

Civil Procedure II Sample Midterm Exam

Professor Crouch

Three questions with word limits.

Directions: Please answer each question asked within the requisite word limit. If you rely upon a rule or court decision, please provide a citation and explain how it applies.

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Thompson was severely injured in an automobile accident and, in all likelihood, will be unable to walk ever again. Unfortunately, the individual (**Haskins**) who rammed into Thompson's car has no money and no liability insurance coverage. At the time of the accident Haskins was texting on his **SamSapple** handheld mobile device. Thompson has now filed a class-action lawsuit against SamSapple in a Missouri-based Federal Court on behalf of all persons injured in automobile accidents due in-part to the use of a SamSapple device while driving.

1. Explain why the court should not certify this class. (<300 words).
2. How could Thompson change his class structure to make it more amenable to class certification (<100 words).

One of Thompson's theories in the case is that it would have been relatively cheap for SamSapple to change its software so that the device will not work for someone driving a vehicle. **Thompson's** attorneys hired an electrical engineer (**Gerard**) who, after several attempts, was unable to so modify the software. Gerard is now convinced that the change would be quite difficult. Obviously, Thompson is not planning to put Gerard on the stand to testify and has *not* disclosed Gerard as a testifying witness under R.26(a)(2). SamSapple has subpoenaed Gerard with a notice of deposition. Thompson has responded with a motion for protective order under R.26(c) and would like to prevent Gerard from testifying at all and especially prevent his testimony regarding his opinion that the proposed fix would be so difficult.

3. How should a court rule on the motion for protective order? (<400 words).

