

ExamID: \_\_\_\_\_

*Law School of Harvard University / 2024–2025*

*Section 5  
Fall 2024*

# Civil Procedure: Final Exam

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**Exam type:** IN-CLASS  
**Exam mode:** OPEN  
**Exam time:** 9:00 a.m. to 12:30 p.m. on Monday, December 16, 2024  
**Word limit:** 2500

This exam is 8 pages long. Please check to see that you have all 8 pages.

## **MATERIALS AND MECHANICS**

This exam is open-book and open-note; you may use any digital or paper materials or devices that you find helpful. That said, the Exam4 software won't let you paste text from other documents or exit the software during the exam. ***Your exam must be entirely your own work: you mustn't consult anyone, employ AI, or access the Internet during the exam, nor may you use any other network-capable devices, such as cell phones.***

By submitting your exam answer(s), you acknowledge the above instructions, and certify that the work you are submitting is your own, that you have not received unauthorized assistance on the exam, including use of AI (such as ChatGPT and other large language models) unless explicitly permitted by your instructor, and that you have followed applicable rules, including rules for accessing reference and other materials during the exam.

## ANONYMITY

Exam4 will automatically print your anonymous ID and word count on the exam copy, which you won't be able to read or edit once it's submitted. Because the exam may be administered to some students at different times, please don't discuss its contents with anyone until either the exam period ends or you've been notified that all exams are in.

To help keep the grading of separate questions anonymous, *please use the "Answer Separator" function* to distinguish one question from another.

Harvard's rules prohibit student contact with faculty before, during, and after the exam regarding the personal scheduling or administration of an exam for that student until the student's grade is posted. Such contact is prohibited even if the anonymity of the student's exam is preserved; this policy extends to communications to the full class. To maintain anonymity and to ensure compliance by students with this policy, I've been asked not to communicate in any way, including through email or the course website, with individual students or the class as a whole regarding the exam while the exam is in progress or until the posting of the students' grades after the exam. If a student contacts me, I'm not to respond but to contact the Registrar's Office instead. (I will, however, be thinking about you guys!) In case of emergencies, *contact the Registrar's Office directly*.

## CONTENTS

This exam consists of **three essay or short-answer questions**. Your answers are limited to **2500 words** in total. This is a strict limit, and additional words won't be read—not as a penalty, but as a uniform way of ensuring fairness to students who stayed within the limit.

Brevity is appreciated, and you aren't required to write that much. Make sure to watch your word count, so that you don't find yourself making substantial cuts in the last few minutes.

Each question is accompanied by a point value, a recommended time allocation, and a recommended word limit. These are only recommendations! Allocate your time and words in whichever way seems best to you.

## SUGGESTIONS

In general, please follow the advice given in John H. Langbein's *Writing Law Examinations*, available on the website. A few specific recommendations:

- (1) *Make sure that you read each question carefully.* Pay attention to the point values: they signal how important each question will be. I suggest that you reserve thirty minutes at the beginning for reading the whole thing, as well as another thirty minutes at the end for proofreading and correcting. (The recommended time allocations assume you'll do this.) Separately, I'd encourage you to spend up to one-third of your time on each question just sketching out answers with pencil and paper before starting to type. If you just dive in, you'll get lost halfway.
- (2) *Organize your answers clearly.* You don't need to follow any one format with rigor (IRAC, etc.), but it greatly helps to identify an applicable legal standard before applying it. Stating your conclusions clearly will also be helpful to me when grading. Mentioning individual rules, statutes, or cases can sometimes serve as useful shorthand, but chapter-and-verse citations are a waste of time. In the words of the now-repealed Rule 84, the model exams available on the course website "illustrate the simplicity and brevity that the rules contemplate."
- (3) *State the substance accurately.* If a particular legal standard hasn't received any substantial attention either in the book or in my lectures, it's unlikely to be tested. That said, the exam is open-book and could require close parsing of a provision we haven't addressed at length—or, indeed, at all.
- (4) *Apply the law as it stands today.* As noted on the syllabus, the exam doesn't ask things like "how would this case have been decided in 1872?" It only tests on the law as it stands on the date of the exam, including any newly effective amendments to the Federal Rules.
- (5) *Unless you're given specific details to the contrary, you may assume:* that every party is properly served; that every pleading is properly pleaded; that all filings are timely; that every motion, brief, or response presents the best available arguments for its position; and so on. Don't try to invent new and helpful facts or law not mentioned in the exam.

