Final Exam

This is a 2 hour, restricted open book exam. You are allowed to consult only the following material:

- the required texts for the course as listed in the syllabus (no other commercially prepared materials are allowed);
- any material you personally prepared;
- print-outs of the PowerPoint presentations given in class.

This exam is comprised of three essay questions. I cannot recommend highly enough that you take time to organize your answer; a well-presented answer will necessarily be more cogent and is therefore unavoidably going to be prone to a better grade than a disorganized one. **Also, write on only one side of the page!** Your answers should demonstrate knowledge of the issues we have discussed in this course, including how they may relate to each other. Concentrate on any approaches or issues that you think are the most important, but do not hesitate to give a short summary of why you have rejected any other approaches or issues. However, if you are pressed for time, err in favor of discussing the most important issues rather than spending time you do not really have on other items.

You must turn in this exam along with your answers. I will not return your exam answers to you.

Before starting the exam, make sure you have 5 pages. Good luck!!
Background Facts For Questions 1-2

X, who lives and works in Iowa, invented a revolutionary new product: a robot that mops floors. To build it, he entered into a contract with Y, a manufacturer located in China. The contract specifies that it is to be interpreted in accordance with Iowa law. Under the contract, Y is obligated to build the robots in accordance with X’s specifications, and Y ships the completed robots to X in Iowa on a monthly basis. To do so, Y arranges for a commercial freight company to deliver the robots to X in Iowa via a multipart trip, first by ship from China to California in the United States, then by train from California to Iowa, and finally by delivery truck from the Iowa train depot to X’s location. Apart from X specifying the final delivery location, Y controls all aspects of this delivery, meaning that the freight company is responsible for delivering the robots in whatever manner and to whatever destination that Y specifies.

After receiving delivery of the robots, X sells the robots to customers throughout the United States. X’s customers are commercial businesses and commercial buildings that use the robots to clean large floor spaces, such as large conference rooms or building lobbies. When X sells a robot to a customer, he simply ships the robot to the customer via a Federal Express unit devoted to such commercial shipments, instructing Federal Express to deliver the robot to whatever location the customer has specified. The robots are designed to be simple to operate and to require little to no maintenance. When maintenance is required, the customers have to ship the robot back to X, though this has rarely occurred. Thus, X is able to run his business wholly out of Iowa, and does not travel to meet his customers in the various states in which they are located. Selling his robots is X’s only business.

As for Y, it does business with many United States entrepreneurs and United States companies, though of them only X is located in Iowa. The business Y does in the United States constitutes only about 10% of both Y’s revenues and profits. The vast majority of Y’s business is with Asian clients, which are located in numerous countries such as Japan, Singapore, and South Korea. Another small part of Y’s business is with African countries.

To develop and service business clients from the United States, Y has for many years maintained a representative in California. The representative has a small office in San Francisco, though he spends most of his time traveling throughout the United States, often through the “Rust Belt” in search of new clients and to service existing clients. The Rust Belt is the geographic area of the United States in which most of American manufacturing has historically been located, and covers the middle northern states, stretching roughly from Pennsylvania to Illinois. Iowa, which sits on the western border of Illinois, is just outside the Rust Belt. Y’s representative, in traveling between California and the Rust Belt on business, often travels through Iowa by car.

The only time Y’s representative has actually done business in Iowa was when X and Y were considering entering into their business relationship. After X had found out about Y, X contacted Y in China to inquire whether it might be interested in manufacturing his robots, and if so under what terms. For several months, X and Y maintained fairly constant communication between Iowa and China as they discussed their possible collaboration. Once they decided to work together they began negotiating over the terms of a contract. Initially, most of these communications flowed directly between Iowa and China as X and Y sought to finalize the
major terms in the contract. Through this point, the communications between X and Y occurred by telephone, facsimile machine, and electronic mail. Once the major contract terms were agreed upon, Y’s representative in the United States took the lead in communicating with X over finalizing the entire contract. Y’s representative in the United States had a great deal of autonomy in finalizing the contract, though this was because he was very well versed in the range of possible terms that Y would find acceptable and had to clear any departures from this range with Y in China. For example, Y’s representative in the United States was under strict orders from Y in China to never agree to a forum selection clause in any contract entered into with a United States entrepreneur or company. Indeed, no contract that Y had with any United States business partner included a forum selection clause. When finalizing the contract, Y’s representative mostly communicated with X from outside Iowa by telephone, facsimile machine, and electronic mail. The only business-related visit Y’s representative had with X in Iowa was when the contract between X and Y was signed.

