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**512-370 Civil Procedure I  
Spring Semester 2006**

**UNM School of Law  
Final Examination  
Three Credits**

**Professor Gómez  
Wednesday May 10, 2006  
1:30 p.m.-4:30 p.m. (3 hrs.)**

**Examination Format  
Essay and Short Answers**

1. **Laptop** computer users: Start the Securexam program entering your examination number, course name, professor's name, & date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam.
2. **Bluebooks** for writing: write on every-other line and only on the front page of each sheet. On the front of bluebook record the class name, professor's name, date of exam, and your examination number. Make sure to number each bluebook in order. **DO NOT WRITE YOUR NAME ON BLUEBOOKS.**

A five-minute warning will be given prior to the conclusion of the examination. When time is called, stop immediately. If you are handwriting, lay down your pen & close bluebook immediately. If using a laptop, save & exit the program.

Go to the exam check-in table at the conclusion of the exam & fill out an examination receipt.

## FINAL EXAM

CIVIL PROCEDURE I  
SPRING 2006  
PROFESSOR GÓMEZ

Wednesday, May 10, 2006  
1:30 p.m. - 4:30 p.m.  
3 hours

### Instructions

1. Exams are graded anonymously (by number). Be sure to avoid making any marks (e.g., signing your name) or written remarks that will jeopardize your or anyone else's anonymity, either on the examination or in any other context, before grades are posted.
2. This is a semi-closed book exam. During the exam, you may consult **only** your copy of the Federal Rules of Civil Procedure and your own outline (e.g., an outline prepared by you).
3. References to the "Rules" in the exam are to the current version of the Federal Rules of Civil Procedure. Unless otherwise stated, assume the Federal Rules are in effect, in their entirety, in the jurisdictions involved in the exam questions.
4. This exam has three parts. Questions will be weighted in accordance with the suggested time allocations for each part (part I [70 mins.], part II [70 mins.], part III [30 mins.]). Before beginning to write or type, read through the entire exam. (I have allotted 10 minutes for you to read these instructions and the entire exam.)
5. If you elect to complete your exam on a computer, double-space and paginate your answer (Secure Exam automatically prints out double spaced). If you hand-write your exam, please do the following: use ink (not pencil), use only one side of the page, and, and skip every other line of your blue book.
6. If you believe you need any additional information to answer a question, explain what information you need and why you need it. In your answer, clearly state any assumptions you feel are necessary to answer the question.

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**I.**  
**Issue-spotting & Analysis**  
*(70 minutes)*

Judy and Juan Pablo Mas were married in Flagstaff, Arizona in June 2004 at the home of Judy's parents. At the time, Judy and Juan Pablo both were graduate students in the forestry department at Northern Arizona University. In September 2005, they moved to Silver City, New Mexico, where Judy took a job with the U.S. Forest Service and Juan Pablo started a Ph.D. program. Although a Mexican citizen by birth, Juan Pablo had lived in Arizona since beginning college in 1995. After marrying Judy he had initiated paperwork to become a U.S. citizen. He was a legal permanent resident (e.g., green card holder) as of October, 2005. Juan Pablo and Judy owned a 2000 Chevrolet Neon, registered in Arizona. When they moved to New Mexico, they obtained new driver's licenses from that state. At the time of the accident, neither Judy nor Juan Pablo was registered to vote in any jurisdiction.

For the Christmas and New Year's Day holidays for 2005, they decided to drive to Los Angeles in order to spend time with Juan Pablo's sister and her family. While they were there, they talked about how much they loved Silver City, the Gila Mountains, and about how they thought New Mexico would be a great place to raise children, if they ever decided to have any. When they left Los Angeles, on January 2, their car was packed with several boxes of framed family photos, keepsakes, and some small pieces of furniture which Juan Pablo's deceased mother had left him. Juan Pablo's sister had stored these items for many years, but Juan Pablo had decided he wanted them with him in Silver City.

On the night of January 2, 2006, as Judy and Juan Pablo were on their way back home to Silver City, their Neon was struck by a New Holland tractor driven by Owen Less. Judy was driving and Juan Pablo was in the passenger seat taking a nap when the accident occurred near Winslow, Arizona on Interstate-40. Judy died instantly; Juan Pablo sustained serious injuries and was hospitalized for several weeks in Flagstaff.

Less, who has lived all of his life in Arizona where he works on the farm his family has operated for three generations, was not hurt in the accident. In addition to the farm in northwestern Arizona, Less also sometimes spends weekends working at a ranch he co-owns with cousins, which straddles the border between Arizona and New Mexico.

The tractor Less was driving is registered to O'Connor's Farm & Ranch, a company that buys smaller, family-owned ranches and farms in the Southwest and then contracts with the sellers to have them continue operating their properties as employees. O'Connor's is incorporated in Arizona. Three of 12 operations it owns are in New Mexico, and these three operations accounted for around ten percent of their annual earnings in 2005 and 2004.

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Mas has filed a wrongful death lawsuit against Less and O'Connor's Farm & Ranch, Inc. in federal court in New Mexico, seeking to recover \$2 million in damages.

\* \* \*

- (1) *You have been retained to represent the defendants, Less and O'Connor's. Evaluate whether you should file a 12(b) pre-answer motion challenging personal jurisdiction and/or subject matter jurisdiction. (Do not consider any other 12(b) challenges in your answer.) Your answer should include an analysis of how likely you would be to succeed at such a motion, and, hence, consideration of the plaintiff's counter-arguments against your motion.*

\* \* \*

Assume the case has moved forward and is still in New Mexico federal court (either because the defendants lost their 12(b) challenges or because they decided they preferred this forum to others).