- (6) *If there are issues that seem inconclusive or that require more information, you should say so.* Some of them may be intentional. If one answer to an unclear issue seems better than another, but not conclusively so, you should say that too. Likewise, not every issue suggested by the fact pattern is actually relevant to the question asked; discussing irrelevancies will only cost you time.
- (7) **This one is very important:** *When listing reasons why a particular result would be legally correct, don't give just one; give as many as are correct, even if just one of them would be enough to win or lose on that issue. Don't assume that I'll know you know the basics; show me that you do!*

### **GRADING**

Answers will be graded on your understanding and analysis, as well as on clarity of exposition. Individual questions will be curved, to reward those who do well on harder questions, and then the exam as a whole will be curved. Final grades will be calculated in compliance with the syllabus and with Harvard's grading policies.

\* \* \*

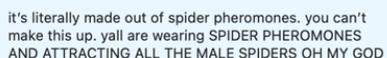
Good luck!

<p><b>DO NOT TURN TO THE NEXT PAGE UNTIL THE PROCTOR TELLS YOU TO BEGIN</b></p>
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— START OF EXAM —

**Q.1. “Sol das aranhas”:** (56 pts, ≈1 hr 25 min, up to ≈1400 words)

In late 2023, rumors circulated that certain acetates, particularly farnesyl acetate and hexadecyl acetate, could be found in cosmetics brand Sol de Janeiro’s “Delícia Drench Body Butter.” These compounds are also found in the pheromones of female wolf spiders, rendering the wearer irresistibly attractive to male wolf spiders. (There are over 2000 species in the family *Lycosidae*; the name, taken from the Greek *λύκος*—‘wolf’—refers to their superior hunting skills.) Sol de Janeiro later denied the rumors on Instagram.



it's literally made out of spider pheromones. you can't make this up. yall are wearing SPIDER PHEROMONES AND ATTRACTING ALL THE MALE SPIDERS OH MY GOD

Fig. 1. A 2023 posting on x.com.



Fig. 2. An amorous male wolf spider, as envisioned by ChatGPT.



Fig. 3. The company’s denial.

Eighty-three percent of shares in Sol de Janeiro, U.S.A., Inc., a Delaware corporation with headquarters in Manhattan, are owned by L’Occitane International S.A., a French corporation. L’Occitane is headquartered in Manosque, a temperate region of wet, coastal forests well within the wolf spider’s ordinary habitat range. Manosque is also an hour’s drive from the *Plateau d’Albion*, a former French strategic nuclear site whose underground missile silos, said to be repurposed for civilian use in 1996, only incidentally resemble the deep, tubular burrows favored by many *Lycosidae* species.

Alice, then a first-year at HLS, received a jar of the body butter as part of a section-wide “Secret Santa” gift exchange in 2023. When she mentioned it on campus the next day, after applying the product liberally that morning, her friend Carol asked if she had seen any wolf spiders, and her friend Bob showed her the rumors on his phone. A longtime sufferer of arachnophobia, Alice ran screaming down the hall, tripped, and was seriously injured. Despite their claims of innocence, Bob and Carol were expelled.

Alice filed suit in the District of Massachusetts against Sol de Janeiro, asserting that it had sold adulterated cosmetics in violation of the federal Food, Drug & Cosmetic (FD&C) Act. A second claim against L’Occitane, named as an accessory, stated that Sol de Janeiro “would surely never let this happen without their 83%-owner’s agreeing to such a devious plan.”

The companies moved to dismiss for lack of subject-matter and personal jurisdiction. They argued that the FD&C Act allows FDA enforcement but creates no private cause of action, and that expert testing showed the body butter to be wholly free of the compounds in question. They further denied that the cosmetic was “adulterated” under the statute, which requires a “poisonous or deleterious substance which may render it injurious to users.” (Per Wikipedia, wolf spiders only “inject venom if continually provoked,” a possibility they described as “a small price to pay for the delightful company of our eight-legged friends.”) Finally, they pointed out that the gift receipt accompanying the jar showed that it had been purchased at a Sephora in the Kohl’s in Kingston, in the Northern District of New York, and not at one of the many authorized Massachusetts retailers to which Sol de Janeiro and L’Occitane’s American subsidiary send their products. (Alternatively, the motion sought a transfer to the Northern District. The law of New York, but not of Massachusetts, encourages gift-giving by limiting damages for Secret-Santa-related claims to \$50,000 per defendant—except for defendants acting jointly, against any one of whom the full amount may be sought.)

