

Part 2 – Essay Question Forty-Five (45) points

You are an attorney who represents a San Francisco company called Stark Enterprises, Inc. Stark manufactures all-terrain vehicles (ATV's) for use by the U.S. Army in the war zones in Afghanistan and Iraq. Stark has a subcontract with Los Angeles company Farris Manufacturing, Inc., for the manufacture of bomb-proof metal plating which is attached to the underside of the ATV's to protect them from mines and similar explosive devices that are placed on the roads the ATV's travel.

The metal plates supplied by Farris have malfunctioned, and in a dozen instances, they have not protected the ATV's from road mine explosions. The Army has cancelled the Stark Enterprises contract, which results in a loss of \$100 million dollars to Stark. On behalf of Stark, you filed a complaint in U.S. District Court in San Francisco against Farris seeking \$100 million in damages for breach of contract, alleging that they defectively designed the metal plating. You also seek punitive damages on the grounds that Farris intentionally misrepresented that the plating would be bombproof, despite actual knowledge they had, and Stark did not have, that Farris' own testing of their plating revealed it would not be bombproof.

You have served a set of interrogatories and a set of requests for production of documents on counsel for Farris. They have not responded. You have written a letter to them demanding that they respond. They continue to refuse to respond. What steps are available to you to get a response to these discovery requests? If all steps fail, what remedies are available for Stark from the court in response to Farris' refusal to participate in discovery?

Assume further that based on the discovery you are able to complete, ie: initial disclosures, depositions, and your own investigation, you come to the conclusion that there are no longer any triable issues of material fact in the case, and that you have adequate evidence to prove all of Stark's claims. You are now five months before the assigned trial date. Stark asks whether there are any steps that can be taken to bring the case to resolution without the necessity of trial, and if so, what do you need to file in order to accomplish that goal. What is your response? If you have a proposal for how to accomplish their goal, provide a detailed statement of what the law requires Stark to show, and how it must go about showing it, in order to succeed in this filing.

End of Exam