

**BOSTON UNIVERSITY SCHOOL OF LAW  
2008 JOURNAL SELECTION WRITING COMPETITION  
PROCEDURAL INSTRUCTIONS**

The procedural instructions for the 2008 Journal Selection Writing Competition are divided into four parts:

Part I contains general instructions that are applicable to the entire competition.

Part II contains specific instructions for each of the three documents you must submit to complete your writing competition entry. Part II.A contains instructions for the footnote portion; Part II.B contains instructions for the memo portion; and Part II.C contains instructions for the personal information sheet.

Part III contains instructions for submitting your entry. Part III.A. contains instructions for submitting your entry through CourseInfo to each journal. Part III.B contains instructions for submitting a "master copy" by mail.

Part IV contains additional information related to this competition.

**YOU MUST COMPLY WITH ALL OF THE FOLLOWING INSTRUCTIONS. FAILURE TO DO SO WILL NEGATIVELY AFFECT YOUR SCORE ON THE WRITING COMPETITION.**

**PART I. GENERAL INSTRUCTIONS**

The instructions in this part apply to the entire competition.

**A. Before Starting**

Check to make sure that you have all the pages in the packet, numbered from 1 to 231. If you are missing any pages, contact the *Law Review* IMMEDIATELY, by emailing [lawrev@bu.edu](mailto:lawrev@bu.edu).

Also, make sure that you can login to each journal's CourseInfo website – see Part III.A below for instructions on how to access the websites. NOTE that all Courseinfo sites will be down on May 14th and 15th, but will be back up and running on May 16th. On May 16th, please make sure that you can access each journal's website as well as the "Student Dropbox" (click on the "Student Tools" button to the left, and then click the "Student Dropbox" icon) on each journal's website. Email the *Law Review* with your [bu.edu](http://bu.edu) login name at [lawrev@bu.edu](mailto:lawrev@bu.edu) IMMEDIATELY if you receive a message that says "Access Denied: CourseInfo Error 401" or any other error.

**B. Permissible Resources**

**THE ONLY MATERIALS YOU MAY USE ARE: (1) this packet; (2) a standard English dictionary; (3) a standard legal dictionary (e.g. Black's or Barron's); and (4) The Bluebook (18th ed.).**

**UNDER NO CIRCUMSTANCES MAY YOU USE ANY OTHER MATERIALS.** "Other materials" includes, but is not limited to, *Elements of Style* and *Charrow's*. The cases and statutes in this packet may only be read *as they appear in this packet*. Do not read the cases or statutes on Lexis, Westlaw, in case reporters, or anywhere else. Only use the information in this packet. **Use of other materials will result in disqualification.**

**C. Collaboration**

**YOU MUST NOT DISCUSS ANY PORTION OF THE WRITING COMPETITION WITH ANYONE UNTIL AFTER THE COMPETITION ENDS ON MAY 21, 2008.** Collaboration with others regarding any aspect of this competition will result in disqualification and will be reported to the Dean's office.

## **PART II. SPECIFIC INSTRUCTIONS FOR FOOTNOTE PORTION, MEMO PORTION, AND PERSONAL INFORMATION SHEET**

This section contains specific instructions for the three documents you will need to submit to complete your entry. Part II.A contains instructions for the footnote portion; Part II.B contains instructions for the memo portion; and Part II.C contains instructions for the personal information sheet.

### **A. Footnote Portion**

#### **1. GENERAL INSTRUCTIONS**

Your assignment for this sub-part is to fix all errors in the footnotes beginning on page 13. There are 30 footnotes. Many of the footnotes contain multiple errors; some of the errors are extremely subtle. **You will retype the 30 footnotes in a separate document in proper Bluebook format.**

Type up every single footnote. If a footnote is correct, then you should just retype it as it appears. If it is incorrect, then you are to type the footnote as it should have appeared. Make sure you type up the entire footnote, including textual sentences in the footnote that do not have citations in them.

#### **2. TYPEFACE**

You must retype your corrected footnotes in a 12-point "Courier New" font.

#### **3. NUMBERING**

Number the corrected footnotes from 1 to 30. Use regular numerals (1, 2, 3) as opposed to footnote (i.e., superscript) numerals (<sup>1</sup>, <sup>2</sup>, <sup>3</sup>).

#### **4. FORMAT**

Use left justification. There are no margin, lines per page, or double-spacing requirements for this portion of the competition.

#### **5. HEADERS AND FOOTERS**

Right-justify your assigned number in a header. Center-justify a page number in a footer. Your assigned number and page number must appear on every page. There are no font or margin requirements for the header or footer.

#### **6. UNDERLINES VS. ITALICS**

**DO NOT USE ITALICS.** Law Review footnotes tend to use *italics* rather than underlining. However, when you type up the corrected footnotes, if you think text should be italicized, **do not italicize it; underline it instead.**

#### **7. CITATION FORMS**

The Bluebook (18th ed.) contains different rules for citation forms in Law Review footnotes than for citation forms in legal memos. (The inside front cover of the Bluebook provides some examples of correct citation forms in Law Review footnotes; the inside back cover of the Bluebook provides some examples of correct citation forms in legal memos.) **In this section, (unlike the Memo Portion), be sure to follow the rules for citation forms in Law Review footnotes, not legal memos.** Do NOT use Bluepages for this section. The one exception to this rule is that when the Bluebook calls for italics you should instead underline.

**Example 1.** Assume footnote 1 in the attached excerpt reads as follows: John Smith, *This Is Your Brain on Drugs*, 44 B.U. L. REV. 222 (1995).

If you think this footnote is mistake-free then you should type:

1. John Smith, This Is Your Brain on Drugs,  
44 B.U. L. REV. 222 (1995).

**Example 2.** Assume footnote 2 in the attached excerpt reads as follows:  
*See id.* at 223.

If you think this footnote is mistake-free then you should type:  
2. See id. at 223.

**Example 3.** Assume footnote 3 in the attached excerpt reads as follows:  
Dave Thomas, Chicken Is Good, 55 B.U. L. Rev. 333.

If you think there are three mistakes in this footnote (“Chicken Is Good” should be italicized, “B.U. L. Rev.” should be in small caps, and the year of publication should be included), then you should type:

3. Dave Thomas, Chicken Is Good, 55 B.U. L. REV. 333  
(YEAR OF PUBLICATION) .

- **Technical Tip:** The Bluebook (18th ed.) requires certain information in Law Review footnotes to be in SMALL CAPS. (The correct citation for the Boston University Law Review, for example, is B.U. L. REV.; the “EV” is in small caps.) To type in SMALL CAPS in Microsoft Word, click on “Format,” then click on “Font,” then click the box next to “Small Caps.”

#### 8. MISSING INFORMATION

You might determine that a particular sentence in a footnote cannot be corrected without additional information – which you do not have. If that happens, then write a word that substitutes for the information you need. You should only include omitted information when the Bluebook (18th ed.) indicates that the information is necessary. For example: Assume a footnote reads “See Smith v. Jones, 90 U.S. 100, 110.” You notice that there needs to be a year at the end of the citation, but you don’t know what year *Smith v. Jones* was decided and you’re not allowed to look it up. Simply write “See Smith v. Jones, 90 U.S. 100, 110 (YEAR).” It would also be fine to write “DATE” instead of “YEAR” – the precise choice of word or words is not important as long as it’s clear that you know (1) what information is missing, and (2) where it should go.

