

Jurisdiction and Judgments  
Professor Baldwin  
May 9, 1998  
2:00-5:00 P.M.

This is a 3 hour examination, and the examination has 2 parts. In Part I, you **must** choose one answer from the choices that you are offered. **You must record your choice on the appropriate blank provided at the left margin of the exam.** Then you **must** write an explanation for each choice you select in the appropriate allotted space in the exam. If you need more space than the lines allotted for your answer, please continue that answer on the back of the same page. If for some reason you need still more space, use a blue book and write Part I on the front of it.

Besides selected portions of the United States Constitution, Federal Rules of Civil Procedure (hereinafter FRCP) and United States Code (hereinafter USC) provisions, you should have 9-10-70, 9-10-91 and 34-9-2 from the Official Code of Georgia in your Rules/ Statutes handout. Please check to be sure that you have the handout and all of the above named. If there is reference to a statute or law not in your handout, do not panic. Sufficient explanation will be provided in the question.

Part I of the exam contains 10 questions. Each question counts 60 points. Note that there are sets of facts for questions 1-4 and for 5-9 . In addition, there are facts which apply specifically to 3-4 and 7-9. **Please note that some of the facts for question 10 carry over to Part II.** For all 10 questions in Part I, select the best answer. If there is insufficient room for your explanation, please continue on the other side of that page. If that is still insufficient, use a Blue Book and write Part I on the cover.

Part II contains 4 essay questions. Please write Part II in the Blue Books provided, and please **write on every other line in the blue book.** Each essay is worth 100 points. The exam is worth a total of 1000 points.

For this examination, please apply the \$75,000.00 amount in controversy requirement if you are

asked to assess 28 USC 1332(a) diversity subject matter jurisdiction. Please note that there are no statute of limitations issues on this exam.

Budget your time wisely, work efficiently and answer carefully. **Remember to place your exam number on the first page of this exam and on every Blue Book that you use for exam answers.**

### Part I

**(For questions 1-4)** Professor I. Knoxx was an Associate Professor of Environmental Studies in the Cornell University Environmental Studies Department from 1985 to 1990. Professor Knoxx taught and wrote at Cornell's Ithaca, New York campus during those years, and in 1989 he completed writing "The Corporate Polluters."

In 1990 Professor Knoxx accepted an offer from the University of Michigan to teach full time in the University of Michigan Environmental Studies Institute. He moved himself and his family from Ithaca to Ann Arbor, Michigan the same year. In 1991, the Cornell University Press published "The Corporate Polluters", and copies were sent to college bookstores in every state. The Cornell University Press is the publishing arm of Cornell. It has its only office and plant in New York, New York (New York City). New York City is about 260 miles southeast of Ithaca.

In a chapter entitled "The Greatest and Worst World-Wide Polluter-Coca-Cola Is It", Professor Knoxx excoriated the world wide environmental excesses of the Coca-Cola Company, a Delaware corporation with world headquarters in Atlanta, Georgia. In 1995, the Coca-Cola Board of Directors ordered the Coca-Cola Legal Department to sue for defamation of the Company. The Legal Department staff decides to sue Professor Knoxx for \$5 million, the Cornell University Press for \$10 million, and Cornell University for \$20 million.









**(For questions 5-9)**

The Mercer University School of Medicine uses 8 actors and actresses to perform various patient roles for its Patient Counselling course simulations. The course is required for graduation, and it is offered during the first three weeks of April each year.

The School of Medicine contracts separately with each actor and actress every year, and each contract covers the first three weeks of April. The contract also describes the roles that each will perform during the simulations. One of the most frequently used actresses is Monique Halo, a citizen of South Carolina.

On 3/15/97 the Georgia State Department of Labor conducted a random audit of the School of Medicine employees as part of an audit of the employee records of Mercer University and the School of Medicine. In the course of the audit, I.M. Smartt, a Department of Labor auditor, noticed that there were 8 actors and actresses on the Mercer payroll who were described as independent contractors. She learned that the 8 were the actors and actresses who performed in the School of Medicine Patient Counselling course simulations during the first three weeks of April, 1996.

On 4/1/97, the Department of Labor notified the Mercer Personnel Department and the School of Medicine that it considered the actors and actresses employees of the University and the School of Medicine. In a timely response, the University Counsel informed the Department of Labor that each actor and actress was an independent contractor and not a University or School of Medicine employee.

There is a definition for employee in Section 34-9-2 of the Georgia Code. However, by a Georgia Supreme Court decision (Smith v. All Right Construction), the Georgia Supreme Court held that the United States Fair Labor Standards Act definition for independent contractor must apply when there is an independent contractor question under 34-9-2.





