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Exam No. _____

**512 Civil Procedure I
Spring Semester 2008**

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

**Professors Mathewson & Gomez
Wednesday, May 14th, 2008
1:30-5:00 p.m. (3 ½ 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: use **ink** not pencil, 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.

Professor's Instructions

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FINAL EXAM

**CIVIL PROCEDURE I
SPRING 2008
PROFESSORS GÓMEZ and MATHEWSON**

**Wednesday, May 14, 2008
1:30 p.m. - 5:00 p.m.
3 1/2 hours**

Instructions

1. Exams are graded anonymously (by number). Before grades are posted, be sure to avoid making any marks (e.g., signing your name), written remarks, or oral remarks that might jeopardize your or anyone else's anonymity.
2. This is a semi-closed book exam. You may consult **only** the following two items: (1) your copy of the Federal Rules of Civil Procedure; (2) an outline you have prepared yourself.
3. Unless otherwise indicated, references to the "Rules" in the exam are to the version of the Federal Rules of Civil Procedure used in the course. Unless otherwise stated, assume the Federal Rules are in effect, in their entirety, in the jurisdictions involved in the exam questions.
4. **We recommend that, before you begin writing your answer, you read the entire examination and write an outline of your answer (and we have allotted extra time for you to do so).**

-- Exam Continues Next Page --

The Honorable Cornell Peevyhouse lives in Bladensburg, Maryland. Judge Peevyhouse sits as a judge on the District of Columbia Small Claims Court. He patronized Custom Cleaners, which is located about three blocks from his home, for ten years beginning in 1995. The store is owned by Ken and Barbie Jung who immigrated to the United States in 1990 and who, since 2003, have been legal permanent residents of the U.S. and who live in Arlington, Virginia.

Judge Peevyhouse's relationship with Custom Cleaners changed on February 1, 2005. He had taken a pair of Brooks Brothers dress pants to Custom Cleaners for alterations two weeks earlier. When he went to pick up the pants that day, the cleaners was unable to find the pants. Since he had developed a relationship with the Jungs over the years, he agreed to come back in a few days in order to give them time to search for the pants. It was then that he learned that the Jungs had sent the pants to Lee's Tailor Shop for the alterations. When Judge Peevyhouse returned on February 14, 2005, the Jungs told him that they had found his pants and tendered a pair to him. They were not, however, his pants; the pants the Jungs gave him were cuffed and solid navy blue, whereas his pants were uncuffed and pin-striped. He rejected the pants and an argument ensued.

The three-year statute of limitations under the Maryland Consumer Protection Act was going to run on February 14, 2008. He went to his lawyers at Edwards & Romney on January 30, 2008. The firm has represented the judge for many years in a variety of matters. The case was assigned to Paul Kucinich, an associate who graduated from law school in 2007. Edwards and Romney told Kucinich that Peevyhouse was an experienced consumer lawyer. "Just do what the judge tells you," they told him. "Whatever you do, keep him happy." Kucinich interviewed Judge Peevyhouse. The judge directed him to file a complaint for among other things, unfair trade practices under the Maryland Consumer Protection Act (the "Act").

The Act provides for minimum statutory damages of \$1500 per day for each violation, punitive damages' treble compensatory damages and reasonable attorney's fees. The Act makes it a violation, among other things, (I) to intentionally use deceptive practices in the providing of services, and, (II) to intentionally represent that the subject of a transaction has been supplied by a business when it has not. The Act also requires the claim to established by the preponderance of the evidence standard to recover compensatory and statutory damages and by the clear and convincing evidence standard to recover punitive damages. Kucinich filed the following complaint the day after meeting with Peevyhouse, on February 1, 2008.