#### 9. ASSUMPTIONS

You should assume that the author has correctly quoted every source: If there is a spelling mistake in a direct quote then assume that the spelling mistake existed in the original source as well.

You should also assume that the signals the author used in each footnote are correct. While the signals themselves may require editing for Bluebook compliance, the particular type of signals chosen for the sources in each footnote should not be changed.

#### 10. NOTE ABOUT GRADING

You will receive points for each error you correct; you will lose points for introducing new errors. As such, only make edits that are necessary to correct for spelling, grammar, and compliance with the Bluebook (18th ed.).

#### B. Memo Portion

The following are the page limit and formatting rules for the Memo Portion. They do not apply to the Footnote Portion. The materials for the Memo Portion, including substantive instructions for the Memo Portion, start on page 16 and continue to the end of this packet. Recognize that these instructions might be different than those you learned in your 1L writing class.

##### 1. PAGE LIMIT

Your memo must not exceed ten pages. If your memo exceeds ten pages, it will not be read.

##### 2. TYPED

Your memo must be typed.

### 3. HEADINGS

You should use a standard memorandum heading at the top of your memo similar to the one as shown on page 16 of this packet (including the Court, Memorandum, To, From, Re, and Date). All other headings are optional.

### 4. SPACING

The body of your memo must be double-spaced. There are two exceptions to this rule:

- a. Cite block quotations in accordance with the Bluebook (18th ed.), Rule 5.1(a), p. 68.
- b. Headings may be single-spaced.

**Note:** Issues and brief answers are part of the body of your memo and must be double-spaced.

### 5. FONT

You must type your memo in 12-point "Times New Roman" font. Note that this is a different font than what is required in the Footnote portion.

### 6. MARGINS AND JUSTIFICATION

a. **Margins:** You must have one-inch margins on the left, right, top, and bottom of each page – exclusive of the header and footer (see Part II.B.7 below).

b. **Justification:** Your memo must be left justified. The only exceptions are for block quotations in accordance with the Bluebook (18th ed.), Rule 5.1(a), p. 68, and the main heading at the top of your memo. This means that all other headings (if you choose to use them), issues, and brief answers should be left justified. There are no restrictions on indenting paragraphs, issues, or brief answers.

### 7. HEADERS AND FOOTERS

a. **Header:** Right-justify your assigned number in a header. Your assigned number must appear on every page of your memo (in the top right corner of the page).

b. **Footer:** Center-justify your page number in a footer. A page number must appear on every page of your memo (at the bottom of the page in the center).

c. **Font and Margin:** There are no font or margin requirements for the header or footer. However, the header and footer must be typed, **not** hand-written.

### 8. UNDERLINES VS. ITALICS.

**DO NOT USE ITALICS.** If you think that certain text should be put in *italics*, (e.g. the title of a Law Review Article), underline it instead.

### 9. CITATION FORMS.

The Bluebook (18th ed.) contains different rules for citation forms in legal memos than for citation forms in Law Review footnotes. (The inside back cover of the Bluebook provides some examples of correct citation forms in legal memos; the inside front cover of the Bluebook provides some examples of correct citation forms in Law Review footnotes.) **In this section, (unlike the Footnote portion), be sure to follow the rules for citation forms in legal memos, not Law Review footnotes.** Consult the Bluepages on p. 3 of your Bluebook. For example, you must present citations in the text of your memo (**do not use footnotes for citations or any other purpose**). Again, however, do not italicize any text; if there is any text that you think should be italicized, underline it instead.

The materials in this packet reference other resources for which you do not have the full source. **You may not consult the full source.** If you wish to cite these materials, you must (1) cite them only as a secondary source, and (2) cite only that portion of the resource cited in the permissible materials. Should you wish to cite a secondary source not fully cited in the permissible materials, include the word CITATION where the missing information should have been included.

**Example 1:** Assume the packet includes a case called *Johnson v. State*, 100 F.3d 100 (13th Cir. 2002), which states the following on page 101:

Some courts have said to read these instructions carefully. *See, e.g., Smith v. Jones*, 200 F.3d 200, 201 (14th Cir. 2002) (“It is a good idea to carefully read the instructions.”).

Your only permissible citation of that quote would be in the following form:

We should “read these instructions carefully.” *Johnson v. State*, 100 F.3d 100, 101 (13th Cir. 2002) (citing *Smith v. Jones*, 200 F.3d 200, 201 (14th Cir. 2002)).

The following citation would **NOT** be permissible (because it uses *Jones* as a primary source rather than as a secondary source):

One court has observed that it is “a good idea to carefully read the instructions.” *Smith v. Jones*, 200 F.3d 200, 201 (14th Cir. 2002), quoted in *Johnson v. State*, 100 F.3d 100, 101 (13th Cir. 2002).

**Example 2:** Assume the packet includes a case called *Thomas v. State*, 300 F.3d 300 (13th Cir. 2002), which states the following on page 301:

One court has noted that “the circuits are divided.” *Edwards v. Brown*, 400 F.3d 400, 401 (14th Cir. 2002).

Your only permissible citation of that quote would be in the following form:

It is clear that “the circuits are divided.” *Thomas v. State*, 300 F.3d 300, 301 (13th Cir. 2002) (quoting *Edwards v. Brown*, 400 F.3d 400, 401 (14th Cir. 2002)).

**Example 3:** Assume the packet includes a *Law Review* article called Homer Simpson, *I Can’t Believe It’s Not Butter!*, 83 B.U. L. Rev. 435 (2005), which states the following on page 438: “*Smith v. Wesson* held that butter is better than margarine.”

Your only permissible citation would be in the following form:

One court preferred butter to margarine. Homer Simpson, *I Can’t Believe It’s Not Butter!*, 83 B.U. L. Rev. 435, 438 (2005) (citing *Smith v. Wesson*, CITATION).

### **C. Personal Information Sheet.**

The Personal Information Sheet is located on pages 10 and 11. Instructions for completing this form are contained on the Personal Information Sheet.

## **PART III. INSTRUCTIONS FOR SUBMITTING YOUR ENTRY**

This part contains instructions on how you should submit your writing competition entry.

You will submit **three** files:

1. Footnote Portion (see Part II.A).
2. Memo Portion (see Part II.B).
3. Personal Information Sheet (see Part II.C).

You will submit each of these files in **two** formats:

1. Online through each journal's CourseInfo website (see Part III.A below for instructions).
2. Hardcopies sent to the *Law Review* (see Part III.B below for instructions).

