

# FINAL EXAMINATION

## CIVIL PROCEDURE I

PROFESSOR WINGATE

FALL 2005

1. You have **two (2)** hours to complete this exam.
2. This is a **closed** book exam. Students may not use any outside materials or confer with each other during the exam.
3. This exam consists of **two (2) parts**.

**Part I** consists of twenty-eight (28) multiple-choice questions. Please mark your responses to the multiple choice questions on the separate ParSCORE TEST FORM using pen or pencil and following the instructions on that form. If you change your answer, place a clear X through the wrong answer and mark the correct answer. A machine will score the exam and any ambiguities will be counted as a wrong answer. If a general rule governs the question, and the facts do not indicate the basis for an exception, answer the question in accordance with the general rule.

Part II consists of one (1) essay question. Please write your response in the blue book provided. Please write clearly. Write on every other line and every other page to permit instructor comments.

Each part will be weighted equally for grading purposes. It is recommended that you spend one hour on each section.

4. If you are handwriting your essay answer, please write in the blue book(s) provided. **Please write on one side of each page, and on every other line. Please write legibly.** No credit will be given for an answer or a portion thereof, which cannot be read by the grader. In analyzing the essay question, please address each issue reasonably raised by the facts presented, even if rendered moot by your analysis of some other issue. Credit will only be given for analysis that is set forth; unexplained conclusions will not suffice. If you find it necessary to make any assumptions of fact or law to answer the question, state what they are and how they affect your answer.

5. 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 or any exam materials.
6. 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 II ♦ ESSAY QUESTION

On April 3, 2005, Paul was severely injured in an automobile accident in East Texas, a mythical state of the United States of America. A car owned by Acme Office Supplies (Acme) and driven by one of its employees while on company business collided with the car Paul was driving causing it to catch fire. Acme is a Florida corporation and maintains its principal place of business in Miami, Florida. Paul believes that the negligence of the Acme employee caused the accident. However, he also believes that his car, a Percedes-Benz, was defectively designed and manufactured and that those defects caused his injuries to be much more severe than they otherwise would have been. East Texas Civil Procedure Code section 170 provides that Aa nonresident who commits a tortious act within this State is subject to suit in the State with respect to any claims arising therefrom.≡

Paul's Percedes-Benz was manufactured by the Benz Corporation (Benz) , a German corporation with its principal place of business in Germany. In 2004 there were approximately 600,000 Benz cars sold worldwide, 73,000 of these in the United States. A significant number of the Benz cars sold in the United States in 2004 were sold in East Texas, but the exact number cannot be determined. Benz North America, Incorporated (BNA) is the sole importer and distributor in the United States of Percedes-Benz cars and parts. BNA is a Delaware corporation with its principal place of business in New Jersey. BNA buys U.S.-version Percedes-Benz vehicles in Germany from Benz and ships them to the United States. BNA also ships parts it buys from Benz in Germany to the United States. Benz designs and manufactures U.S.-version Percedes-Benz vehicles to comply with applicable federal regulations so that they can be certified as compliant and sold to BNA in Germany for marketing and distribution by BNA in the United States. However, Benz has never done any business in the United States, has no employees in the country, does not own or possess any office, plant, or warehouse in the United States, and has never directly sold Percedes-Benz cars in the United States. Further, Benz has never advertised the sale of Percedes-Benz vehicles in the United States; rather, BNA and its local, authorized dealers advertise U.S.-version Percedes-Benz vehicles and sell these vehicles throughout the United States, including East Texas. Benz maintains an Internet web site by means of which individuals around the world can communicate with it. The web site offers information about its products and services. Individuals visiting the web site can register with Benz to receive direct mailings from the company electronically and can communicate with and request replies from Benz representatives. Benz does not offer vehicles for sale over the Internet, but refers sales inquiries from the United States to BNA. BNA maintains an independent site on which it advertises U.S.-version Percedes-Benz vehicles.

Paul's Percedes-Benz was not a U.S.-version vehicle. Paul was born in the United States and is currently domiciled in East Texas. However, he lived in France for several years, married a French woman, and became a French citizen. Consequently, he is a citizen of the United States and a citizen of France. He purchased his Percedes-Benz in France. When Paul moved to East Texas, he had his Percedes-Benz shipped there. It was designed and manufactured by Benz in Germany for the European marketplace. Benz did not play any role in importing the car to the United States.

You are an attorney for the law firm representing Paul. The partner in charge of the case has asked you to write a memorandum discussing whether Paul will be able to litigate a negligence claim against Acme and negligence and strict liability claims against Benz in a suit brought in the United States District Court for the District of East Texas. Paul's suit would seek to recover one million dollars in damages from the defendants for the injuries he suffered in the accident. The partner asks that you thoroughly discuss the issues raised by his inquiry, note reasonable arguments on both sides on them, and indicate how the court is likely to resolve them. Write the memorandum.

**END OF EXAM**