INSTRUCTIONS: ESSAY QUESTIONS

1. Do not start reading this 3-page exam (other than this cover page) until instructed to do so by the proctor. The exam is to be taken using EXAM4 in CLOSED mode.

2. The following two questions will count for approximately 60% of your final grade. The subparts of the essay questions will not necessarily be worth an equal number of points. You will have two hours to answer these two questions.

3. Place your exam number, but not your name, on both your answers and on this sheet.

4. This is a closed book examination, except that you may have with you during the exam your assigned textbook and Federal Rules supplement. During the exam you cannot refer to anything other than the examination, the course text, and the assigned supplement. You also are not to speak with anyone other than the proctor about the exam during the exam period, consult materials outside the exam room, or bring other materials into the exam room.

5. Electronic devices such as mobile phones must be turned off before the exam begins and during exam. Backpacks or other containers should be closed and left at front of the room.

6. Students may leave the exam room as needed to use restroom facilities. Except in case of an emergency, only one person should be out of the room at a time.

7. Read the questions carefully, but do not presume they have been written to trick or mislead. Take time to think through and organize your answers before beginning to write. Explain your answers and, if any assumption of law or fact is necessary, set forth such assumption. Don't belabor the obvious in your answers, but focus on the more difficult aspects of the questions.

8. Turn in your answer sheet, these questions, and any scrap paper at the end of your exam.
Question 1

Drone, Inc. makes drone airplanes especially designed for photography. Drone is incorporated in Delaware, its headquarters are in Illinois, all three of its factories are in Indiana, and its sales distribution center and the majority of its sales in Florida. About 50% of the motors on these drones are manufactured by Motors, Inc., which is incorporated and with its headquarters, factory, and all other operations in Ohio. The other 50% of the motors are manufactured by Equipment R Us, which is incorporated and has its principal place of business in Florida.

Peter Photographer, a citizen of Florida, purchases a Drone drone and uses it for wedding photography. While photographing a wedding on a south Florida beach, the drone malfunctions and crashes into the bride and groom just as the pastor is about to declare them married. The bride and groom, both citizens of Florida, file a civil action in federal district court for the Southern District of Florida against Drone and Motors, alleging that the motor and drone were negligently designed and constructed. The groom seeks $75,000 in damages, while the bride (whose expensive dress was destroyed in the crash) seeks $85,000.

Defendants Drone and Motors both file a motion seeking to dismiss the action against them due to lack of personal jurisdiction and improper venue. The court denies both motions.

After the court has denied these motions to dismiss, Drone and Motors file their answers, denying many of the facts alleged in the complaint and asserting lack of subject-matter jurisdiction and failure to join as a required party defendant Equipment R Us. The defendants then file a motion to dismiss based on these two defenses.

Please answer the following questions.

1. Should the court have dismissed the claims against either Drone or Motors due to lack of personal jurisdiction?

2. Should the court have dismissed the action due to lack of venue?

3. Should the court grant the motion to dismiss for lack of subject-matter jurisdiction?

4. Should the court grant the motion to dismiss for failure to join Equipment R Us as a required party defendant?
Question 2

Cellphones, Inc. (“Cellphones”) introduces a new cell phone that, unfortunately for the buyers, tends to catch fire. These fires have resulted in both injuries and minor damage to the property of 150 phone owners. As a result of this propensity to catch fire, the phones (for which consumers paid $250 or $350) have become worthless.

Lonny Lawyer brings an action in Oregon federal district court seeking to represent at “class consisting of all those who purchased one of these defective cell phones.” The class is estimated to include 50,000 consumers from each of the 50 states, seeks exclusively monetary damages, and is brought against CellPhones, which is incorporated in Delaware and has its principal place of business in Colorado. The named class representatives are Tracy Talker, a citizen of California who was burned when her phone caught fire (seeking $50,000); Ollie Owner, a citizen of Texas whose garage caught fire when his phone caught fire (seeking $30,000); and Yonnie Yacker, a citizen of Kentucky whose phone has not caught fire but which has not been used by Yacker since the media began covering cellphone fires (seeking $350). Not named as a class representative in the action is Barry Burnen, a citizen of Ohio, whose house burnt down as a result of a fire caused by his cellphone.

After filing this action in federal court and a motion asking the court to certify the class, Lawyer receives a phone call from counsel for Cellphones, who informs him that, in a recent judicial opinion, the Oregon Supreme Court has established a requirement that, before representing any party in an Oregon state class action, an attorney must take a 10-hour course in class action law and procedure. Lawyer replies, “I just graduated from law school, so I took civil procedure pretty recently; But this requirement can’t apply to me because I filed the action in federal court.”