**A. Submitting Your Entries to Journals Through CourseInfo**

For each journal you would like to apply to, you will need to upload all three of the files listed above to that journal's CourseInfo website by 11:59pm EDT on Wednesday, May 21, 2008. **Late submissions will not be considered. Each file you submit through CourseInfo must be in pdf format.**

**1. CONVERTING EACH WORD PROCESSOR DOCUMENT TO A PDF DOCUMENT**

a. Create one word processor document for **each** file. For example, any documents created using Microsoft Word are "word processor" documents. If you are unsure of whether you are using a suitable word processor program for completing the writing competition, email the *Law Review* at lawrev@bu.edu.

b. Go to <http://www.pdfonline.com/> and follow the online instructions for converting your word processor document into pdf format. **Do NOT use downloadable software or the "Print to PDF" option in your word processor.** If you use downloadable software or the "Print to PDF" option in your word processor, some identifying information might be stored in the document's metadata. **If ANY identifying information is contained within your document (in the metadata or otherwise) you will be disqualified** (see Part IV.B below). To check if the pdf versions of your documents contain identifying information:

- i. For PC users: right-click on the document and left-click on "Properties" (which should be the last option). Click the "PDF" tab. The "Title," "Author," "Subject," and "Keywords" fields should be empty.
- ii. For MAC users: single-click on the document. Click "File," and then "Get Info." (You can also single-click on the document and press "open-apple I.") Click on the triangle to the left of "More Info:" – the creator field should read "easyPDF SDK 4.3," or something else that cannot identify you as the author.

c. If <http://www.pdfonline.com/> is not working, we suggest using <http://www.freepdfconvert.com/>. There are numerous online methods for converting word processing documents into a pdf format. Regardless of the method you use to convert your word processing document to a pdf format, you should make sure that the document **does not contain any identifying information** within the metadata.

**2. NAMING YOUR FILES**

Each file's name must conform to the following format:

**Document Type\_XXX**, where Document Type for each of the files should be as follows:

- Footnote Portion = Footnote
- Memo Portion = Memo
- Personal Information Form = Personal

and XXX is your assigned number.

**For example**, if your assigned number is 967, you should name each of your files as follows:

- Footnote\_967
- Memo\_967
- Personal\_967

To create the "\_" (called an "underscore") between "Document Type" and "XXX" in your file name, you can hold down the Shift key and press the key to the right of the number zero key.

**PLEASE ENSURE YOUR FILES ARE NAMED APPROPRIATELY AND ARE IN PDF FORMAT BEFORE UPLOADING THEM.**

### 3. UPLOADING YOUR FILES

For each of the journals you would like to apply to:

- a. Go to <http://courseinfo.bu.edu/08sprglaw.html>, and login into the appropriate CourseInfo website.
  - i. For *Law Review*, login to "BUSL Writing Competition 2008 – Law Review (Spring 2008)" (the website has black buttons).
  - ii. For the *American Journal of Law and Medicine*, login to "BUSL Writing Competition 2008 - American Journal of Law and Medicine (Spring 2008)" (the website has red buttons).
  - iii. For the *International Law Journal*, login to "BUSL Writing Competition 2008 - International Law Journal (Spring 2008)" (the website has brown buttons).
  - iv. For the *Journal of Banking and Finance Law*, login to "BUSL Writing Competition 2008 - Review of Banking and Finance Law (Spring 2008)" (the website has green buttons).
  - v. For the *Journal of Science and Technology Law*, login to "BUSL Writing Competition 2008 - Journal of Science and Technology Law (Spring 2008)" (the website has gray buttons).
  - vi. For the *Public Interest Law Journal*, login to "BUSL Writing Competition 2008 - Public Interest Law Journal (Spring 2008)" (the website has orange buttons).
- b. Click the "Student Tools" button.
- c. Click the "Student Drop Box" icon.
- d. Select the pdf file containing your personal information - it should be titled "Personal\_xxx" where the "xxx" is your 3 digit assigned number - by clicking on the "browse" button and selecting the correct file.
- e. Give the submission a "Name of Link to File" IDENTICAL to the file name under which you saved the submission on your computer. For the above example, the name of the link would be "Personal\_xxx" where "xxx" is your assigned number.
- f. Click "Send File to Instructor."
- g. Repeat steps d-f for the footnote portion and the memo portion.
- h. Repeat steps a-g for each journal you would like to apply to.

**NOTE:** Please be patient when uploading your pdf documents to CourseInfo. It may take several seconds for a document to upload. Do NOT click submit twice. If the document uploads twice, you must email Law Review at [lawrev@bu.edu](mailto:lawrev@bu.edu) immediately. Please also make sure that you are logged onto CourseInfo under **your own** username. If you are logged on under someone else's username when you upload your pdf documents, you must email Law Review at [lawrev@bu.edu](mailto:lawrev@bu.edu) immediately.

The CourseInfo website can handle a significant amount of web traffic; we do not expect any problems with the website. Nevertheless, intermittent connectivity and server issues can arise and the CourseInfo site may be inaccessible for short periods of time. Also, your internet access might have connectivity issues of its own. It is **YOUR** responsibility to upload ALL of the files by the deadline. We will NOT extend the deadline or accept late submissions, except for a system-wide failure of the CourseInfo website. We strongly encourage you to upload your entry well before the deadline so as to avoid any connectivity or server issues. In the event of a system-wide failure (which is very unlikely to occur), you will receive an email detailing alternate instructions.

You must upload the same entry to each journal. There can be no discrepancy between the documents you submit to each journal and the hard copy you mail to the *Law Review*.

#### **B. Submitting Your "Master Copy" by Mail**

You must mail a "Master Copy" of your entry in ONE package through U.S. or Canadian mail. You must use First Class or Priority Mail. You may not use Metered Mail or Book Rate Mail. You **may not** use delivery services (e.g. Federal Express) for entries mailed from within the U.S. or Canada. Send the package to:

**Boston University *Law Review***  
765 Commonwealth Avenue  
Boston, MA 02215.

You may use a return address on the envelope.

Your entry must be postmarked by a U.S. or Canadian Post Office **on or before May 21, 2008**. If an entry is postmarked later than May 21, 2008, it will not be considered. Note that a Pitney-Bowes postage stamp is not a postmark, and the relevant date will be the one used by an official post office. We recommend that you request an official receipt from the post office noting your postmark date. **People who wish to mail entries from abroad (excluding Canada) should notify the *Law Review* as soon as possible, and must notify the *Law Review* prior to mailing their entry, by emailing [lawrev@bu.edu](mailto:lawrev@bu.edu).** We will only accept international entries from delivery services that can provide delivery within a reasonable time (e.g. Federal Express, UPS, DHL).

Your "Master Copy" should contain one copy of each of the following:

1. Footnote Portion
2. Memo Portion
3. Personal Information Sheet

Do **NOT** staple your entry. Please use a paper clip.

Your "Master Copy" must be **EXACTLY** the same as what you uploaded through CourseInfo to each of the journals. All procedural requirements from Part II apply to the "Master Copy."

## **PART IV. ADDITIONAL MATTERS**

### **A. Emergency Extensions**

The deadline is firm. We will consider granting an extension only in the event of a serious emergency. If an emergency arises, you must contact the *Law Review* immediately by email ([lawrev@bu.edu](mailto:lawrev@bu.edu)) on or before May 21, 2008. The *Law Review* will grant extensions at its discretion.

