

CIVIL PROCEDURE I--Professor Murphy
Fall 2022

1. SUMMARY OF COURSE COVERAGE
2. CLASS ASSIGNMENTS
3. MASTER CHALLENGE ASSIGNMENTS

Assignment Pacing

- *Please read materials within a particular numbered assignment in the order in which I list them because they are ordered so as to aid your comprehension.*
- Please proceed to the next numbered assignment for each new class unless I announce otherwise. (I do not, however, recommend reading ahead.)
- Because class discussion of an assignment often carries over to the next class, make sure that you review your materials and notes from the prior class. Prepare birds-eye takeaways as explained in Course Information Memo.

Independent Work on Casebook Problems, Course Supplemental Materials Problems, and Master Challenge Assignments

- Students are free to discuss with other current students in this section the assigned problems, Master Challenge Assignments, etc., but submitted written work must be independently authored.
- Students may not consult any course materials that I previously distributed to prior students nor to written submissions by prior students. Moreover, students may not listen to prior recordings of this course or read transcripts or summaries thereof.

Written Assignments

- **Which written assignments must be submitted?**
 - “Master Challenge” assignments
 - Any other assignments that I explicitly designate (either in this assignment plan or otherwise) as “submit”
 - Assignments that require you to write answers to casebook problems, write answers to prompts that I have given you, draft a document, etc. **should not be submitted to me**
- **How to submit written assignments**
 - Please upload your submission into the “Assignments” tool in our Bridges course site, under the corresponding assignment heading. Do not copy any portion of the question into your submission, or else a plagiarism alert will be triggered. Put your name at the top right corner of every submission.

SUMMARY OF COVERAGE IN CIVIL PROCEDURE I

PART I – FUNDAMENTALS OF A CIVIL LAWSUIT AT THE TRIAL LEVEL

PART IA: PLEADINGS AND JUDGMENTS BASED ON PLEADINGS

The Complaint

- Legal Sufficiency
- Factual" Sufficiency

Heightened Specificity Requirements in Certain Cases

Pleading Inconsistent Facts and Alternative Theories

Remedies

Voluntary & Involuntary Dismissal

Defendant's Options in Response to a Complaint

- Motions
- Answer
- Default /Default Judgment
- Offer of Judgment

Service & Filing Court Papers

Amended & Supplemental Pleadings

Litigating in Good Faith--Rule 11 and Other Sanctions

PART IB: LEARNING FACTS ABOUT THE CASE: DISCLOSURE & DISCOVERY

Required Initial Disclosures

Discovery Scope and Limits

Devices to Ask for Information

Discovery of Material in Electronic Form

Failure to Make Disclosure or to Cooperate in Discovery; Sanctions

Relation to Rules of Evidence

Privileged Material

Work Product Doctrine

Parties' Planning Meeting

Pretrial Disclosures, Conferences, and Orders

PART IC: ADJUDICATION

The Right to Jury Trial

Summary Judgment: Adjudication without Trial or Jury

Judgment as a Matter of Law

New Trial

Techniques for Controlling Juries

PART II: PACKAGING LITIGATION

PART IIA: PRECLUSION DOCTRINES (Time permitting, we will complete this part in the fall semester; if not, we will cover this part at the beginning of the spring semester)

Claim Preclusion

- Scope of Claim Preclusion
- Claim Preclusion only against a Prior Claimant or a Person in Privity with a Prior Claimant
- Requirement of Valid, Final Judgment on Merits

Issue Preclusion

- Requirements for Issue Preclusion
- Against Whom Can Issue Preclusion be Asserted?
- Who Can Assert Issue Preclusion?

