

Section 7  
Fall 2022

# Civil Procedure: Final Exam

STEPHEN E. SACHS  
*Harvard Law School*

**Available for download:** Monday, December 12, 2022,  
starting at **9 a.m. EST**

**Must be electronically submitted:** Monday, December 12, 2022,  
within **3 hours** from download  
or by **12:30 p.m. EST**, whichever is earlier

The exam mode is TAKEHOME. This exam is 7 pages long. Please check to see that you have all 7 pages.

## **MATERIALS**

The exam is completely open-book and open-note. While taking this exam you may consult any digital or paper materials you find helpful. That said, you are instructed not to consult anyone else or to do new research on the Internet during the exam. *Your exam must be entirely your own work.*

By submitting your exam answers, 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, 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. Because the exam may be administered to some students at different times, don't discuss its contents with anyone until after the exam period ends or until I've notified you that all exams have been submitted.

To assist with the anonymous grading of separate questions, *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; additional words won't be read. (This isn't a penalty, but a uniform way of ensuring fairness across different answers.)

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 twenty minutes at the beginning for reading the whole thing, as well as ten minutes at the end for proofreading. (The recommended time allocations assume that you’ll do this.) Separately, I’d encourage you to spend up to one-third of your time just sketching out the 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. 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!

— START OF EXAM —

**Q.1: “Animal Fighting Ring”** (60 pts, ≈1 hr 30 min, up to ≈1500 words)

Three years ago authorities in Japan exposed an international criminal organization engaged in capturing or stealing rare wild animals, confining them in small spherical cages, and forcing them to take part in an underground animal-fighting ring. Run out of a gymnasium in Viridian City, Kantō, Japan, this organization—known as “*Roketto-dan*”—was responsible for numerous violations of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In the United States, its conduct would also violate the Endangered Species Act (ESA) and state statutes such as the Massachusetts Endangered Species Act (MESA), M.G.L. ch. 131A, § 2, which restricts the possession of ESA-protected species.

Among the documents uncovered in Viridian City was a plan to send an independent field operative, Jessie Musashi, to explore the eastern United States in the hopes of catching every species named in a special index, the *Poketto Monsutā Zukan* (PMZ). In summer 2020, Musashi was apprehended at a Massachusetts summer camp attempting to steal a mammal lawfully possessed by a ten-year-old camper, described in police reports as a minor with the initials “A.K.” A raid on a nearby warehouse rented by Musashi led to the rescue of many other rare animals, collectively valued in the hundreds of thousands of dollars and reported stolen from a New Hampshire wildlife sanctuary owned by Harvard biologist Samuel Oak.



*Left:* The animal (*Pika pikachu*) that Musashi tried to steal from A.K.

*Right:* Some of the species recovered from Musashi’s warehouse (*Sphera jigglypuffii*; *Snorlacticus dormiens*; *Plesiosaurus lapras*).

In the U.S. District Court in Boston, Professor Oak and A.K. sued the criminal organization as well as the gym official, “Giovanni,” rumored to be its leader. Their complaint includes as exhibits copies of the American and Japanese police reports. It asks for money damages under the Massachusetts tort of conversion, as well as an injunction under the ESA’s citizen-suit provision, 16 U.S.C. § 1540(g)(1)(A), prohibiting any further attempts by Giovanni or *Roketto-dan* to steal the plaintiffs’ animals. (MESA has no citizen-suit provision, and the state’s Supreme Judicial Court has read similar statutes not to create a private right of action. But some trial courts have allowed private MESA suits providing the same injunctive relief as the ESA.)

The plaintiffs’ process server traveled to Japan and delivered by hand to Giovanni two copies of a complaint and summons naming as defendants “*Roketto-dan*” and “Giovanni.” No attorney for *Roketto-dan* has appeared; after reviewing the plaintiffs’ affidavits, the clerk entered its default.

Giovanni moved to dismiss the complaint under Rule 12(b)(1), (2), (3), (5), (6), and (7), arguing (among other things) that Musashi should have been made a defendant. The court deferred decision on his motion.

Giovanni then answered the complaint. Thirty days later, he filed a motion for summary judgment, stating in an affidavit that he never expected Musashi to *steal* any animals, and arguing that New Hampshire law (unlike Massachusetts law) doesn’t punish principals for their agents’ unexpected misdeeds. His motion also included documents from a recently certified federal class action against the same defendants in the Central District of California, limited to the issue of the availability of ESA injunctive relief, on behalf of all American owners of *PMZ*-listed animals that *Roketto-dan* had stolen or attempted to steal. After a full hearing, but without notice to class members, the district court in California denied a default judgment and dismissed the complaint as to *Roketto-dan*, entering judgment under Rule 54(b) and holding that the crime ring lacked California contacts or the capacity to be sued under Japanese law. Subsequently that court also granted summary judgment to Giovanni and denied all relief, finding an injunction unavailable under the ESA because the plaintiffs’ injuries were in the past rather than the future, and noting in passing that mammals of the genus *Pika* (*P. pichu*, *P. pikachu*, and *P. raichu*) are so abundant in the wild as to be outside the ESA’s protections. Its clerk immediately entered judgment.

The Boston plaintiffs oppose Giovanni's motions. They have moved for a default judgment against *Roketto-dan*, to amend their complaint to include Giovanni's full name, and for a jury trial on all contested issues of fact.

**How should the Boston court rule on the pending motions, and why?** (Answer as to each motion or part of a motion independently, in the order in which they are mentioned above, without considering one's effect on another or assuming that the court proceeds in any particular order. But if the order would matter, or if the resolution of one motion would affect another, you should also say so. And if you don't know something or lack adequate information, you should say that too.)

**Q.2: "Things We Have Not Studied"** (16 pts, ≈25 min, up to ≈400 words)

Below are listed several provisions that we never discussed at any length in class. Read them again. Then explain, based on what you've already learned, why they might exist and what you think they're for. Remember that you are not permitted to conduct new research on the Internet.

- (a) Rule 37(a)(5)(A)(ii).
- (b) Rule 52(a)(3).
- (c) Rule 65(e)(2).

**Q.3: "Crystals and Mud"** (24 pts, ≈35 min, up to ≈600 words)

The American law of civil procedure employs a mix of precise rules and vague standards. It's likely, however, that some issue that's the subject of a precise rule instead ought to be the subject of a vague standard, and that some issue that's the subject of a vague standard instead ought to be the subject of a precise rule. **Suggest one example in each category, and defend your choices.**

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

— END OF EXAM —