### **B. Blind Grading**

Aside from your assigned number, do not place any identifying marks anywhere on (or in the metadata of) your entry except those required on the Personal Information Sheet. **All journals use a blind grading system.**

### **C. Evaluation of Submissions**

Each journal will evaluate your competition entry independently and will apply its own membership criteria.

### **D. Notification of Competition Results**

All competition participants will be notified of the results by **July 16, 2008**, even if they have not been accepted by a journal. If you have not heard anything by July 16, 2008, email the *Law Review* at [lawrev@bu.edu](mailto:lawrev@bu.edu). Please do not contact the *Law Review* concerning the results of the writing competition before July 16, 2008. **Also, please do not contact the Dean's Office.** The *Law Review* and other journals at Boston University are completely student-run. As such, the Dean's Office does not have any information regarding this competition and it will not be able to answer any of your questions.

### **E. Email Address and Phone Number Changes**

If the contact information you provide on the Personal Information Sheet changes before notification of competition results, please notify the *Law Review* by email at [lawrev@bu.edu](mailto:lawrev@bu.edu). The *Law Review* will forward any new information to each journal to which you submit an entry, but we encourage you to notify them as well.

### **F. Questions**

If you have a procedural question about the competition in general, contact the *Law Review* by email at [lawrev@bu.edu](mailto:lawrev@bu.edu). We will respond to appropriate questions within 24 hours. No email answers will supersede the rules set forth in these instructions. The resolution of any disputes will come from these instructions. **Again, please do not contact the Dean's Office.**

### **G. Dues**

All journals require that their members pay annual dues, primarily to cover the costs of providing amenities to members. The amount of these dues is determined by each journal independently.

**BOSTON UNIVERSITY SCHOOL OF LAW**  
**2008 JOURNAL SELECTION WRITING COMPETITION**  
**PERSONAL INFORMATION SHEET**  
(Page 1 of 2)

**THIS DOCUMENT WILL BE EMAILED TO YOU ON WEDNESDAY MAY 14th.**  
Please fill out and upload the electronic version of the Personal Information Sheet to each journal's Courseinfo site that you would like to apply to. Uploading instructions can be found on page 7 of this packet.

By submitting this form, you stipulate that the following statements are **TRUE**.

1. My submission is entirely my own work.
2. I have not consulted any materials other than a standard English dictionary, a standard legal dictionary, the Bluebook (18th ed.), and the materials contained within this packet (as they appear in this packet).
3. I have not consulted with any other person during the competition with regard to any matter connected with the competition.
4. I have complied with **all** of the instructions set out in this packet.

Please fill out the following information:

NAME :

ASSIGNED NUMBER:

PHONE NUMBER (Mid-July):

E-MAIL ADDRESS (Mid-July):

**BOSTON UNIVERSITY SCHOOL OF LAW  
2008 JOURNAL SELECTION WRITING COMPETITION  
PREFERENCE LIST  
PERSONAL INFORMATION SHEET  
(Page 2 of 2)**

Please rank the following journals in order of your preference by ranking them 1 through 6. Rank: "1" being your first choice, "2" being your second choice, and so on. You do not need to rank all of the journals. Rank only those journals that you want to consider you for membership. (If you do not want to rank a particular journal, simply leave it blank.) Be sure to upload your entry to each journal's CourseInfo website that you rank.

If you wish to be considered for membership on the *Law Review*, you **MUST** rank **Law Review as your first choice**. You **WILL NOT** be considered for *Law Review* membership if you do not rank *Law Review* first and complete the competition in good faith. This rule applies even if your class rank would otherwise result in automatic selection to the *Law Review* (i.e., top three students in each first-year section).

- Boston University Law Review..... \_\_\_\_\_
- American Journal of Law & Medicine:..... \_\_\_\_\_
- International Law Journal..... \_\_\_\_\_
- Journal of Science & Technology Law..... \_\_\_\_\_
- Public Interest Law Journal..... \_\_\_\_\_
- Review of Banking & Financial Law..... \_\_\_\_\_

## ACADEMIC CREDIT FOR JOURNAL WORK

Please note that the faculty has recently approved awarding 2 academic credits per year for 2L members on all journals who complete satisfactory work over the course of the year, including completion of a Student Note. More details regarding credit will be given to you upon selection to a journal.

However, please note that unlike the other journals the *Review of Banking and Financial Law* does not require its members to complete a Student Note until 3L year. As such, the system for giving credit to those who have satisfactorily completed 2L requirements on the *Review of Banking and Financial Law* also depends on satisfactory completion of a 3L note. ALL journal members must satisfactorily complete a Student Note in order to receive academic credit; the timing of the evaluation is simply different for members of the *Review of Banking and Financial Law*. Because of the difference in timing there is a remote possibility that 2L credit may be retroactively revoked 3L year for members of that journal if a Note is not satisfactorily completed that year. The *Review of Banking and Financial Law* does not expect this to become an issue, but if you have specific concerns about this, you may contact the journal at [rbfl@bu.edu](mailto:rbfl@bu.edu).

**BOSTON UNIVERSITY SCHOOL OF LAW**  
**2008 JOURNAL SELECTION WRITING COMPETITION**  
**FOOTNOTE PORTION**

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On the following pages you will find footnotes from an unpublished Student Note. Though you do not have the text of the Note, the footnotes are numbered as they are in the Note. For instructions on how to complete these sections of the writing competition, please see Parts II.A in the procedural instructions.

1. See, *Lindsay Corp. of America v. Lohan, Inc.* 464 U.S. 417, 442 (1984) ("The sale of copying equipment does not constitute contributory infringement if the product is...capable of substantial noninfringing uses").
2. See, *Cady v. Heron, Ltd.* 545 U.S. 913, 913 (Holding that "[o]ne who distributes a device with the object of promoting its use to infringe copyright is liable for resulting acts of infringement by third parties.")
3. *Lindsay*, 464 U.S. at 445 (1984).
4. See, e.g., Regina George, Reassessing the Fair Use Doctrine, 101 HARVARD L. REV. 1659, 1670-1676 (1988); Karen Smith, Balancing Digital Copyright Infringement and Technological Innovation, 56 L. & CONTEMP. PROBS. 1345, 1346, 1351 (2004); M. R. Duvall, Note, Searching For Intent-Based Doctrines of Indirect Liability in Copyright Law, 106 COLUM. L. REV. 909, 922 (2006); Gretchen Weiners, Intellectual Property, Substantive Due Process and Lochner v. New York's de facto Demise, 55 U.C.L.A. L. REV. 143, 145-147 (2007)
5. "The Congress shall have the power...to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. CONST. art. I, sec. 8, cl. 8.
6. *A&M Records, Inc. v. Casablanca Records*, 334 F. 3d 643, 644 (7<sup>th</sup> Cir. 2003)
7. *Black's Law Dictionary* 993 (8th edition, 1999)
8. See, e.g., *Steph v. Kuo*, 716 NE.2d 114 (N.Y. 1999); *Aaron v. Samuels*, 11 SW.3d 19 (Tex. Ct. App. 2000); *Beyer v. McWhorter*, 32 P.3d 192 (Cal. 2001)
9. See generally, Sarah Unger, Rumors, in 3 A LITTLE MORE PERSONAL 96 (Erik Jensen tran., 1999).
10. See, *A&M Records*, 334 F. 3d 643 at 660. For an overview of the facts in *A&M Records*, see Katie Holloway, Sharing or "Stealing," NY Times, February 24, 2002 at A2; Hannah