Problems of Federalism

	Topics	Preparation
1	<p>Introduction to Civil Procedure ****</p> <p>PART I Fundamentals of a Civil Lawsuit at the Trial Level PART I A: PLEADINGS AND JUDGMENTS BASED ON PLEADINGS</p> <p>The Complaint</p>	<p>Casebook 3-15; in Course Materials Supplement, "Sources of Federal Civil Procedural Law"</p> <p>Casebook 305-311 (not including "Legal Sufficiency"); Federal Rules of Civil Procedure (hereafter "F.R.C.P.") 1, 7(a) & (b)(1)-(2), (8)(a), 8(e), 10; Sample Complaint in Course Materials Supplement</p> <p>Based on the selected Federal Rules of Civil Procedure that I have assigned and the sample complaint I have provided as a guide, type and submit at the beginning of class one hard copy of a simple complaint for Sarah Jones in the United States District Court for the District of Wyoming. Your complaint should be based on the following facts and any additional facts that you deem warranted:</p> <p>On August 1, 2013, Mark Jones was physically injured in an automobile accident. Jerry Smith rear-ended Jones's car while Jones was stopped at a red light at the intersection of Oak Ave. and Maple St. in Cheyenne, Wyoming. Mark Jones has been married to Sarah Jones since May 1, 2010. Sarah wishes to sue Smith for "loss of consortium," which the relevant law defines as arising when an injured spouse, due to a tortious act, can no longer supply the affection and companionship natural to a spousal relationship. The relevant law thus far has recognized loss of consortium claims only when a couple is married, and the date of marriage must have preceded the date of the tortious act.</p> <p>In drafting the complaint, do not do any outside research or rely on complaints you may have seen elsewhere. Moreover, in your complaint, do not attempt to make a statement of jurisdiction; we will study this concept later in the course (simply use the words "Statement of Federal Court Jurisdiction" in brackets where appropriate in the complaint).</p> <p>Upload your submission under the "Assignments Tool" in our Bridges course site. Place your name at the top right of the submission. However, at the end of your complaint, create fictitious information for attorney name, signature, address, email, and telephone.</p> <p>I will <i>not</i> be grading your complaint. Please keep a hardcopy of your complaint available for you to review during class.</p>

2	<p>Court Systems</p> <p>The Complaint continued Legal Sufficiency (sometimes called "substantive" sufficiency)</p>	<p>In Course Materials Supplement, study “Hierarchy of Courts” and “Geographic Boundaries”</p> <p>311-314; F.R.C.P.12(b)(6)</p> <p>Based <i>only</i> on the first two paragraphs of note 1 on page 313, distill and write the elements of the cause of action. Then prepare written answers to Questions 1(a) & (b) on p. 313 and Q3 on p. 314</p> <p>Building on our Sarah Jones complaint drafting exercise, consider the consequences if: (1) Sarah Jones, in her complaint, does not allege that she is married or (2) the plaintiff is not Sarah Jones but Claire Brown, who alleges in her complaint that prior to the accident and ever since, she has cohabitated with Mark Jones in an intimate relationship. She does not allege a marriage, but the remainder of her complaint mirrors the Sarah Jones complaint.</p>
3	<p>The Complaint continued Factual Sufficiency (sometimes called "formal" sufficiency)</p>	<p>In the Course Materials Supplement:</p> <ul style="list-style-type: none"> • Guide to Analyzing <i>Ashcroft v. Iqbal</i> • <i>Ashcroft v. Iqbal</i>, 556 U.S. 662 (2009) • More on Sufficiency of a Complaint
4	<p>The Complaint: Factual Sufficiency continued</p> <p>Recap on Sufficiency of a Complaint</p> <p>Exercise: Sufficiency of a Complaint</p> <p>Heightened Specificity Requirements in Certain Cases</p>	<p>Casebook p. 328 note 2 & p. 329-330 notes 8 &10</p> <p>In the Course Materials Supplement:</p> <ul style="list-style-type: none"> • Post-<i>Iqbal</i> Activity • Alexander Reinert, Measuring the Impact of Plausibility Pleading • How are Federal Rules of Civil Procedure Amended • Twombly/<i>Iqbal</i> Analytic Steps for Considering Whether a Claim is Formally/Factually Sufficient Under FRCP 8(a)(2) • Examples Applying <i>Twombly & Iqbal</i> • Allegations on “Information & Belief” <p>Study note 6 on page 334-335 of the casebook</p> <p>In Course Materials Supplement, read “Recap: Has the claimant . . .”</p> <p>Prepare written answers to “Pleading Hypos” in Course Materials Supplement</p> <p>F.R.C.P. 9(b), (g); casebook 345-346 (only notes 2-4 & note 6)</p>

