UNIVERSITY OF MARYLAND
SCHOOL OF LAW

Legal Method Civil Procedure - Section A

(3 Hours)

Professor Hyman

No. __________

Signature: _______________________

Printed Name: _______________________

INSTRUCTIONS:

Sign and print your name in the blanks above. Put the number found above on each of your blue books on the outside cover and on the envelope. If you write more than one blue book (e.g., two), put on the cover of the first: "1st of 2," and on the second, "2nd of 2," etc. Do not put your name on the blue books or on the envelope at any place. When you turn in your blue books, return the questions.

Each student is responsible for ensuring that all the completed examination papers (usually blue books) and the examination question sheets are handed in to the examination administrator. No examination papers will be accepted after the examination administrator has collected the materials.

Upon completion of the examination, put your answers to the examination in the envelope, fasten the flap with the clasp, and hand in the envelope to the exam administrator. **Be sure to enclose all of your answers -- you will be graded only on what is inside the envelope.** Do not put the exam questions in the envelope. Hand in the questions separately to the exam administrator. Do not put your name anywhere on the envelope or on your answers. Both the envelope and your answers should contain your exam number, the course name, and the instructor.

**Hand your report on the discovery game to the examination administrator. DO NOT PUT THE REPORT IN THE ENVELOPE. The report should contain your social security number, and not your name.**

**COMPUTER INSTRUCTIONS:**

Students may use computers on this exam. Students must supply their own equipment, including computers and printers. Students using computers must take the exam in the assigned typing room; the TAL Center, the clinic and other law school equipment and facilities are not available for student use on exams. The student work product must be completed and returned to the exam proctor according to the normal exam administration rules. No allowance for addition time will be given for equipment failure, etc. Students must submit a hard copy.
SPECIAL INSTRUCTIONS:

You may bring into the exam ONLY:

(1) The case book, supplement, and all xeroxed materials;

(2) Your class notes;

(3) Outlines prepared by you or by a study group to which you belong. Excerpts from a commercially prepared source may be incorporated only to a reasonable extent.

Write legibly and on every other line of the page. If you type, do so double-spaced. The problems are weighted according to the amount of time indicated. Plan your time accordingly.

Finally, remember the words of Karl Llewellyn: Technique without ideals is a menace, but ideals without technique is a mess.
1. Answer the following statements with a true or false and write a one or two sentence explanation of your answer. (60 minutes)

   a. Because the boundaries of the subject matter jurisdiction of the federal district courts derives solely from Title 28, Chapter 85 (encompassing, among others, sections 28 USC 1331 and 1332), Congress is free to expand or contract the subject matter jurisdiction of the federal district courts at will.

   b. Federal question jurisdiction pursuant to 28 USC section 1331 may be based either on claims made by the plaintiff or defenses or counterclaims raised by the defendant.

   c. Personal jurisdiction may be based on physical presence, but physical presence is not necessary for personal jurisdiction.

   d. Erie requires federal courts sitting in diversity to apply state substantive and procedural law.

   e. Federal Rule of Civil Procedure 8(a) represents a complete rejection of the requirements of writ and code based pleading.

   f. Equitable relief is called that because it is designed to be fair.

   g. Attorney's fees are the responsibility of the party which incurred them.

   h. A good faith belief that a factual representation is true is a bar to Rule 11 sanctions.

   i. Summary judgment is designed to get rid of cases where the non-moving party will fail to meet its evidentiary burden (and thus lose) at trial.

   j. A district court judge has the authority to force the parties to engage in good faith settlement discussions.

   k. The Due Process Clause of the U.S. Constitution requires actual notice before the deprivation of property.

   l. Discovery under the Federal Rules of Civil Procedure is a mechanism for the gathering of information from (and the imposition of costs upon) the opposing party.

   m. Legal remedies are favored over equitable remedies.
n. Preliminary injunctions may be granted only if it is overwhelmingly certain the moving party will prevail at trial.

o. In a civil rights case, the prevailing party is entitled to recover its costs.

p. The absence of personal jurisdiction must be raised in the Answer or it is waived.

q. Although the due process clause of the U.S. Constitution places the outer boundary on the assertion of personal jurisdiction, a Court can decline to exercise jurisdiction if it concludes an alternative forum is more convenient.

r. The due process clause of the U.S. Constitution imposes limits on the procedures which a state can employ in awarding punitive damages, but there are no due process limits on the amount that can be awarded as punitive damages.

s. Stephanie, a Vermont citizen sues John, a Virginia citizen, in Virginia state court. If the amount in controversy is $100,000, John can remove to federal court.

t. A general denial is sufficient to place in issue any affirmative defenses one might have to a claim.