- Turner, A&M Sues Casablanca, WASHINGTON POST, February 26, 2002 at A11.
11. See, YVONNE M. WILLIAMS, THAT IS SO FETCH: DRAWING THE DISTINCTION BETWEEN FAIR USE AND INFRINGEMENT 24-26 (2007) (hereinafter WILLIAMS, THAT IS SO FETCH). For a related discussion see YVONNE M. WILLIAMS, WHY ORANGE IS NOT THE NEW PINK 123.
  12. A. Peter Jaskievic, Lindsay Lohan Graduates From Harvard Law School, US WEEKLY, Jul. 2, 2007.
  13. Thomas R. Sutcliffe, Note, The Georgia Rule: Secondary Liability After Georgia v. Wilcox, 88 BU L. REV. (forthcoming in Oct. 2008)
  14. In Geoff v. Atkins (2002 Mass App. Div. 617, 629 (2002) (citing Achal Engineering v. Oza Corp, 1020 N.E.2d 677, 682 (Mass 1999)) (Judge Sauer dissenting)), judge Sauer argued that the benefit of being able to survive a nuclear war outweighed the benefits of having windows and adequate climate control. The majority opinion, however, expressly disagreed with judge Sauer's analysis. Id. at 624 n. 2.
  15. Bret A. Finkelstein, Just My Luck: Disaster at Sea, TUL. MARITIME L.J. 206 (2008)
  16. For more information on this subject, see Interview with Stewart T. Moran, Editor-in-Chief, BU L. Rev., in Boston, MA (April 22, 2008).
  17. Competition and the Future of Digital Music: Hearing Before the Antitrust Task Force of the House Comm. on the Judiciary, 110<sup>th</sup> Cong. 18 (Statement of Samantha Ronson, CEO, Casablanca Records)
  18. WILLIAM M. LANDES AND RICHARD A. POSNER, AN ECONOMIC THEORY OF INTELLECTUAL PROPERTY LAW 27-34 (Jill Hamers, Bettie Locke and Alice Allen eds. 2003).
  19. Symposium, Beyond Microsoft: Antitrust, Technology and Intellectual Property, BERK. TECH. L.J. 213 (2001).
  20. WILLIAMS, THAT IS SO FETCH, supra note 11, at 45 ("And on the third day the Remington bolt-action rifle was create (sic) so that man could fight the dinosaurs").
  21. Ben Strawn, Confessions of a Broken Heart, in 3 A LITTLE MORE PERSONAL, supra note 8, at 342, 356.
  22. See infra footnotes 187, 192-96 and accompanying text.
  23. LANDES AND POSNER, supra note 18, at 82
  24. RESTATEMENT (2ND) OF TORTS § 222 cmt. c, illus. 1 (1965).
  25. Id. at § 223.
  26. See, G.A. Res. 62/1, ¶ 22, United Nations Document A/RES/62/1 (Sept. 26, 2007).
  27. Lindsay, 464 U.S. at 444 (1984).
  28. Id.
  29. See, 1 CORINTHIANS 13:13.

30. Consider the following hypothetical. A, who has limited vocabulary, uses the phrase "that's hot" repeatedly. Over time the public comes to associate the phrase with A. B, who is catty and yet uncreative, decides to start using the phrase "that's hot" as well, and is quoted as saying such in a weekly gossip magazine. A sues B, claiming that A holds a copyright and that B has infringed it. A does not have a valid claim against B because phrases are not copyrightable. See 17 U.S.C. § 102 (2000).

**BOSTON UNIVERSITY SCHOOL OF LAW  
2008 JOURNAL SELECTION WRITING COMPETITION  
MEMO PORTION**

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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS  
MEMORANDUM**

TO: New Law Clerk  
FROM: Judge Hamers  
RE: John "Vicky" Johnson v. Boston Area Ducks; Charlie MacKenzie v. Boston Area Ducks  
DATE: May 14, 2008

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Congratulations on finishing your first year of law school! Welcome to your summer at the Federal District Court for the District of Massachusetts.

I am presiding over the cases of John "Vicky" Johnson v. Boston Area Ducks and Charlie MacKenzie v. Boston Area Ducks. The two cases have been consolidated because they involve common questions of fact. All three parties have stipulated to all of the facts as described below. The parties have also agreed to a bench trial. Thus, the parties have agreed to let me determine their claims based on the facts as stipulated and the applicable law. Defendant Boston Area Ducks (hereinafter "BAD") has filed a motion for summary judgment in the Johnson case and a motion to dismiss for lack of subject matter jurisdiction in the MacKenzie case.

Your assignment is to write a legal memorandum regarding the issues raised by the Defendant in its motions. Enclosed you will find **all** the materials you will need to develop your analysis. **No outside research is allowed.** You are, however, allowed to consult a legal dictionary such as *Black's* or *Barron's* in order to familiarize yourself with the relevant legal terms. I would like you to limit the analysis in your memo to the issues I describe below.

Defendant BAD has moved for summary judgment on John "Vicky" Johnson's (hereinafter "Vicky") Jones Act claim. BAD argues that Vicky is not a "seaman" within the meaning of the Jones Act, 46 U.S.C.A. § 30104 (2007), and the Supreme Court's interpretation thereof in Chandris, Inc. v. Latsis, 515 U.S. 347 (1995). Thus, BAD argues that Vicky does not qualify for the Jones Act remedies that he is seeking. Jurisdiction is **not** at issue in Vicky's Jones Act claim and should not be discussed in your memo.

Defendant BAD has moved for dismissal under Fed. R. Civ. P. 12(b)(1) on Charlie MacKenzie's (hereinafter "Charlie") tort claim. Charlie's tort claim is that BAD intentionally contaminated the food it served him while he was a passenger on BAD's duck boat tour of Boston. That tortious act resulted in Charlie getting food poisoning and hypothermia. Charlie claims he incurred significant medical expenses as a result of this tort for which he seeks compensatory damages. Charlie has asserted federal admiralty jurisdiction under 28 U.S.C. § 1333(1) (2000). BAD claims there is no admiralty jurisdiction in this case, and thus the case must be dismissed.<sup>1</sup> BAD argues that Charlie has failed to meet the admiralty jurisdiction requirements of § 1333(1) as construed by the Supreme Court in Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527 (1995).

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<sup>1</sup> There is no alternative basis for federal subject matter jurisdiction in this case. No other bases of federal jurisdiction should be considered in your memo.

Accordingly, the two issues you should discuss in your memorandum are:

- 1) Does Vicky qualify as a Jones Act "seaman"?<sup>2</sup>
- 2) Does Charlie's tort claim (as described above) satisfy the requirements of federal admiralty jurisdiction under 28 U.S.C. § 1333(1) (2000)?