<p><i>13(b) continued</i></p> <p>Required Disclosure of Expert Testimony</p> <p>Required Pretrial Disclosures</p> <p>Scope of Discovery</p> <p>Limits on Discovery</p> <ul style="list-style-type: none"> • Attorney-Client Privilege • Qualified Protection of Work Product (materials prepared in anticipation of litigation) • Claiming a Privilege or Protecting Work Product • Limitations on Frequency and Extent of Discovery • Protective Orders <p>General summary of discovery thus far</p>	<p>F.R.C.P. 26(a)(2)(A)</p> <p>F.R.C.P. 26(a)(3)(A)</p> <p>398-409 (but skip <i>United Oil Co.</i> and questions 1& 2 following the case); F.R.C.P. 26(b)(1) & 26(e)(1)</p> <p>Prepare written responses to the following questions: 1) What is the principal difference between required disclosure and discovery? 2) What is the difference between what must be initially disclosed under 26(a)(1)(i) & (ii) and the scope of discovery under 26(b)(1)?</p> <p>Reread 405 (starting at note b)-408</p> <p>417; F.R.C.P. 26(b)(3)(A)-(B). Note: if a party intends to introduce its work product into evidence, the party has waived the privilege and must disclose the work product in advance of trial pursuant to the mandatory pretrial disclosures Rule 26(a)(3)(iii)</p> <p>F.R.C.P. 26(b)(5)</p> <p>F.R.C.P. 26(b)(2)</p> <p>F.R.C.P. 26(c)</p> <p>In Course Materials Supplement: “Informal Investigation and the Scope of Discovery: Summary of Basic Principles</p>
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	PART 1C ADJUDICATION	
16	<p>The Right to a Jury</p> <ul style="list-style-type: none"> Historical roots The Federal Constitutional Right to a Jury Trial Asserting the federal right to jury trial Size of Jury & Voting Rule Composition of the Jury Jury nullification and its limits 	<p>15-17</p> <p>Seventh Amendment to the U.S. Constitution (in Rules pamphlet); 463-482; Prepare written answer to the following question: From <i>Chauffers v. Terry</i>, what is the Supreme Court’s test for discerning whether the Seventh Amendment guarantees an entitlement to a jury trial rather than a bench trial? Prepare written answers to 474 Q1 & Q2</p> <p>In Course Materials Supplement, study chart on Constitutional Right to Jury Trial and study the page references to cases in the chart</p> <p>F.R.C.P. 38 & 39</p> <p>F.R.C.P. 48(a-b)</p> <p>482-484; F.R.C.P. 47 (a-b)</p> <p>Prepare written response to the following: How many peremptory challenges does each side have in a civil case in federal court?</p> <p>In the seminal case of <i>Batson v. Kentucky</i> (1986), the U.S. Supreme Court interpreted the Equal Protection Clause of the U.S. Constitution to prohibit a prosecutor in a criminal case from using peremptory challenges to exclude prospective jurors solely based on their race. Subsequent Supreme Court decisions extended the <i>Batson</i> doctrine to civil cases and cases where jurors are excluded on the basis of sex.</p> <p>p. 500 note 4 through note 7 on p. 502 (pay particular attention to note 5, which describes the three-step “<i>Batson</i>” framework)</p> <p>In Course Materials Supplement, read "Selected Federal Statutes on Composition of Juries in Federal Courts" and “Race Discrimination in Jury Selection.”</p> <p>507-508</p>