Cellphones then files a motion to dismiss asserting three grounds: (1) Lawyer has not taken the class action course required by the Oregon Supreme Court; (2) the federal court does not have subject-matter jurisdiction to hear this action; and (3) the class does not satisfy the federal requirements for class certification.

Please answer the following questions.

(1) Should the court apply the Oregon state rule requiring training in class actions?

(2) Does the court have subject-matter jurisdiction to hear this action?

(3) Should the court grant the motion to certify the class?

(4) Assume that (1) the court determines that it has jurisdiction to hear the action; (2) the court denies the motion to certify the class; and (3) Barry Burnen files a motion to intervene as a plaintiff in the action. Should the court grant Buren’s motion?
Question I

I. Should the court have dismissed the claims against either Drone or Motors due to lack of personal jurisdiction/

A. Federal court can utilize Florida long-arm statute pursuant to Rule 4(h)(1)(a) and 4(e)(1).

B. Under *International Shoe*, defendants are subject to personal jurisdiction if they have minimum contacts with the forum, contacts would not offend traditional notions of fair play and substantial justice, and claim arises from forum contacts.

C. Drone actually has availed itself of Florida marketplace, because majority of its sales are in Florida.

1. So it would not be unfair to subject Drone to suit in Florida, and Drone is subject to suit in that state.

2. Drone would be subject to specific personal jurisdiction, because claim arises from its forum-state contacts.

D. However, it’s unclear whether Motors should be subject to personal jurisdiction in Florida.

1. Motors may have sold the motor to Drone in Ohio or Indiana.

2. Motors has no direct contact with Florida, but merely sold motors to Drone, knowing that some of those motors might reach Florida.

3. Majority of Supreme Court neither adopted nor rejected “stream of commerce” personal jurisdiction in *Asahi* and *McIntyre*.

4. But here motors were expensive components and Motors must have known that many of them would reach Florida.

5. This is not like inexpensive tire value in *Asahi*, a product manufactured outside the United States as in *McIntyre*, or the potter’s mug as hypotheticized by Justice Breyer in his concurrence in that case.
E. Drone is subject to personal jurisdiction in Florida, and there’s a strong argument that Motors is as well.

II. Should the court have dismissed the action due to lack of venue?

A. Venue is the place within a particular court system where the action will be determined.

B. Under Section 1391(b), there are three possible venue choices for this action.

1. Section 1391(b)(1) allows for venue in a district “in which any defendant resides, if all defendants are residents of the State in which the district is located.”

   a. Section 1391(c)(2) provides that corporations reside “in any judicial district in which such defendant is subject to the court’s personal jurisdiction.”

   b. Here both Drone and perhaps Motors are subject to personal jurisdiction in Florida.

   c. Presuming this to be the case, venue would be appropriate in Southern District of Florida.

2. Section 1391(b)(2) provides for venue in a district in which “a substantial part of the events or omissions giving rise to the claim occurred.”


   b. Therefore, venue is proper in that district.

3. Section 1391(b)(3) provides for venue in any district “in which any defendant is subject to the court’s personal jurisdiction with respect to such action.”

   a. This is merely a fallback venue possibility.

   b. Because venue is possible under Sections (b)(1) and (2), Section (b)(3) provides no additional venue choices.

C. Thus venue was properly sited in the Southern District of Florida.

III. Should the court grant the motion to dismiss for lack of subject-matter jurisdiction?
A. Rule 12(h) provides that most Rule 12 defenses are waived if they are not included in a motion to dismiss.

1. But Rule 12(h)(3) recognizes ability to raise lack of subject-matter jurisdiction at any time.

2. Thus motion to dismiss for lack of subject-matter jurisdiction was not waived by not including it in initial motion to dismiss.

B. There is no federal question claim raised in this action, so Section 1331 does not provide a jurisdictional basis for the action.

C. Section 1332(a) diversity jurisdiction exists for bride’s claim.

1. Amount in controversy must be more than $75,000 for diversity jurisdiction.
   a. Here bride seeks more than $75,000.
   b. So amount in controversy requirement is satisfied.

2. There must be complete diversity between the parties.
   a. Section 1332(c) provides that corporations are citizens of both their state of incorporation and state of their principal place of business.
   b. *Hertz* determines that a corporation’s principal place of business is in state where it has its “nerve center” (headquarters).
   c. Thus Drone is citizen of both Delaware and Illinois, while Motors is a citizen of Ohio.
   d. There is complete diversity and the amount in controversy requirement is met, so the court should not dismiss bride’s claim.