Several federal courts have addressed these questions in recent cases. I am interested in your analysis of how you think the case law applies to the two instant cases. Remember that we are bound by only U.S. Supreme Court and First Circuit opinions. But I am also interested in other federal cases that may be persuasive. I have included in this packet some cases and statutes that you may (or may not) find useful for developing your analysis. **You should address only the two issues described above.** I look forward to reading your memo. Thanks – and good luck!

Sincerely,



Judge Jill Hamers

District Judge  
U.S. District Court for the District of Massachusetts

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<sup>2</sup> The language of the Jones Act is included in your packet of materials. The Jones Act provides a number of remedies for "seamen" that are not available to other types of workers. The details of those remedies and other aspects of the Jones Act are not important for the purposes of your memo. The only issue you should consider is whether Vicky qualifies as a "seaman" within the meaning of the Jones Act and related caselaw.

## JUDGE HAMERS'S INSTRUCTIONS FOR WRITING YOUR MEMO

Keep your analysis clearly focused on the facts provided below and the issues set out above. Remember that this memo is limited to **ten pages**. You are not to exceed that limit. Please organize the memorandum as follows:

- 1) **Facts:** Present the relevant facts of this case based on the facts provided. Be as succinct as possible. You do not need to cite to the statement of facts or Figure 1.
- 2) **Issues:** Give a short description of the issues you will address. **DO NOT** raise any issues beyond those that I have explicitly told you to discuss in this memo. Address **both** of the issues separately and in full, even if your conclusion on any one would preclude full discussion of the other.
- 3) **Brief Answer:** Provide a summary of the conclusions you have reached.
- 4) **Discussion:** Discuss the case law that you consider relevant to your analysis. Apply that case law to the facts of this case. In doing so, keep in mind the weight of external authorities. Although this court is bound only by U.S. Supreme Court and First Circuit Court cases, I am interested in the reasoning and considerations that other courts have used in deciding similar cases.

See Part II.B.3. of the instructions for rules on using headings. Organize your discussion based on *your own judgment* of the best way to present your analysis. There is no requirement that you address the issues in the order I have presented them.

- 5) **Conclusion:** I am interested in your conclusions regarding the Defendant's motions.

\*\*\*Remember that in this portion of the writing competition, you should follow the rules for citation forms in legal memoranda (i.e., see Bluebook pg. 3). This means, for example, that you must present citations in the text of your memo. **Do not use any footnotes**. Again, however, underline anything that you think should be italicized. See page 4 of the general instructions for additional formatting instructions.\*\*\*

## FACTS

This case arises from a duck boat tour of Boston on May 15, 2007 that went terribly wrong. The pertinent parties are Plaintiff Charlie MacKenzie (hereinafter "Charlie"), a passenger on the duck boat; Plaintiff John "Vicky" Johnson (hereinafter "Vicky"), the captain or "ConDUCKtor" of the duck boat; and Defendant Boston Area Ducks (hereinafter "BAD"), a company which operates duck boat tours in the city of Boston.

### BAD

BAD is a company which gives so-called "duck tours" of Boston. Passengers ride in an authentic, renovated World War II amphibious landing vehicle known as a duck boat. Driving the vehicles are "ConDUCKtors," who also narrate the tour. The duck boat takes its passengers by all the places that make Boston the birthplace of freedom and a city of firsts, including the golden-domed State House, Bunker Hill, Boston Common, and more. The ConDUCKtor gives the passengers lots of little known facts and interesting insights about the city.

Part way through the tour, the duck boat is driven right into either the Charles River or Boston Harbor to continue the tour in the water. During the winter months, the duck boats enter directly into Boston Harbor near Boston's North End neighborhood. They cannot take the duck boat into the Charles River from late November until late April because of the river's tendency to freeze over during the winter months. During the rest of the year, the duck boats enter the Charles River near the Esplanade and then go downriver, through a set of locks, and into Boston Harbor. The duck boats cruise around only a limited part of Boston Harbor so as to avoid other commercial boat traffic heading out into the Atlantic Ocean. The duck boat then returns to land, finishing at the Prudential Center where it began. See Figure 1 for a map of Boston which references the above mentioned locations. For all tours, fifty percent of the tour takes place on land while the other fifty percent takes place on water.

BAD operates a fleet of eight duck boats that they rent from eight separate World War II memorabilia collectors. The eight individual owners (hereinafter "owners") of the duck boats are C. Lathrop, P. Zalzal, T. Zupancis, A. Oza, M. Bomba, J. Vigliotti, S. Collamore, and T. Sutcliffe. Because of the uniqueness of the duck boats, the owners have placed certain restrictions on BAD's authority to operate the duck boats and reserved certain rights for themselves. These restrictions and reservations are included in BAD's contracts with the owners and include the following:

- BAD shall hire and maintain a staff sufficient to operate all eight duck boats.
- BAD shall pay a percentage of revenues earned from duck boat tours to each owner.
- Each owner can name and decorate their boat how they choose.
- Each owner can require BAD to operate certain "special tours." For such special tours:
  - The owner can change the standard tour price charged to passengers.
  - BAD will supply customers with certain additional amenities at the owner's request.
  - The owner is responsible for all additional costs.
- All other operating decisions, including employment decisions, are left exclusively to BAD.

BAD also employs a catering staff which prepares all of the food that is served on the duck boat tours. The catering department does all its cooking in their kitchen located in the basement of the Prudential Center. Noemi is the Executive Chef and oversees all catering activities. All other catering employees work in teams of six. The only team that is relevant to this case is known as "Team AE." Team AE is led by Chef Rob and includes five other dedicated cooks: Dave, Joe, Lauren, Regina, and

Yvonne. The members of Team AE have become good friends over the years. Back in March 2007, Team AE requested to have the night of May 14 (the night before the events surrounding this case) off so they could watch the season finale of their favorite TV show, Top Chef. Executive Chef Noemi initially informed them they could have the night off, but on May 13, Noemi informed Chef Rob that Team AE needed to work May 14 after all.

An irate Team AE decided they had been pushed around by Noemi and BAD for the last time. Deciding to quit and eager to get revenge, the team agreed to intentionally botch their last assignment. That last assignment was to prepare haggis<sup>3</sup> for a special tour in honor of National Poetry Month to take place the following day, May 15. In preparing the haggis, Team AE used expired products, intentionally cross-contaminated raw foods, and did not wash their hands before handling the ingredients.

### Vicky

Vicky is one of many employees of BAD and has worked for BAD for two years. Vicky began his tour guide career at the famous Alcatraz prison in San Francisco. He was fired from that job for frightening tour patrons with stories of prisoner Machine Gun Kelly's penchant for, in not so pleasant terms, unkind treatment of his fellow prisoners. After Alcatraz, Vicky got his ConDUCKtor career started at Ride a Duck of San Francisco (hereinafter "RAD"). During his first two years at RAD, Vicky performed several duties. He sold tickets, did promotional activities around the RAD-passenger loading area to try and encourage passersby to buy tickets, and performed maintenance and janitorial duties. After two years, he was promoted to ConDUCKtor. After another three years, he abruptly quit RAD, picked up and moved to Philadelphia, where he was hired by Ducks of Philadelphia, Etc. (hereinafter "DOPE") as a ConDUCKtor. After four years of employment at DOPE, Vicky again quit and moved, this time to Boston. Upon arriving in Boston, Vicky applied to work for BAD. BAD was skeptical given Vicky's prior history of abruptly quitting his jobs, but they gave him a shot. BAD, however, would not let Vicky work exclusively as a ConDUCKtor. BAD liked to cross-train their employees so that they were familiar with the various parts of the duck boat operation.