**(For questions 7-9)**

Monique Halo, a citizen of South Carolina, is an actress who has performed in the Patient Counselling course simulations since 1990. Halo has spent every January and February since 1990 acting for the Alliance Theatre in Atlanta, Georgia. While there she rents the same room in the same actor's boarding house at 99 Piedmont Road. In every year since 1990, Halo has performed at the Kennedy Center in Washington, D.C. and lived in a performing arts boarding house on M Street, N.W., and she has lived in a Plymouth, Massachusetts boarding house on Priscilla Alden Way when she has performed summer theatre in Plymouth during July and August over the same period. Nevertheless, she resides in Charleston, South Carolina for all but the months named and the three weeks in April that she spends in Macon acting in the roles assigned by the School of Medicine. Each year since 1990 Halo has listed the addresses for all of the boarding houses and her Charleston, South Carolina home on her contract with Mercer University.

\_\_\_\_\_7. The Superior Court of Bibb County for the State of Georgia will have power over Halo on matters involving her April, 1997 Georgia employment:

- a) in Georgia during January, February and the first three weeks of April, 1998.
- b) in Georgia during the first three weeks in April, 1998.
- c) at all times while she is in Georgia and South Carolina during 1998.
- d) none of the above.

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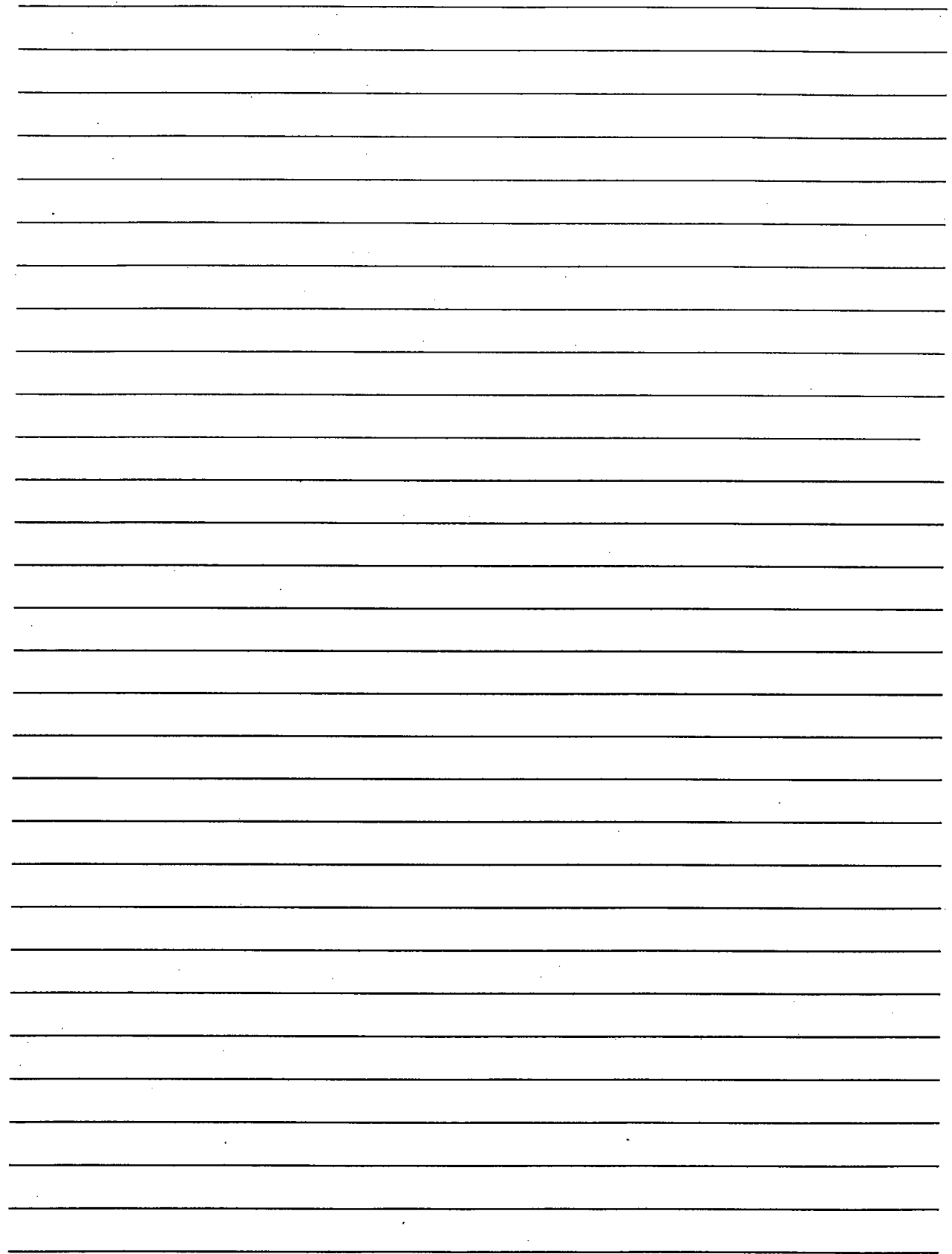
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For Question 10 and Part II.1.