**IN THE PRINCESS ANNE COUNTY SUPERIOR COURT
FOR THE COMMONWEALTH OF MARYLAND**

Cornell Peevyhouse,)		
	Plaintiff)		
)		Civil Action
)		File No. xx-xxx
Kim Jung et al.,)		
	Defendants)		

COMPLAINT

1. Plaintiff is a citizen of the State of Maryland.
2. Defendants are citizens of the State of Virginia
3. The defendants own Custom Cleaners, a dry cleaning store located on Bladensburg Road, NE, Bladensburg, Maryland, within walking distance of Plaintiff's home.
4. Defendants displayed a sign at Custom Cleaners stating "Satisfaction Guaranteed." The sign constituted an unconditional warranty that required the defendants to honor any claim by any customer, without limitation, based on the customer's determination of whatever would make that customer satisfied.
5. Plaintiff took a pair of Brooks Brothers pants to Custom Cleaners for alterations in February 2005. Defendants lost his pants, and then attempted to substitute another pair of pants for his pants in violation of the Maryland Consumer Protection Act.
6. The defendants did not honor and had no intention of honoring the satisfaction unconditionally guaranteed to their customers. The failure to honor the guarantee constitutes an unfair trade practice under the Maryland Consumer Protection Act.
7. Defendants displayed another sign at Custom Cleaners stating "All Work Done on Premises." Defendants sent his pants for alterations to a tailor at another location. The pants were lost in the transportation between Custom Cleaners and the tailor.
8. Defendants thereby defrauded Plaintiff by inducing him to take his pants to Custom Cleaners for alterations to be done at the Bladensburg Road location.
9. Defendants have negligently handled his pants as bailees.

Wherefore plaintiffs demand judgment against defendant, and the entry of such relief in damages as follows:

- (a) statutory damages of \$1500 per day for each violation of the Maryland Consumer Protection Act;
- (b) trebled compensatory damages
- (c) punitive damages
- (d) injunctive relief;
- (e) reasonable attorney's fees;
- (f) and such other relief as the court deems proper and the evidence supports.

Signed: _____
Paul Kucinich, Esq.
Edwards & Romney
1117 Gold Coast Drive
Silver Springs, MD 28605

A professional process server delivered the complaint on February 10, 2008 to the Custom Cleaners store. However, the Jungs declined to accept it because the defendant was listed as "Kim Jung," who owned a drycleaners down the road from them. Subsequently, Kucinich filed an amended complaint on February 15, 2008, in which he substituted Ken and Barbie Jung as the defendants. The amended complaint was identical in all respects to the original complaint except for the change of parties and additional fraud allegations regarding another sign posted at the cleaners that said "Same Day Service." The amended complaint was served on February 15, 2008 to a sixteen year-old cashier at Custom Cleaners.

* * *

- (1) You have been hired as a summer associate by Paula Poundstone and Associates, who is representing the Jungs. Write a memo analyzing the nature and likely success of any pre-answer motion challenges the defendants can bring under Rule 12(b). In your memo, discuss the likely responses of the plaintiff to your motions.
- (2) In a second memo, analyze whether the Jungs can challenge the amended complaint under Rule 15; discuss the likely response of the plaintiff as well.
- (3) You believe that Kucinich and his client, Judge Peevyhouse, should be sanctioned under Rule 11 for filing the complaint. Write a memo analyzing the nature and likely success of such a motion.

* * *

You have been assigned to assist Kucinich in representing the plaintiff, Judge Peevyhouse. After commencing discovery, you have obtained the following information. In her deposition, Barbie Jung admitted the following:

- (a) that she was familiar with Plaintiff's pants because he brought them in often;
- (b) that she and her husband had lost the pants; and
- (c) that she offered the plaintiff a pair of solid navy blue cuffed Brooks Brothers pants and that she had told him they were his pants, but that, in doing so, she made an honest mistake.

You have received a letter from the Jungs offering to settle the case for \$12,000. The Edwards & Romney bill for the case has already reached \$10,000 and the Jungs have incurred a similar amount of attorney fees.

* * *

- (4) You are considering whether to file a motion for summary judgment on the unfair trade practice claims. Please write a memo recommending whether to file the motion; in your answer, consider the likelihood of success on the motion, the likely response of the defendants, and any other considerations you may have.

End of Exam