	PART IC ADJUDICATION continued	
17	Summary Judgment: Adjudication without Trial	<p>Casebook 508-511 (in the third full paragraph of page 510, the sentence “All such evidence is in written form” should be revised to read “All such evidence is in documentary form” so as to include evidence beyond written materials, such as a video-recording)</p> <p>F.R.C.P. 56</p> <p>In Course Materials Supplement:</p> <ul style="list-style-type: none"> • Study Excerpts from Notes of Federal Rules Advisory Committee on 2010 Amendments to Rule 56 • Study Summary Judgment Essentials <p>In Course Materials Supplement:</p> <ul style="list-style-type: none"> • Prepare written responses to “Summary Judgment Questions” <p>Outline written answers to questions on 511</p> <p>Scott v. Harris</p> <ul style="list-style-type: none"> • Read page 529 note 1 and watch at least the last three minutes of the video that the Supreme Court posted in Scott v. Harris: • https://www.youtube.com/watch?v=qrVKSgRZ2GY • Be prepared to discuss in class: do you think that Harris's driving endangered human life, warranting the police officer's attempt to stop Harris by causing Harris's car to spin? • Read 529-530 note 2 <p>Tolan v. Cotton</p> <ul style="list-style-type: none"> • In Course Materials Supplement, read "Background on <i>Tolan v. Cotton</i>" • Read 530-531 note 4 • Prepare written response: Explain why the police officer's motion for summary judgment should be denied in <i>Tolan v. Cotton</i>. <p>Read 531-532 notes 5-6</p>
18	Summary Judgment continued: Burdens of Production	<p>Study <i>again</i> Rule 56, Advisory Committee notes, and Summary Judgment Essentials</p> <p>Read 520-522 notes 1 & 4</p> <p>In Course Materials Supplement:</p> <ul style="list-style-type: none"> • Study "The Burdens of Production at Summary Judgment: A Tennis Analogy"

19	Summary Judgment continued	<p>In Course Materials Supplement</p> <ul style="list-style-type: none"> • <i>Salley v. Heartland-Charleston</i> • U.S. District Court for the District of Rhode Island Local Rule on Summary Judgment • <i>Colman v. Faucher</i> • <i>Pamplona v. Pine</i> • Prepare written responses to questions following <i>Salley, Colman, and Pamplona</i>
20	Motion for Judgment as a Matter of Law; Renewed Motion for Judgment as a Matter of Law	<p>F.R.C.P. 50 (a-b)</p> <p>In Course Materials Supplement:</p> <ul style="list-style-type: none"> • Timing of Initial Motion for Judgment as a Matter of Law Compared to Dispositive Motions that Might Have Been Made Earlier in the Lawsuit • Initial Motion for Judgment as a Matter of Law • Judge’s Role in Ruling on a Motion for Judgment as a Matter of Law; Burdens of Persuasion and Production <p>532-534 and prepare written answers to questions (a) & (b)</p> <p>534-541 (through note 6); compare cases at 539-541, notes 3 & 4 with each other and with <i>Lavender v. Kurn</i></p>

21	<p>Exercise: Summary Judgment</p> <p>Renewed Motion for Judgment as a Matter of Law continued</p> <p>Trial by a Judge (“Bench Trial”)</p> <p>Entry of Judgment</p> <p>Stay of Proceedings to Enforce Judgment</p> <p>New Trial</p> <p>“Harmless Error” doctrine</p> <p>Application of “New Trial” doctrine</p>	<p>Master Challenge Assignment 5</p> <p>F.R.C.P. 50 (b-e) In Course Materials Supplement:</p> <ul style="list-style-type: none"> • Denial of Initial Motion for Judgment as a Matter of Law • Trial court ruling on renewed motion for JMOL and losing party’s appeal <p>F.R.C.P. 52</p> <p>F.R.C.P. 58; On website of the Administrative Office of the U.S. Courts, read the form called “Judgment in a Civil Case”</p> <p>F.R.C.P. 62 (a-b)</p> <p>542; F.R.C.P. 59</p> <p>In Course Materials Supplement:</p> <ul style="list-style-type: none"> • "Phases of a Civil Jury Trial" • "JMOL Versus New Trial On Sufficiency of Evidence in a Jury Trial" and prepare written answers to questions in that document • “Errors in Process as Possibly Warranting a New Trial” <p>F.R.C.P. 61</p> <p>542-551; prepare written answers to p. 549, Q5</p> <p>After note 8 on p. 550, read in Course Materials Supplement, “Choices a Federal Judge Has When Jury Award of Compensatory Damages is Excessive”</p>
22	<p>Relief from a Judgment or Order</p> <p>Other Techniques for Controlling Juries</p> <p>Juror Misconduct</p>	<p>557-559; F.R.C.P. 60(a)-(d);</p> <p>551-555; F.R.C.P. 49; in Course Materials Supplement, "General v. Special Jury Verdicts"</p> <p>555-557; in Course Materials Supplement, “More on whether a judge, when asked to inquire into the validity of a jury verdict, may take testimony from a juror”</p>