D. Section 1332(a) diversity jurisdiction does not exist for groom’s claim.

1. Although there is complete diversity between groom and defendants, groom does not seek more than $75,000.

2. Nor does *Snyder v. Harris* allow these plaintiffs to aggregate their asserted damage claims under Section 1332.

E. But groom’s claims can tag along because Section 1367 creates federal
subject-matter jurisdiction for this claim.

1. So if there is federal subject-matter jurisdiction, it must come under 28 U.S.C. Section 1367.

2. Section 1367 provides for supplemental jurisdiction.

3. Section 1367(a) is satisfied, because state-law claim is “so related to [a claim] in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.”

4. Here, both state and federal claim arise from same basic facts surrounding denial of job promotion.

5. There is federal question jurisdiction over federal claim, so state claim can be heard through court’s supplemental jurisdiction.

6. Section 1367(a) explicitly says: “Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.”

7. However, under Section 1367(c), court may decline to exercise supplemental jurisdiction.

   a. State claim here does not appear to “raise a novel or complex issue of State law.”

   b. Nor does state claim appear to “substantially predominate” over federal claim.

   c. Nor do there appear to be any “exceptional circumstances” that would suggest that district court should not exercise supplemental jurisdiction over state-law claim.

F. So motion to dismiss for lack of subject-matter jurisdiction should be denied.

IV. Should the court grant the motion to dismiss for failure to join Equipment R Us as a required party?

A. Typically people have a right to decide whether, when, where, and how to file their claims.

B. However, Rule 19 requires certain persons to be joined to an action so court can provide complete relief to current parties and prevent practical impairment to interests of those not joined in action.
C. Is Equipment R Us a Rule 19(a) required party?

1. Rule 19(a)(1)(A) requires joinder if “in that person’s absence, the court cannot accord complete relief among existing parties.”

2. Rule 19(a)(1)(B) requires joinder if person claims an interest and is situated so that “as a practical matter impair or impede the person’s ability to protect the interest” or “leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.”

3. If judgment is entered against Drone and Motors, they may not be successful in a second action against Equipment R Us.

D. Should action proceed without joinder of Equipment R Us?

1. If required person can’t be joined, court “must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed.”

2. Equipment R Us is citizen of Florida, so joining this person as a defendant would destroy complete diversity (because plaintiffs are Florida citizens).

3. In determining whether action should go forward, Rule 19(b) provides that court is to consider:

   a. Extent to which judgment rendered in person’s absence might prejudice person or existing parties;

   b. Extent to which prejudice could be lessened by shaping relief or using protective provisions in judgment;

   c. Whether judgment rendered in person’s absence would be adequate; and

   d. Whether plaintiffs would have adequate remedy if action were dismissed for nonjoinder.

4. Court could protect Drone and Motors by dismissing action and allowing plaintiffs to file an action against all three manufacturers in state court.
Question 2

I. Should the court apply the Oregon state rule requiring training in class actions?

A. This action presents *Erie* and *Hanna* issues.

1. Under Rules of Decision Act, federal courts apply both state common law and statutory law in federal diversity actions.

2. Under *Byrd v. Blue Ridge*, court is to consider: (1) state substantive (non-courtroom) interests; (2) federal interest in procedures within federal courts; and (3) possibility of forum shopping or unequal administrative of the law.

3. Here, state of Oregon has little interest in lawyer’ behavior in federal courts.

4. In fact, lawyer competence is a federal interest, too, and Rule 23(a)(4) requires that class action lawyers be adequate.

5. Federal courts do, though, have great interest in policing attorney and litigant behavior in federal courts—but haven’t decided to require attorney class action training.

6. It’s also unclear whether attorney would choose federal over state court to avoid state rule (although this attorney may do so).

B. However, this question is controlled by *Hanna* rather than *Erie*.

1. Not federal common law, but a FRCP (Rule 23) is at issue.


3. Rule 23 really regulates procedure.

4. Nor does Rule 23 abridge, enlarge, or modify any substantive right.

5. Court has never found a FRCP violative of RDA.

6. In this action, court would apply Rule 23 rather than state law.

II. Does the court have subject-matter jurisdiction to hear this action?

A. There is no federal question presented, so Section 1331 does not apply.
B. Nor are requirements for diversity jurisdiction under Section 1332(a) met.

1. There is complete diversity among the parties.

2. Although there are class members from all 50 states, only citizenship of named class representatives are considered for diversity purposes (Ben Hur).

