

**FINAL EXAM**  
**CIVIL PROCEDURE II**  
**PROFESSOR GREENBERG**  
**SPRING 2008**

1. You have **three (3) hours** to complete this exam. You are not required to spend the entire time working on the exam. I recommend that you spend sixty minutes on the multiple-choice questions, and two hours on the essay question. Try to avoid the temptation to second-guess yourself on the multiple-choice questions – your initial instinct is often the most accurate. For purposes of this exam, wherever the term “Rule” is used, you are to assume this refers to the Federal Rules of Civil Procedure (FRCP). Additionally, you are to assume that all litigation referred to in this exam is taking place in Federal Court, and that all jurisdictional requirements have been met – there is no basis for challenging the jurisdiction of the Court.
  
2. **THIS IS A CLOSED BOOK EXAM.** You may **not** bring in or use any notes, books or other materials to assist you in responding to the questions.
  
3. The exam has two components.

**Part I** consists of 30 multiple-choice questions. The multiple-choice questions are each worth one (1) point, for a total of thirty (30) points. You must use the PARSCORE form to enter your answers. You may use a pen or pencil. Follow the directions on the score form. Please be careful not to make any stray marks.

**Part II** consists of one (1) essay question. The essay question is worth 70 points. Answer the essay question as fully as you can, citing any appropriate cases, Federal and State Rules, and statutes that are relevant. **DO NOT WRITE ON BOTH SIDES OF THE PAGE. WRITE LEGIBLY OR PRINT IF YOUR HANDWRITING IS DIFFICULT TO READ.** If I cannot read your response to a question, your grade will be adversely affected.

On the essay question, I recommend that you first spend about forty (40) minutes issue-spotting and outlining your response, before you start writing. Outline to the answer to each issue in the question – don't do a quick outline. This way you are less likely to miss issues or to submit a disorganized response. Support all conclusions. Points are deducted if you miss an issue. The essay question contains numerous issues. Each issue is worth the same amount of points (for example, if there are ten (7) issues, they are each worth 10 points towards the total of 70 points). To obtain a high score, you will need to properly identify and respond to all of the issues.

4. Write your exam number on your exam envelope. Put your correct class section and student exam # at the top of this page, each page of questions, each blue book, and the "PARSCORE TEST FORM." **Do not** use your name, student ID number or Social Security Number on any exam materials.
  
5. . At the conclusion of the exam, return all test materials, including blue books, PARSCORE answer sheet, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

## Part 2 – Essay Question

### Seventy (70) points

The GREENCUP Company of Colorado recently developed a cardboard cup it represented could be an answer to the problem of manufacturing a cup which could hold a hot beverage without burning your fingers, yet at the same time be environmentally safe because it is totally biodegradable, as opposed to Styrofoam cups. GREENCUP sold 2 million cups to coffee shops and fast food outlets in the summer of 2007.

Unfortunately, the cups had a serious design defect, and after five minutes of use, the cups disintegrated, spilling very hot liquid all over the users. Over 500,000 people reported serious injuries resulting from the failure of the cups. Injuries included burns to the legs, hands, arms, lips and faces of customers. People affected ranged in age from 12 to 95 years of age, and the severity of their injuries varied widely. Some of the worst injuries were suffered by elderly people, aged 90 – 95 years. It is expected that some of these individuals will die from their injuries during the next two years. Other victims will need plastic surgery to cover, at least partially, the scars caused by the burning liquids.

GREENCUP is a startup company. They maintain product liability insurance coverage of \$5 million dollars. The estimated amount of the personal injury claims against the company is projected to exceed 20 million dollars.

**First Questions:** A group of 100 injured persons, some of whom have suffered the worst burns and 3 of whom are in the elderly group that is facing death as a result of the cup failure, have approached you, as a veteran San Francisco class action attorney, to see if they have grounds for a class action lawsuit against GREENCUP. They ask you whether it would be possible to certify a class for these claims, and if so, what are the elements that would need to be shown in order to obtain class certification? They also ask what obstacles do you see in obtaining class certification, and what options would be available if certification was denied? Finally, they ask you whether you could serve as class counsel. What is your response?

**Second Questions:** Assuming that you are able to move forward with preparations for filing a class action suit, your clients' next express concern that some of them are so old

that they may not live long enough to see the case come to trial, and ask you whether it is possible to begin discovery regarding their claims in the case before it is filed. What is your response? Additionally, your clients have read that GREENCUP has refused to disclose any information about how their cups are designed and manufactured, citing trade secrets as a basis for nondisclosure. They ask you how you will handle this problem, and what you can do if the company refuses to produce this information. What is your advice?

Assume next that at the trial of this case, the jury finds that the design of the cups is defective, and that GREENCUP is liable for their defective design, and the proximately caused damages that follow from that design. Six months after the judgment in this case is final, a truck driver, who had one of the cups and had been using it as a water cup, poured hot coffee from his thermos into the cup, and set off down the highway. When he lifted the cup to drink the coffee, it spilled all over him, causing him to have an accident and collide with, and kill, another driver on the highway. The driver's family sues GREENCUP, and asserts issue preclusion as to the issue of whether the cup design was defective, and was therefore a cause of the accident. Who is likely to prevail on this issue, and why?

**End of Exam**