Alice soon filed an amended complaint, restating her earlier claims and adding new tort claims against Bob and Carol, both jointly and individually, alleging that they either bought the jar intending to frighten her or simply chose to do so afterwards. She also added a negligence claim against Harvard for allowing the gift exchange. Pending motions were denied as moot.

Bob and Carol answered the complaint. Bob’s answer included a claim against Harvard and against Professor Martin Mallory under the Federal Educational Rights and Privacy Act (FERPA), alleging that Mallory had publicly belittled his cold-call answers and that Harvard was vicariously liable. Bob also asserted a breach-of-contract claim against Harvard for expelling him without following the proper procedures, as well as a federal securities claim against L’Occitane, of which Bob had owned one share before the company was repurchased by its reclusive billionaire owner. Bob contended that the owner had diminished L’Occitane’s value (and thus the cost of repurchasing its shares) by neglecting its luxury-goods sales in favor of unprofitable biological research, radiation experiments, and a lavish new headquarters with an entrance concealed by silk and leaves. Harvard answered Alice’s complaint and Bob’s cross-claims, moving to sever the latter into a separate case. Mallory made no response, so Bob moved for a default judgment and an award of his requested \$1 million in damages.

Sol de Janeiro and L’Occitane renewed their earlier motions; the court postponed resolving them. They then answered Alice’s amended complaint, restating their previous arguments and adding that her amended complaint failed to state a claim or to lay proper venue, and that it was precluded by the judgment in a failed product-liability class action on behalf of all Delícia Drench buyers in New York. (Alice denies that she received any notice of this class action or of the jury’s special verdict finding the product free of the relevant compounds.) L’Occitane answered Bob’s cross-claim. The companies moved for judgment on the pleadings against Alice and for summary judgment on the preclusion issue.

Discovery proceeds apace. Alice has unsuccessfully sought audio recordings of conference calls among L’Occitane and Sol de Janeiro executives, their lawyers, and their outside public-relations firms discussing the Internet rumors and a mysterious “PROJECT ARACHNE.” After conferring, she moved to compel disclosure. She also subpoenaed for a Boston deposition Dr. Floyd W. Shockley, chair of the Entomology Collections Committee at D.C.’s Smithsonian Institution, who was quoted in the *New York Times* as stating that the rumors showed a “glaring lack of understanding about the diversity of Wolf spiders.” He has moved to quash the subpoena. Finally,

Alice has prepared an affidavit stating under oath that “the body butter smelled just like farnesyl acetate—I’d know that smell anywhere,” and that “the Sephora cashier told me the buyer looked a lot like Bob.” She has sought a ruling by the court that this affidavit is sufficient to preclude summary judgment in favor of Bob or the companies on the merits.

**How should the court rule on the various pending motions before it, and why?** (Address each pending motion independently and in the order in which it’s mentioned above, without considering the effect that one might have on another. But if there would be a relevant effect, just say so. And if you need more information or are unsure, just say that too.)

**Q.2. “Explain”:** (16 pts, ≈25 min, up to ≈400 words)

**Explain the reasons behind, and intended operation of, the following:**

- (a) Fed. R. App. P. 4(a)(4)(A)(i)
- (b) Fed. R. App. P. 4(a)(4)(A)(iii)
- (c) Fed. R. App. P. 4(a)(4)(A)(vi)

**Q.3. “The costs of discovery”:** (28 pts, ≈40 min, up to ≈700 words)

- (a) Suppose we adopted the following as Rule 34(d): “Unless otherwise stipulated by the parties or ordered by the court for good cause, the reasonable expenses (including attorney’s fees) of responding to any document production request under this rule shall be borne by the party making such request.” **What would be the consequences of this change? Would it be a good or bad idea? Why?**
  
- (b) Now instead suppose Massachusetts adopted a statute along these lines, applying to “any document production request in any cause of action arising under the laws of this Commonwealth.” **How would the consequences of this change be different than those discussed in your previous answer? Would it be a good or bad idea? Why?**

*(Your answers, in total, should not exceed 2500 words.)*

— END OF EXAM —