Vicky spends an equal amount of time working for each of the eight duck boats. BAD, as part of normal record-keeping procedures, has kept data on how often Vicky performed particular job functions for each of the eight duck boats. They provided the following chart:

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<sup>3</sup> Haggis is a traditional Scottish dish. There are many recipes, most of which have in common the following ingredients: sheep's 'pluck' (heart, liver and lungs), minced with onion, oatmeal, suet, spices, and salt, mixed with stock, and traditionally boiled in the animal's stomach for approximately three hours.

|   | ConDUCKtor <sup>a</sup> | Ticket Sales <sup>b</sup> | Promotional <sup>c</sup> | Other <sup>d</sup> |
|---|-------------------------|---------------------------|--------------------------|--------------------|
| <b>C. Lathrop</b>   | 91%                     | 4%                        | 4%                       | 1%                 |
| <b>P. Zalzal</b>  | 75%                     | 10%                       | 13%                      | 2%                 |
| <b>T. Zupancis</b>  | 79%                     | 8%                        | 10%                      | 3%                 |
| <b>A. Oza</b>   | 29%                     | 39%                       | 29%                      | 3%                 |
| <b>M. Bomba</b>   | 47%                     | 22%                       | 28%                      | 3%                 |
| <b>S. Collamore</b>   | 37%                     | 24%                       | 36%                      | 3%                 |
| <b>T. Sutcliffe</b>   | 58%                     | 18%                       | 22%                      | 2%                 |
| <b>J. Vigliotti</b>   | 68%                     | 10%                       | 20%                      | 2%                 |
| <b>Average</b>  | 61%                     | 17%                       | 20%                      | 2%                 |
| <sup>a</sup> This time is spent actually operating the duck boat and giving duck tours to passengers.   |                         |                           |                          |                    |
| <sup>b</sup> This time takes place at the ticket booth at the Prudential Center   |                         |                           |                          |                    |
| <sup>c</sup> This time takes place around the Prudential Center. It consists of trying to persuade potential passengers to buy tickets.   |                         |                           |                          |                    |
| <sup>d</sup> This time takes place around the Prudential Center. It consists of preparing for duck tours, cleaning up after duck tours, performing maintenance on the duck boats, and other administrative tasks. |                         |                           |                          |                    |

### Charlie

Charlie and Harriet MacKenzie, in celebration of their fifteenth wedding anniversary, decided to visit Boston in May of 2007. The MacKenzies came to Boston from their home in San Francisco where Harriet is employed as a butcher and Charlie is a beat poet. Being big fans of all things poetic, particularly the great Scottish poet Robert Burns, they wanted to visit the hometown of such great poets as E.E. Cummings, Ralph Waldo Emerson, Robert Frost, Sylvia Plath, and Edgar Allan Poe, to name a few.

May 15, 2007 was an unseasonably cold day in Boston. Upon arriving in Boston for their fifteenth anniversary, Charlie and Harriet decided they needed to get a good lay of the land. While walking down Boylston Street, they began hearing the sound of quacking ducks. To their surprise, a BAD operated duck boat passed by filled with zealous Boston tourists making quacking sounds. Intrigued, Charlie and Harriet followed the vehicle to the Prudential Center, where the vehicle stopped. They found an information booth where they learned all about BAD and the duck boats.

### May 15, 2007

After learning all about the duck boat tours at the Prudential Center ticket booth, Charlie and Harriet MacKenzie were informed of a special duck boat tour that was scheduled for that afternoon. This special tour was in celebration of National Poetry Month and would take the passengers on a unique duck boat tour of Boston poetry landmarks. In addition, the passengers would delight in live music and food. In perusing the menu for the tour, Charlie was excited to see that one of his favorite Scottish foods, haggis, was on the menu. The MacKenzies purchased their tickets and climbed on board their duck boat. The duck boat being used for this special poetry tour was owned by A. Oza (hereinafter "Oza"). Per Oza's contract with BAD (as described above), Oza developed the concept of the special tour, picked out the food options and live music, and set the ticket price. BAD fulfilled all of Oza's requests and operated the tour as required by the contract.

As Charlie and Harriet boarded, they met their ConDUCKtor, Vicky. Vicky got the tour going and invited the passengers to dig into the food. Charlie found his haggis and quickly devoured it. As the tour progressed, the passengers enjoyed the live music and the sights. Charlie, however, quickly started to feel ill.

Part way through the tour, Vicky piloted the duck boat into the Charles River as planned. Immediately after Vicky drove the duck boat into the water, the duck boat began rocking back and forth as it cut across the choppy waters of the Charles River. Due to the motion of the boat, combined with the effects of the bad haggis, Charlie became violently ill. He began throwing up and became disoriented. Charlie started yelling incoherent phrases such as "Harriet! Har-ee-et. Hard-hearted harbinger of haggis" and "come let us dance like children of the night!" He arose from his seat and stumbled up to the front of the duck boat, continuing to vomit and shout unintelligibly. As he leaned over the railing of the boat to vomit once more, the boat rocked to the side, and Charlie toppled over the safety rope and into the water.<sup>4</sup>

Vicky's training and experience immediately kicked in. As required by Coast Guard regulations, Vicky immediately stopped the duck boat, put on a life preserver, and jumped into the water to rescue Charlie. Another passenger, Ralph Elliot of Dallas, tossed a life preserver to Charlie. Vicky swam over to Charlie, secured the life preserver around him, and pulled him back to the boat. While trying to climb back into the duck boat, however, Vicky separated his shoulder. Charlie made it back into the boat without further incident.

Vicky resumed control of the duck boat (Vicky was able to control the duck boat with his one good arm), and being the dedicated ConDUCKtor that he was, piloted the duck boat down the Charles River, through the locks, into Boston Harbor, and eventually back onto land as planned. In fact, Vicky completed the rest of the tour, ending as planned back at the Prudential Center. Vicky even provided the witty commentary that he had been practicing for weeks for this special poetry tour.

Upon completing the tour, both Vicky and Charlie were taken to the hospital. Vicky was treated for his separated shoulder, but was unable to return to work for a month. BAD refused to pay Vicky for more than a week of missed time, and thus Vicky went three weeks without pay while he recovered from his injury. Vicky, upset with BAD, hired a lawyer and sued BAD for lost wages under the Jones Act, 46 U.S.C.A. § 30104 (2007).

Charlie was treated at the hospital for food poisoning and hypothermia. Unfortunately, Charlie's insurance policy did not cover the expenses, and he was left with a sizable hospital bill. Charlie also decided to sue BAD. Wanting to get the case into federal court, he invoked the federal courts' admiralty jurisdiction, 28 U.S.C. § 1333(1) (2000).