Mas's lawyer has submitted 20 interrogatories to the defendants, including #18, which reads as follows:

"State whether any statements of eyewitnesses, including employees of either defendant, were taken in connection with the accident. Attach hereto photocopies of all such statements if in writing, or, if oral, set forth in detail the provisions of any such oral statements."

As it turns out, you, as defense attorney, had interviewed some witnesses in the days following the accident. Opie Less, the defendant's brother, who also was employed by O'Connor's Farm and Ranch, Inc., was an eyewitness to the accident. Opie and Owen were driving separate vehicles and both had stopped to get gas about an hour before the accident, but Opie had stayed longer than Owen in order to place a phone call to a friend. At the time of the accident, he was driving a pick-up truck (owned by O'Connor's) about 10 miles behind his brother, going west on I-40, and he witnessed the accident. You were retained by the defendants two days after the accident, and you interviewed Opie four days after the accident, anticipating that there eventually would be a lawsuit filed.

You also interviewed the driver of a semi-truck who was a witness to the accident, as he was driving behind the Mas vehicle (driving east on I-40). The semi-truck driver, Gerald Sanchez, was himself in an accident three months after Judy Mas was killed. Due to that accident, he remains in a coma in a Denver hospital.

\* \* \*

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- (2) *As the attorney representing the defendants, how should you respond to plaintiff's Interrogatory #18? In your answer, anticipate any counter-arguments the plaintiff will make in response to your reply to the interrogatory.*

\* \* \*

Assume the defendants have lost their bid to exclude from discovery your notes on your interviews with Opie Less and Gerald Sanchez. Yet the defendants have continued to refuse to turn over these notes to the plaintiff.

\* \* \*

- (3) *Switch hats: you are now the plaintiff's attorney. How should you respond to the defendants' continuing lack of cooperation with your discovery request? In your answer, clearly state any assumptions you feel are necessary in order to answer this question.*

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**II.**  
**Short Answer Questions**  
(70 minutes)

*For each of the following assertions (in which “P” refers to plaintiff and “D” refers to defendant), do the following: (1) state whether the assertion is **true or false** (worth half credit for the question), and (2) provide a one sentence explanation for your answer (worth half credit for each question). There is no in-between: if the assertion is not true in every instance, then it is false; a statement that is true but that “doesn’t tell the whole story” is nevertheless true. Your explanation may include reference to a rule, statute, or case; it may include an example or counter-example; or it may consist of a simple statement of why you believe the assertion is true or false.*

1. §455 of the U.S. Code provides that parties may exercise a peremptory challenge of a federal judge one time during the course of litigation.
2. Pennoyer v. Neff stands for the proposition that a state court's jurisdiction over persons or property should be, in general, co-terminus with the state's territorial boundaries.
3. The International Shoe case instituted an easy-to-apply, predictable rule for determining whether a court had personal jurisdiction over a corporation.
4. Shaffer v. Heitner put to rest the strategy of using *quasi in rem* as a mechanism by which to establish personal jurisdiction over a defendant (which we first encountered in Pennoyer).
5. Rule 4(d) provides that D who resides in the U.S. gets 90 days to answer P's complaint if she agreed to waive in-person service of P's complaint.
6. P chooses the litigation forum by deciding where to file her complaint; D does not have any choice about the forum.
7. The federal courts, unlike state courts, are courts of limited jurisdiction, and this reflects values related to federalism and states' sovereignty.
8. §1332 does not provide any mechanism for enforcing P's honesty in representing the minimum amount-in-controversy required for diversity jurisdiction.

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9. §1367 allows federal judges to decide questions of state law if the state claims arose close in time and place to P's claims based on federal law.
10. A large reason for the Supreme Court's about-face in Erie R.R. v. Thompkins was increasing frustration with forum-shopping for the purpose of gaining substantive law that was viewed as more favorable to the party more experienced at litigation.
11. Modern notice pleading under the federal rules continued the trend first started with the various state codes adopted in the mid-19th century (such as the Field Code of New York).
12. One defense technique for getting rid of a case during the pleading stage is to file a motion to dismiss under Rule 12(b)(6), in which D contests the facts alleged by P, and which, if D wins, results in a final judgment.
13. Under the 1983 amendments, Rule 11 sanctions were limited to use by defendants.
14. The Supreme Court has held that the special pleading rules for complaints alleging fraud (see R. 9) override the notice pleading regime put in place by Rule 8(a).
15. Under Rule 15, P is limited to amending her complaint to situations in which the proposed amendment "relates back" to the original cause of action.
16. Under Rule 26(b), all relevant information (that is, information that bears on a claim or defense) may be discovered by your opponent.
17. The major categories of required initial disclosures under R. 26(a) are, first, the names and contact information for persons likely to have relevant information about claims or defenses; and, also, a list of all documents and other tangible things in the possession of the party that might be used by it to support its claims or defenses.
18. In Hickman v. Taylor, the Supreme Court agreed with D that its lawyer's trial preparation material was exempted from discovery because it fell within the attorney-client privilege.
19. During an especially aggressive deposition of D by P's lawyer, you, as D's attorney, advise D not to answer a question posed to her by P's attorney; in doing so, you invoke Rule 30(d)(4). In response, P can seek Rule 37(b) sanctions.
20. Unlike Rule 37 sanctions, sanctions for discovery violations [under R. 26(g)] are discretionary.

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**III.**  
**Reflective Essay**  
*(30 minutes)*

"A trial is a failure."<sup>1</sup>

*Do you agree or disagree with this statement? Justify your position by drawing on appellate decisions, empirical observation or data, and/or public policy arguments more generally.*

END OF EXAM

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<sup>1</sup> Samuel Gross and Kent Syverud, as quoted in Yeazell's casebook, p. 465.