, and deny the motion for a new trial.

*Incorrect. See B.*

D. Grant the motion for renewed judgment as a matter of law, but conditionally deny the motion for a new trial as moot.

*Incorrect. See B.*

**20.** Plaintiff sued defendant for negligence for a car crash. In her complaint, plaintiff alleged in paragraph 12 that "The defendant's red Porsche hit my blue Audi because the defendant was drunk and driving above the posted speed limit." After a reasonable investigation into the facts, defense counsel concluded that the plaintiff's Audi was red and that the defendant's Porsche was blue. Defense counsel also concluded that her client was not drunk but just liked driving too fast. Which of the following is an appropriate allegation for the answer to paragraph 12?

A. "Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12."

*Incorrect. D's lawyer has in fact done an investigation and learned that some of the allegations in par. 12 are true. So it would be totally improper to generally deny par. 12.*

B. "The allegations of paragraph 12 are denied."

*Incorrect. You can't generally deny an allegation if in good faith you realize parts are true.*

**C. "Defendant admits that she was driving her Porsche above the posted speed limit when her Porsche struck the plaintiff's Audi. The remaining allegations of paragraph 12 are denied."**

*Correct. Under FRCP 8(b), a party answering a pleading with a claim must admit, deny, or engage in deemed denials and must do so in good faith, admitting or denying as the Rule 11 investigation indicates. Here, defense counsel has learned that the P did have an Audi and the D had a Porsche, but that the colors were misstated in the complaint. Defense counsel also learned that their client liked driving too fast but had not been drunk at the relevant time. D has specifically admitted the true allegations and generally denied the rest, something that is permitted under FRCP 8(b).*

D. "Defendant denies that the Porsche was red or that the Audi was blue. The remaining allegations of paragraph 12 are admitted."

*Incorrect. D has just admitted to driving drunk even though D wasn't drunk!*

**[END OF EXAMINATION]**

**The Nathenson Family "Not Ready for Prime Time" Exam Scenario Players wish you all a happy, healthy, and safe holiday break!**

**The Borky Atticus Dog**

**Our Beloved Luci Rabbit**

**The Persistent Shelly Turtle**