2. Deputy Dog ("DD") is gainfully employed as a cartoon character in Toon Town. Since her prospects look bright, she decides to buy a house in Toon Town. She looks for some time, and settles on a modest ranch house. As a cautious buyer, she hires an inspector and promises to tip him $50 if he does an "extra special" job inspecting the house. The inspection found several problems (furnace, slab, roof) which the sellers agreed to fix before closing. The problem with the slab was found only because the inspector brought along his brother's X-ray machine and used it to identify a structural defect which an ordinary inspection would not have found. DD paid the inspector the normal fee for his inspection, and also added a $100 tip for his efforts above and beyond the call of duty.

DD shopped around for a mortgage, and ultimately settled on Oriole Mortgage, which advertised heavily in the Toon Town papers. Oriole Mortgage has offices in Baltimore and advertised its low-cost mortgages in airline magazines, including Southwest. Southwest flies to the West Coast, and someone carried a copy of the magazine off the airplane and left it in the terminal where DD picked it up. After finding the ad and being impressed by the low rates and promise of high quality service at low cost, DD called an 800 number and requested a loan application. She filled it out and sent it in, and received a telegram telling her she was approved. At closing, she signed the mortgage without reading it. The mortgage provided that in the event of default, the entire amount would become due and owing. Payments were to be mailed to Oriole in Baltimore. The mortgage was pre-printed in fine type, and listed in several places the address of Oriole Mortgage. After closing, she hired a contractor to remodel the basement and add an addition to the house. Shortly thereafter she was fired. More bad news awaited at home, where the contractor told her that her backyard was filled with toxic waste, and it had seeped into the slab and foundation, destroying the structural integrity of the cement and threatening imminent collapse of the house. DD
regretfully told the contractor that she had to stop renovations, since her unemployed status left her without funds to pay the mortgage -- let alone for a remodeling job.

After three months went by without a single payment, Oriole Mortgage filed suit in Federal District Court in Baltimore. DD received in the mail service of process and a waiver. The complaint sought an amount equal to the entire outstanding mortgage (totalling $65,000). Jurisdiction was alleged to be based on diversity.

A. DD appears in your office, and wants to know what to do, including whether she has any defenses to the suit. She does know that she cannot afford to litigate if she has to do it in Maryland. She would prefer to stall matters for as long as possible, in hopes of getting another job, so she can pay off the mortgage. Advise her. (25 minutes)

B. DD consults with a real estate agent about selling the house, in hopes of getting a better return than she would from foreclosure. She is devastated to hear that the house is essentially unsaleable without expensive toxic waste abatement procedures, including epoxy injection into the slab and foundation to shore up the cement. She prevails upon you to file suit in Toon Town state court against the inspector on the theory that his negligence in conducting the inspection caused her to overpay for the house. The Inspector's answer denied that there was any toxic waste or structural integrity problems with DD's house. In the alternative, the answer denied that there had been any negligence in the inspection. Six months later, after some discovery, the Inspector files for summary judgment on the issue of negligence. Attached to his motion are affidavits from three other inspectors, each claiming that they are prepared to testify that no inspector of reasonable skill and caution would have discovered the problems with DD's House without actually boring into the foundation, and that they had never heard of an inspection where there was such boring. Advise DD as to how (if at all) she should respond to this motion. (20 minutes)

3. Judge Mandelbaum, the District Court Judge who decided *Erie v. Tompkins* noted in the margin of his copy of the Supreme Court opinion that "... for the confusion this decision brought about, it might have been better to leave it alone and stand by good old [Swift v. Tyson]." Assess Judge Mandelbaum's view, with the benefit of 57 years of hindsight. Be sure to address the impact of Erie and its progeny on procedural and substantive law, and the consequences on the administration of justice and party behavior. (45 minutes)

4. You are at the bar celebrating the completion of your outline for civil procedure. One of your classmates (not in this section) approaches you and asks why you worked so hard on learning the subject matter. "After all," he says knowingly, "procedure is just housekeeping -- it doesn't affect outcome." You politely disagree, and offer a brilliantly organized response, including specific examples to the contrary. Write your response. (30 minutes)