**EVIDENCE I (E-171)**

**Atlanta’s John Marshall LAw School**

Fall 2012 (Evening Division)

Prof. Rodney Miller

**“Everhit” Exercise (to be discussed / argued during first class)**

**Background**

You represent Jim Everhit, a reserve quarterback of the San Francisco Forty Whiners. Everhit has sued Jonell Way, a defensive back for the New York Jests, for injuries suffered in a regular season game two years ago. Everhit’s suit is based on the following statute:

Any participant in a professional athletic contest who strikes another participant with intent to injure, and who causes great bodily injury, shall be liable to the injured participant for actual and punitive damages.

Everhit’s story is in part as follows:

I was playing quarterback for the Forty Whiners in a game against the Jests. In the first quarter, I was knocked down after throwing a pass. I was at the bottom of a small pile of Whiners and Jests, including Way. I saw Way try to poke his fingers into my eyes a couple of times, but I prevented injury by turning my head to the side. I wasn’t surprised by Way’s actions because in a game the prior season he said he’d get back at me for getting a beer commercial part that he thought should have been his.

In the second quarter, I was sacked before I could throw a pass. Way again was part of a small pile of players; I was on the bottom. This time, I saw Way gouge my right eye with his thumb. Way was even grinning as he gouged me.

As a result of the gouging, I was in immediate pain and my eye swelled up immediately. I had to be taken out of the game at once. I was taken to the hospital where some medical tests were run. The tests showed that no permanent damage had occurred, but my eye was bandaged for 5 days. My vision out of that eye was blurry for 10 days, and I had occasional headaches. I had to miss the final two regular season games, when the Whiners were playing for a spot in the playoffs.

**Assignment**

Based on this story, identify the following:

1. The individual elements of Everhit’s legal claim.

2. Everhit’s and Way’s versions of a material fact satisfying the element “strikes,” and evidence that either party might offer to prove this fact. Which of this evidence is direct and which is circumstantial evidence?

3. An argument that Everhit’s injury does or does not constitute “great bodily injury.”