	PART II PACKAGING LITIGATION	
	Part IIA: Preclusion Doctrines	In preparing the assignments on preclusion, it will help you to write/diagram out: 1) the claims or issues in the various lawsuits, 2) who asserted the claims or issues, and 3) against whom the claims or issues were asserted
23	<p><u>Preclusion Introduction</u></p> <p><u>Claim Preclusion</u></p> <ul style="list-style-type: none"> • Is preclusion sought on the same claim as was previously asserted in a prior lawsuit? • Is preclusion sought against a claimant who was a claimant in the prior litigation or in privity with a claimant in the prior litigation? • Did the prior litigation result in a valid, final judgment on the merits? • Any exceptions to the operation of claim preclusion? <p>Test your understanding</p>	<p>Watch Panopto Video—Preclusion Introduction (5.5 minutes)</p> <p>Study pp. 641-643 (through 1st paragraph of section B); study page 648 note 6</p> <p>In Course Materials Supplement, study “New Facts Might Create New Claim”</p> <p>Study 651; 657-658 note b (“Configuration of the Parties”)</p> <p>Study 658-660 (skip Notes & Questions and start with note 3)</p> <p>662 (beginning with “Exceptions to Operation of Claim Preclusion”); skip Notes & Questions</p> <p>Using the first three bulleted-questions in this assignment as your checklist, prepare written answers to Hypos 1-4 of "Hypotheticals on Preclusion" in Course Materials Supplement</p> <p>In Course Materials Supplement, answer questions in "Claim Preclusive Effects of Different Types of Judgments"</p>

24	<p>Exercise: Post-Trial Motions</p> <p><u>Issue Preclusion Basics</u></p> <ul style="list-style-type: none"> • Is preclusion sought on the same issue that was already litigated and determined in the prior litigation? • Was determination of the issue essential to the judgment in the prior litigation? • Was the holding on the issue embodied in a valid, final judgment on the merits? • Is preclusion sought against a person who was a party in the prior litigation or in privity with a party in the prior litigation? <p>Test your understanding</p>	<p>Master Challenge 6</p> <p>665 (first paragraph under “C” only); 669 (starting with note 4)-671 (skipping note 5 on p. 669)</p> <p>671-674</p> <p>(Note the parallel question for claim preclusion.)</p> <p>(Note the parallel question for claim preclusion.)</p> <p>Using the preceding 4 questions as your checklist, prepare written answers to 670-671 <i>The Sally and Joe Hypotheticals</i> (a-e)</p>
25	<p><u>Issue Preclusion</u> continued</p> <p>Test your understanding on issue preclusion basics continued</p> <p>Who Can Assert Issue Preclusion?</p> <p>Test your understanding on who can assert issue preclusion</p> <p>Any Exceptions to the Operation of Issue Preclusion?</p>	<p>Prepare written responses to hypos 5-6 of “Hypotheticals on Preclusion” in Course Materials Supplement</p> <p>675-676 (first paragraph of section 5(a) only); 677 (section b, starting with second sentence)-685 (through note 3 only); in Course Materials Supplement, read and answer questions in "Questions for <i>Parklane Hosiery</i>"</p> <p>Prepare written answer to hypo 7 of “Hypotheticals on Preclusion” in Course Materials Supplement</p> <p>686-687 (through note 4); prepare written answers to 687 Q2-3</p>
26	<p><u>Federalism Aspects</u></p> <p>Exercise: Preclusion Doctrine</p>	<p>688-692 (In these pages, the casebook authors reference personal jurisdiction, diversity jurisdiction, federal question jurisdiction, the <i>Erie</i> doctrine, and the Rules of Decision Act. We will be studying those topics next semester, so I do not expect you to understand those concepts yet. Just follow as best you are able the material in these assigned pages.)</p> <p>Master Challenge Assignment 7</p>