3. Cellphones is dual citizen of both Delaware and Colorado.

4. However, none of named plaintiffs seek more than $75,000.
   a. Although Section 1367 permits supplemental jurisdiction if at least one class members satisfies minimal amount in controversy, here none of named class representatives do so.
   b. Supreme Court in Allapattah concludes that Snyder v. Harris’s rule against aggregation to satisfy amount in controversy was not changed by Section 1367.

C. However, subject-matter jurisdiction is satisfied under Class Action Fairness Act of 2005 (Section 1332(d)).

1. There should be more than $5 million in controversy (with 50,000 class members).

2. There are at least 100 class members.

3. There is minimal diversity between some class members and defendant.

D. Therefore, court has subject-matter jurisdiction over this action.

III. Should the court grant the motion to certify the class?

A. For court to certify class action, class must satisfy all 4 requirements of Rule 23(a) and at least one requirement under Rule 23(b).

B. Rule 23(a) prerequisites.

1. Numerosity is satisfied, because it would be difficult to join 50,000 class members as individual plaintiffs.

2. Commonality should be satisfied as well.
   a. This is not as easy to establish after Wal-Mart v. Dukes, and a legal
or factual issue must be identified the answer to which is central to validity of class claims “in one stroke.”

b. Here, though, there must be many common questions concerning alleged problem with phones and liability of Cellphones under applicable tort laws.

3. It is unclear if class representatives are asserting claims typical of class.
   a. However, class could be divided into subclasses under Rule 23(c)(5).
   b. Class representatives appear to represent three major groups within class: those with (1) physical injury; (2) property damage; and (3) loss of phone value.

4. It appears that class representatives, but not class counsel, will adequately represent the class.
   a. There is nothing to suggest that class representatives won’t adequately represent class.
   b. But Lawyer has just graduated from law school and has little experience.
   c. It’s also unclear if Lawyer has financial resources to prosecute a class such as this.

C. Rule 23(b) types of classes.

1. Rule 23(b)(1).
   a. Rule 23(b)(1)(A) is not satisfied because separate actions would not create risk of “inconsistent or varying adjudications . . . that would establish incompatible standards of conduct for the party opposing class (Cellphones).
      (1) Cellphones could pay some claimants and not others, and class seeks no injunctive relief.
      (2) So this is not a “between a rock and a hard place” class action.
   b. Rule 23(b)(1)(B) is not satisfied because individual adjudications would not practically impair rights of non-parties.
(1) Class members seek only monetary relief.

(2) Those seeking monetary relief only fit within Rule 23(b) if there is not enough money to go around (limited fund cases).

2. Rule 23(b)(2) does not apply, because class seeks only monetary relief.

3. Rule 23(b)(3) might apply.
   a. Class actions seeking money typically fall under Rule 23(b)(3).
   b. Because these class actions may bind many class members who never will see the courtroom, notice is required by Rule 23(c)(2).
   c. Class only can be certified under Rule 23(b)(3) if common questions predominate and class action is superior method of resolving dispute.
      (1) Common questions concerning the phone malfunction, as well as Cellphones liability, probably predominate in this action.
      (2) Class action also is probably superior way to resolve these 50,000 claims.
   d. In determining superiority, court should consider Rule 23(b)(3) factors.
      (1) There could be manageability questions here with 50,000 class members and different types of damages.
      (2) However, court could bifurcate damages and liability.
      (3) Rule 26(c)(4) allows class determination of specific issues if entire action would not appropriately be determined as class.

IV. Assume that (1) the court determines that it has jurisdiction to hear the action; (2) the court denies the motion to certify the class; and (3) Barry Burnen files a motion to intervene as a plaintiff in the action. Should the court grant Buren’s motion?

A. Rule 24 governs intervention.

B. Rule 24(a) governs intervention as of right.
   1. There is no federal statute apparent granting Barry right to intervene.
2. But “4 Is” should be satisfied in this action.
   a. Barry has moved to intervene in a timely manner.
   b. Though not formally bound, Barry has interest in action, which raises identical legal and factual claims that he does.
   c. Resolution of action could impair interest by creating bad legal precedent or unfavorable structure for paying claims.
   d. Brand-new Lonnie Lawyer is unlikely to adequately protect Burnen’s interests.

C. Rule 24(b) governs permissive intervention.
   1. Permissive intervention is possible even if intervention of right is not.
   2. There is no federal statute apparent granting permissive right to intervene.
   3. However, court can grant permissive intervention because Barry has at least one common question of law or fact with current action.
   4. Factual questions include reasons why phones are catching fire and common legal issues involve products liability for phone malfunctions.