A year ago, some robots that X had received from Y and that X then sold to customers in the United States allegedly malfunctioned, causing injuries. As a result, X is named as a defendant in various lawsuits. All of the lawsuits were filed in federal district courts. (Presume that each federal court has subject matter jurisdiction under diversity of citizenship.) The lawsuits all allege similar facts, namely that each robot in question had a defective wax tank that leaked wax onto the floors being mopped, and that as a result the floors became extremely slippery, causing people to fall and injure themselves.

Plaintiff A, an Ohio citizen, filed a lawsuit in Ohio. He alleges that on the day of his wedding, and in Ohio, he fell on a slippery floor that had been mopped by one of X’s robots, knocking out his front teeth. The banquet hall at which A slipped had purchased the robot directly from X.

Plaintiff B, a Florida citizen, filed a lawsuit in Florida. He is an older lawyer who is a partner at a major law firm located in Miami. He alleges that he broke his hip after falling on a slippery lobby floor in the building where his firm is located, and that the floor had been mopped by one of X’s robots. The building had not purchased the robot directly from X. Instead, the building had purchased a used robot from one of X’s other clients located in Georgia.

**Question 1** (35 points; corresponds to approximately 53 minutes)

You are X’s lawyer. X is interested in contesting personal jurisdiction in the Ohio and Florida lawsuits, and in transferring the two cases to a federal district court in Iowa. Advise him on these issues.

**Question 2** (25 points; corresponds to approximately 37 minutes)

X has chosen to bring a new lawsuit in the federal district court in Iowa against Y. You are the federal judge assigned to the case. Analyze whether the federal district court in Iowa can properly assert personal jurisdiction over Y.
Background Facts For Question 3

A sues B for breach of contract. A is a major international film celebrity and B is a major photographer. They had mutually agreed to a photo shoot, and they reduced their agreement to a short written contract. Now, some unauthorized photos of A have appeared in a major retrospective museum show of B’s work, and the photos appear to have been taken in B’s studio during her photo shoot of A.

A is upset that his photos were used in the museum show without his authorization, especially because the photos in the museum appear to be very candid shots of him taken without the makeup and soft lighting that is usual during his photo shoots, and which are used to keep his appearance youthful. He guesses that the museum photos were taken as lighting test shots prior to the start of B’s core photo shoot. Among the allegations that A makes in his complaint are the following:

**BREACH OF CONTRACT**

14. Plaintiff realleges each and every preceding paragraph.

15. A and B had entered into a contract under which A had agreed to be photographed by B at B’s studio.

16. The contract specified, among other terms, the day and location of the photo shoot, and the starting time and length of the photo shoot.

17. Under the contract, A and B had agreed that the exclusive public display of all the photographs taken of A by B at B’s studio would be in a photography spread to appear in a 2007 issue of the magazine Vanity Fair.

18. Upon information and belief, the photographs of A in the museum show were taken during B’s photo shoot of A at B’s studio.

19. The photographs of A in the museum show were displayed without A’s written authorization and in breach of the contract between A and B.

20. The unauthorized display of A’s photographic image has caused A damage in the form of appropriation of his image as well as embarrassment, humiliation, and anguish, and has damaged his image in the film industry.

When A filed his complaint, he did not attach any supporting documents.

**Question 3** (20 points; corresponds to approximately 30 minutes)

You are B’s lawyer and need to respond to A’s complaint. You have spoken to B, who has provided you a copy of the written contract. Your review of the contract shows that the factual allegations in the complaint about the contract and its contents are accurate.
Your interview of B, however, reveals new information. According to B, at the end of the photo shoot she had mentioned to A that her work was going to be displayed in a museum show. He (meaning A) was enthusiastic and supportive about the prospect. B thus asked A whether he would mind having any photos of him from the shoot included in the museum show, to which A gave his oral consent. You remember from your first review of the written contract that it included a clause allowing oral modifications. (Presume that such oral modifications would be legally binding.)

If B wants to adjudicate the case through litigation as quickly as possible, how would you advise him to proceed?