Master Challenge

General Instructions

The facts below are inspired by an actual case, but many of the details are fictitious for teaching purposes. Interspersed throughout the facts are various assignments, for which you are to submit typed responses, even if you are absent. **Please do not do outside research for these assignments; such research may lead you off track. You may not consult any materials that I distributed in prior semesters with respect to these assignments.**

Harry and Kay Robinson have been married since 2006 and have three minor children: Tom, Eva, and Sidney. The family decided to move from New York to Florida. They set out in two vehicles: a rented truck to carry their belongings and their Audi LS 100. They had purchased the Audi, new, from Seaway Volkswagen in Massena, New York. Seaway is an authorized dealer of Audi automobiles. The car was manufactured in Germany by Audi Aktiengesellschaft, a company incorporated in Germany with its principal place of business in Germany. The car was imported into the United States by Volkswagen of America, and it was distributed to Seaway by the regional distributor, World-Wide Volkswagen. Both Seaway Volkswagen and World-Wide Volkswagen are incorporated in New York. Volkswagen of America is incorporated in New Jersey, with its principal place of business in New Jersey.

On March 15, 2019, on state highway 62 in Wake County, North Carolina, near Raleigh, Harry and Sidney drove in the truck while Kay, Eva, and Tom followed in the Audi. Lloyd Hull, a citizen of Arkansas, was driving under the influence of drugs and alcohol, and he was driving 90 miles an hour when he negligently crashed into the rear of the Audi. Another driver not involved in the collision, John Wright, witnessed the crash, as did Harry and Sidney. Kay and her two children were trapped in the Audi until rescued, and they suffered severe burns. The police prepared a report of the accident, listing John Wright, Harry, and Sidney as witnesses to the accident.

Kay underwent more than thirty operations and spent months in the intensive care unit of a Raleigh hospital. Eva and Tom were hospitalized for weeks in Raleigh. All three suffered severe physical pain. Harry and Sidney spent weeks visiting their injured family members in the hospital. Kay had not been employed for the five years prior to the accident. While taking care of the family in North Carolina, Harry was unable to start his new job in Florida. Fortunately, the new employer kept the job open for Harry, but Harry lost several weeks of pay until he was able to begin the job. The attorney for the Robinsons has done some preliminary investigation, and she believes that the car was defective because the gas tank was mounted so as to make it susceptible to rupture in a rear-end collision. She also suspects there was insufficient fire protection between the gas tank and the passenger compartment. The Robinsons have provided their attorney with all their maintenance records for the car, which would tend to prove that the car was maintained according to Audi recommendations in the owner's manual. Kay and Harry have told their attorney that neither has previously been involved in any driving accidents.

Lloyd Hull has insufficient assets to compensate the Robinsons for the harms they suffered, and he had no automobile insurance. The Robinsons decide to sue Audi. The Robinsons' attorney is considering two independent theories of products liability: Negligence (violating a duty to the plaintiff to exercise reasonable care in the design or manufacture of a product that caused injury to the plaintiff) and strict liability (producing a product in a defective condition that is unreasonably dangerous for use by consumers or other users). Assume that North Carolina law governs the substantive claims of negligence and strict liability.