Prior to the commencement of these claims, Oza filed for bankruptcy. As such, no parties have elected to file suit against Oza, including Charlie, Vicky, and BAD. Thus, the only two claims at issue are those by Vicky and Charlie against BAD.

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<sup>4</sup> Vicky and Charlie both concede that all safety devices required by the U.S. Coast Guard were in place and operable on the duck boat.



## CASE STATUS

All three parties to the lawsuit have stipulated to all of the facts as described above, including that BAD employees intentionally contaminated the food Charlie consumed on the duck boat and that the contamination was the but-for and proximate cause of Charlie getting food poisoning and becoming disoriented on the boat.

The parties have also agreed to a bench trial. Thus, the parties have agreed to let Judge Hamers determine their claims based on the facts as stipulated and the applicable law. The only two remaining issues in the case are set out below. It is significant to note that jurisdiction is only at issue in Charlie's claim. Jurisdiction is not at issue in Vicky's claim and should not be discussed in your memo.

### MOTIONS FOR SUMMARY JUDGMENT AND DISMISSAL FOR LACK OF SUBJECT MATTER JURISDICTION

Defendant BAD has moved for summary judgment on John "Vicky" Johnson's Jones Act claim. BAD argues that Vicky is not a "seaman" within the meaning of the Jones Act, 46 U.S.C.A. § 30104 (2007), and the Supreme Court's interpretation thereof in Chandris, Inc. v. Latsis, 515 U.S. 347 (1995). Thus, BAD argues that Vicky does not qualify for the Jones Act remedies he is seeking. Jurisdiction is not at issue in Vicky's Jones Act claim and should not be discussed in your memo.

Defendant BAD has moved for dismissal under Fed. R. Civ. P. 12(b)(1) on Charlie MacKenzie's tort claim. Charlie's tort claim is that BAD intentionally contaminated the food it served him while he was a passenger on BAD's duck boat tour of Boston. That tortious act resulted in Charlie getting food poisoning and hypothermia. Charlie claims he incurred significant medical expenses as a result of this tort for which he seeks compensatory damages. Charlie has asserted federal admiralty jurisdiction under 28 U.S.C. § 1333(1) (2000). BAD claims there is no admiralty jurisdiction in this case, and thus the case must be dismissed.<sup>5</sup> BAD argues that Charlie has failed to meet the admiralty jurisdiction requirements of § 1333(1) as construed by the Supreme Court in Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527 (1995).

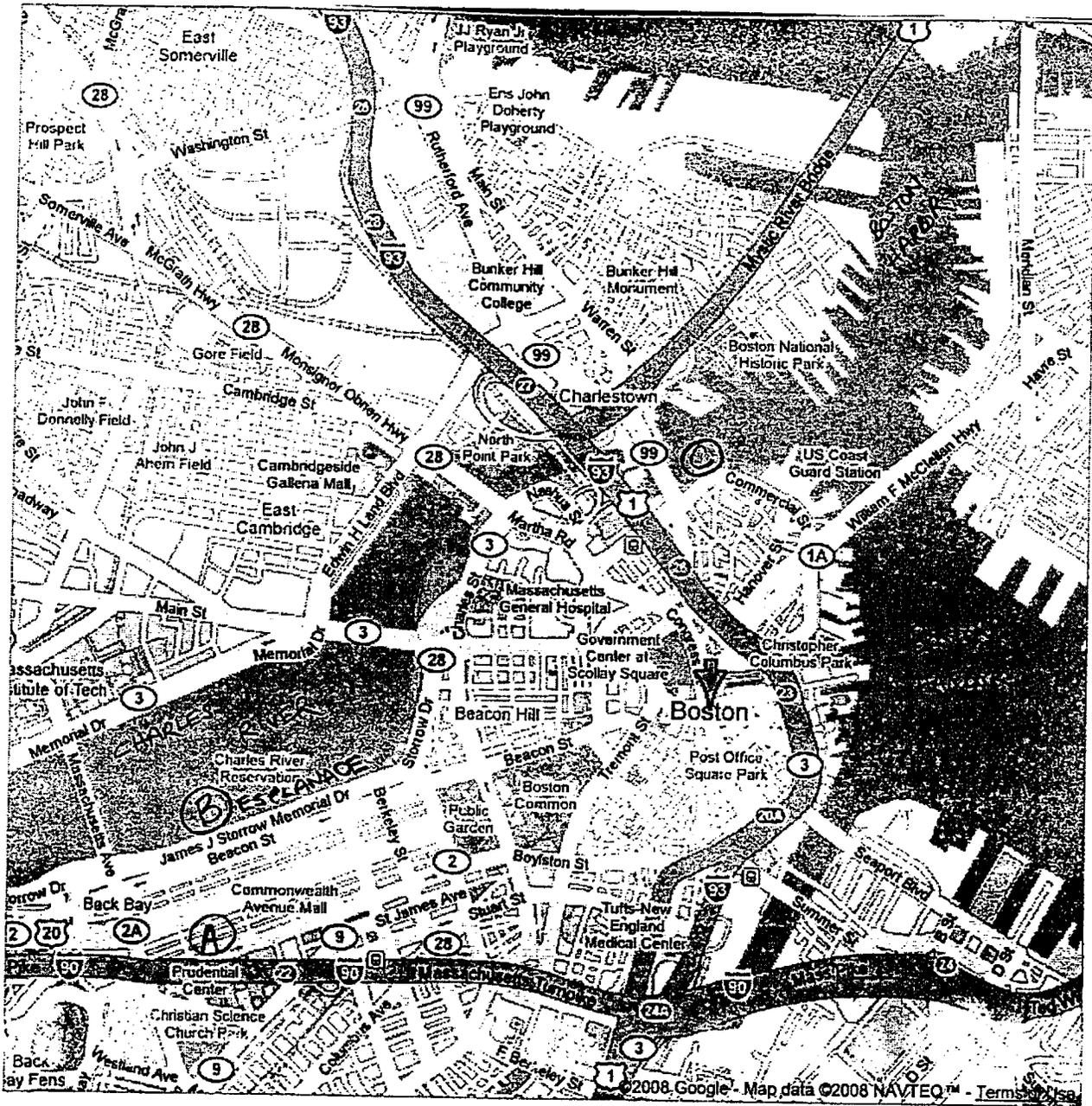
### ISSUES

- 1) Does Vicky qualify as a Jones Act "seaman"?
- 2) Does Charlie's tort claim (as described above) satisfy the requirements of federal admiralty jurisdiction under 28 U.S.C. § 1333(1) (2000)?

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<sup>5</sup> There is no alternative basis for federal subject matter jurisdiction in this case. No other bases of federal jurisdiction should be considered in your memo.

# FIGURE 1



- (A) The Prudential Center. All tours begin and end here.
- (B) This is where the duck boats enter the Charles River from late April until late November.
- (C) This is where the duck boats enter the Boston Harbor from late November until late April.

**UNITED  
STATES  
CODE  
ANNOTATED**

**TITLE 46**

**Shipping**

**§§ 11101 to 30104**

Comprising All Laws of a General  
and Permanent Nature  
Under Arrangement of the Official Code of  
the Laws of the United States  
with  
Annotations from Federal Courts

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