See Clearly Now Sunglasses is a three years old Georgia corporation with its only office and factory in Augusta, Georgia. See Clearly Now produces one product----its Masters Blasters. Masters Blasters are a specially shaded sunglass for men and women golfers. See Clearly first produced the glasses for 1996 Masters Golf Tournament in Augusta. Then and now it charged \$100.00 per Masters Blaster. After it became known that 15 of the top 20 golfers in the Masters were wearing Master Blasters for the first time ever, See Clearly had more requests to fill then it could have foreseen.

I. Gulff, a citizen of Palm Springs, California and the sole propietor the Palm Springs Golf Shop in Palm Springs purchased a pair of the sunglasses at the 1996 Masters. Three weeks later and for an unexplained reason, the glass frame broke in several places while he was wearing them at a driving range near his golf shop. Within the frames were jagged glass lens ends and the ends caused very serious injuries under each of Gulff's eyes.

\_\_\_\_\_10. If Gulff's attorney timely filed a complaint in the State of California District Court for Riverside County(Palm Springs) alleging that See Clearly Now negligently manufactured his Master Blasters and prayed for \$500,000.00 in compensatory and punitive damages on 2/14/97, the California court, consistent with California's statute permitting all assertions of personal jurisdiction consistent with the due process clause, would have:

- a) quasi-in-re personal jurisdiction over See Clearly Now
- b) no personal jurisdiction over See Clearly Now
- c) in personem personal jurisdiction over See Clearly Now
- d) none of the above

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## PART II

The April, 1996 Masters Blaster sales success caused I. See, president and CEO of See Clearly Now, to decide that the company needed a web page on the World Wide Web. After negotiation in Augusta with Microsoft(a Washington corporation headquartered in Seattle, Washington), its Internet service provider on 1/13/98, Microsoft created a web page tailored to See Clearly Now specifications. See Clearly Now paid Microsoft for its web page service by mailing its \$10,000 check to Microsoft Seattle, Washington corporate headquarters on 1/31/98.

The web page went on line from Augusta, Georgia on 2/1/97. At that time, it contained a description about the Masters Blaster, golfers' testimonials praising them, a space for questions, and an order form. The order form notified potential users that See Clearly Now would ship a "web order" C.O.D. (cash on delivery).

To avoid hiring more employees, I. See contracted with EZ WEB, a 3 person e-mail order and "web order" reading service firm in West Augusta, Georgia. By the contract, EZ WEB receives the "web orders" from Monday to Friday between 9A.M. and 5 P.M. in West Augusta. At the conclusion of each day, an EZ WEB employee completes a "web order" daily report of Master Blaster orders. The employee then e-mails the report to the See Clearly Now plant in Augusta.

I. Gulff, a shrewd businessman undaunted by his own experience, was aware of growing Masters Blaster popularity in Riverside County, California by March, 1998. To take advantage of that popularity there and in the rest of southern California, he placed a web order for 1000 Masters Blasters on 3/15/98(Beware the Ides of March!).

An employee in the EZ Web West Augusta office received the request as 10,000 Masters Blasters on account of a glitch in order form transmission. He recorded 10,000 on the report form and e-mailed the report to the See Clearly plant in Augusta. The See Clearly Now Plant Manager received a request for 10,000 on the plant monitor and shipped that number out to Gulff on

3/31/98. When the 10,000 Master Blasters arrived at the Palm Springs Golf Shop, Gulff wrote a check paying for 1000 in full. He refused to accept the other 9000, and the United States Postal to returned them to See Clearly Now in Augusta.

I See called Gulff and demanded payment for the 900 Masters Blasters. After a raucous and expletive filled argument, he hung up on Gulff. Thereafter he ordered his attorney, I.M. Hipp, to “get my money from that Palm Springs kook.”

Hipp consults you. He wants to know:

1. whether he should file the See Clearly Now complaint in Georgia(in Augusta at the Superior Court of Richmond County for the State of Georgia or California(California State Court for the District of Riverside County) and why.

2. whether in any event Gulff can remove the claim, and if so what law should apply.

3. whether a timely Gulff counterclaim against See Clearly Now pursuant to FRCP 13(a) will enable See Clearly Now to add a claim for indemnification against EZ WEB and Microsoft without destroying subject matter jurisdiction.

4. whether and to what extent Gulff can assert personal jurisdiction over EZ Web and Microsoft if he attaches the 900 Master Blasters sitting in the main branch of the Augusta, Georgia Post Office.

Please author a memo addressing all 4 of Hipp’s inquiries. Then you can take off on a well deserved safe, healthy and productive summer vacation!