In assignments 1-7, assume that North Carolina state court procedural doctrines and rules are identical to federal procedural doctrines and rules.

Assignment 1. Draft a complaint for the Robinsons **against Audi only** to be filed in the superior court of the North Carolina state court system. **Exclude** from your complaint any claims for property damage (to the car and its contents.). Include a proper caption and use fictitious names for the signature information. Consider whether F.R.C.P. 5.2(a)(3) may inform how you draft your complaint.

Hint for this assignment: reread FRCP 8(a) and 10, use my posted sample complaints (i.e., Gary Parker, Sarah Jones, and McCormick complaints) for guidance as to format, and make sure you comply with the pleading lessons of the *Iqbal* case. Do not include a statement of jurisdiction. (A statement of jurisdiction may not be required in this state court, for reasons we will explore next semester).

Suggestion for this assignment: create a checklist with respect to the assignments on sufficiency of a complaint, pleading inconsistently or alternatively, and remedies before you tackle this assignment, and use the checklist to guide the drafting of your complaint.

[End of Assignment 1]

Upon receiving the Robinsons' complaint, Audi's defense counsel does initial legal research and factual investigation. From his legal research, Audi's defense counsel finds a North Carolina statute, N.C. Gen. Stat. § 99B-1.1, which provides that: "There shall be no strict liability in tort in product liability actions." The North Carolina Supreme Court has stated that the statute means that "North Carolina has not adopted the law of strict liability in products liability actions" *DeWitt v. Eveready Battery Co.*, 565 S.E.2d 140, 150 (N.C. 2002).

Defense counsel obtains the police report of the accident, and he interviewed a company employee, Heinz Hagenau, who was involved in the design and placement of the gas tanks in Audi LS 100s. Hagenau stated to defense counsel that Audi used the best technology available at the time to ensure safety. Defense counsel also learns that there are Audi documents that would support an assertion that Audi used the best technology available at the time. There are other Audi documents, however, that detail incidents involving gas tank ruptures in Audi LS 100s. Audi believes that the cause of the fire in the Robinson car was the tremendous force of the impact from Hull's car that was going 90 miles an hour. Audi has no facts at this point upon

which it can in good faith allege that the Robinsons were contributorily negligent.

Assignment 2 [submit 3 different documents, all stapled together]

(a) There is a basis for Audi to move to dismiss a portion of the complaint that I previously distributed. What is the ground on which Audi may move to dismiss a portion of the complaint?

(b) Draft the motion to dismiss, explaining in the motion why the court should grant the motion. Hint: Reread Rule 7(b) & my sample Motion to Dismiss in the Course Materials Supplement.

(c) Reread Rules 8(b) and 12(b)(6). Draft an answer for Audi to the complaint that I previously distributed. See my sample Answer in the Course Materials Supplement. (You might also refer to the excerpts from the Haitian refugees complaint and answer that I posted to the course website). Beyond possible defenses that Audi may have under Rule 8(c) or 12(b)(6), consider whether Audi should assert other defenses.

Suggestion for this assignment: Create a checklist for the assignments on Defendant's Options in Response to a Complaint and use the checklist as you draft your responses.

For all court papers that you draft for Assignment 2 and other Master Challenge assignments, assume that all parties have legal representation, the court papers are filed and served electronically with the court electronic filing system, and thus no certificate of service is required under Rule 5(d)(1)(b).

Assignment 3 is omitted.

Assignment 4 on Discovery

In this assignment, you will answer multiple choice questions that I will post on Bridges under "Tests & Quizzes." Answer these questions based both on the facts given in the prior Master Challenge assignments and on the following additional facts:

Additional facts for multiple choice questions 1-2:

Audi's defense counsel has identified the following documents within Audi's possession:

- Documents supporting Audi's assertion that Audi used the best technology available at the time the Robinsons' car was designed and manufactured.
- Documents that reference consumer complaints about engine overheating in the Audi LS 100s that may be relevant to the case but are not favorable to Audi.
- An insurance policy issued by Global Insurance Co. that would cover the amount of Audi's liability to the Robinsons if Audi settles with the Robinsons or if Audi loses on the merits in the Robinsons' case.
- An insurance policy issued by TransAmerica Insurance Co. that provides medical insurance to Audi employees.

Assignment 5 on Summary Judgment

Based on the facts given you in the prior Master Challenge assignments--with the exception of Assignment 4--please complete the following assignment:

Ten days after the close of all discovery, Audi moves for partial summary judgment. Assume that the Robinsons sought punitive damages in their complaint, and that Audi is now asking the court to rule that punitive damages are not available for the Robinsons' claims. For punitive damages to be available in a products liability case under the governing substantive law, the plaintiff must prove by "clear and convincing evidence" that the defendant acted with "the conscious and intentional disregard of and indifference to the rights and safety of others," which the defendant knew or should have known was reasonably likely to result in injury. Audi does not believe that the plaintiffs have adequate proof of such misconduct by Audi. In addition, Audi believes that it used the best technology then available in designing, manufacturing, and placing the gas tank. The Robinsons oppose the summary judgment motion, attaching excerpts from the deposition of a Robinson expert, who is scheduled to testify at trial. During the deposition, the expert states that other, more expensive technology was available at the time the Robinsons' car was manufactured. The expert further stated during the deposition that this alternative technology would have prevented the type of gas tank rupture that occurred in the Robinsons' car. Answer each of the following questions separately:

- (a) What are the legal arguments that Audi should make in its summary judgment motion?
- (b) With what materials could Audi seek to support its motion for summary judgment?
- (c) How should the court rule on Audi's motion for partial summary judgment?

Suggestion for MC Assignment 5: Prepare a checklist on summary judgment and use the checklist as you outline and write your responses.

Assignment 6. The Robinsons case goes to trial, and the Robinsons pursue only the negligence cause of action. Their strongest evidence against Audi is the testimony of the Robinsons expert, the substance of which is detailed in assignment 5, and the Audi documents showing that Audi knew that there were accidents involving gas tank ruptures in the Audi LS 100s. After the Robinsons conclude putting on their case in chief, Audi moves for JMOL; the judge denies the motion. Audi then puts on its case in chief. It offers the testimony of Hagenau, and it introduces the documents supporting its defense that Audi had used the best available technology at the time it manufactured the Robinsons car. The judge, contrary to governing law, allows the Robinsons' lawyer to make a golden rule argument to the jury. That is, the plaintiffs' lawyer asked the jurors, in assessing damages, to consider how much the jurors would want in compensation if they had suffered the pain and emotional distress that the Robinsons had suffered. The jury returns a verdict for the Robinsons, and it awards compensatory damages to each of the plaintiffs. Audi believes the jury was wrong on liability and, even if correct on

liability, wrong on the amount of damages. What should Audi do now at the trial level? How likely is it that the trial judge will set aside any portion of the verdict?

Suggestion for MC Assignment 6: Prepare a checklist for the assignments on judgment as a matter of law and new trial and use the checklist as you outline and write your responses.

Assignment 7. Disregard Assignments 5-6.

During preparation of the case, the Robinsons' attorney learns of a prior lawsuit, brought by other plaintiffs, in which Audi was sued for personal injuries resulting from a gas tank fire that resulted when another Audi LS 100 was hit from the rear. The only theory of liability pursued by the plaintiffs in that earlier lawsuit was that insufficient fire protection existed between the gas tank and the passenger compartment. Audi won the earlier lawsuit.

Respond separately to prompts (a) and (b) below.

(a) Does the earlier lawsuit have any possible preclusive effects in the Robinsons' case? Explain.

(b) Would the earlier lawsuit have any possible preclusive effects in the Robinsons' case **if Audi had lost the first case?** Explain.

Suggestion for MC Assignment 7: Prepare a checklist on preclusion and use the checklist as you outline and write your responses.