

Final Examination
CIVIL PROCEDURE II Section LS2
Professor Cohen
Spring 2007

INSTRUCTIONS

1. This is a **closed** book exam.
2. You have **three (3) hours** for the exam.
3. There are two sections: the first section is an essay and the second section consists of 50 multiple-choice questions.
4. The essay will be worth 50% of the grade, and the multiple-choice questions will be 50%.
5. You must begin with the essay section of the exam; remove the essay section only from your packet. When you have completed that section, you must return that section of the exam; including the question, your answer and your notes to the envelope and you may then remove the multiple choice section. Once you have placed the essay section in the envelope, you may not go back to it.
6. You have up to **90 minutes** to complete the essay section. Writers, please write legibly. Succinctness, organization and clarity will count significantly towards the grade. Writers, please write on every other page to permit instructor comments. Typists please leave wide margins.
7. You have up to **90 minutes** to complete the multiple-choice section. Correct multiple-choice answers are to be marked in the correct space in pencil on the ANSWER SHEET (and NOT with a check or a circle). Both the QUESTION and ANSWER SHEETS are to be given back to the proctor with your exam number on them.
8. Write your exam number on your exam envelope. Put your correct class section and student exam # at the top of this page, each page of questions, each blue book, and the "ParSCORE TEST FORM." **Do not** use your name, student ID number or Social Security Number on any exam materials.
9. At the conclusion of the exam, return all test materials, including blue books, ParScore answer sheet, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not have their exams graded.

Good Luck!

SECTION I: ESSAY QUESTION (50%)

On September 15, 2004, an incident happened to a pedestrian in San Samsdisco, located in the State of Commonwealth, a state which uses the Federal Rules of Civil Procedure. The pedestrian, Paul Passer, while leaving his place of employment on Market Street in the city, walked across Mission Street from the north side of Mission Street, at Ecker's Alley, a public access alley-way, crossing Mission Street towards a set of garages on the South side of Mission Street between 1st and 2nd Streets. As a result, he did not cross at an intersection and was essentially illegally crossing. This is what he and many other people did each business day at about 5 pm on their way to their cars, as they left their jobs and schools. The cross area, at that point, which was frequently used by many people, had no traffic controls, and many people had complained to the city officials about the dangerousness of the area due to a great deal of auto and bus traffic at that time, going in both directions on Mission Street.

On this particular day, when Paul crossed the street, a car driven by Dave Driver, who too was in a hurry to get home, was being driven at an excessively high rate of speed for the area and time, as Dave had had a few drinks after work. Unfortunately, as a result, Paul was hit and knocked down by Dave's car while crossing the street. Paul suffered significant injuries, and much pain and suffering as a result. Many of Paul's friends and colleagues at work came to visit him in the hospital and convinced him that he should not only sue Dave as a result, but also the city of San Samsdisco for not having a traffic light there.

After recovering, many months later, Paul saw a lawyer about the situation. Paul's lawyer, Clarenica, researched the issue and decided that while she could sue Dave for damages, she couldn't sue the City for damages, but could sue it for an injunction to obtain a traffic control at the intersection, but only if she represented plaintiffs threatened with future harm while using the crossing area at that particular point. She and Paul, and one of his friends at work, Rita, who used that crossing, decided that that would be done.

On September 14, 2005, a day before the statute of limitations was to run on the damage action in the State of Commonwealth, Paul and Rita brought their suit, Paul seeking damages, and Rita and Paul seeking an injunction against the city of San Samsdisco, and filed it in the appropriate court in Commonwealth. It was brought seeking a jury trial, and damages from Don Driven, and for injunctive relief as a class action against San Samsdisco, Commonwealth. It turned out that Dave Driver was an entirely different person from Don Driven, but they worked together at the same place, were good friends, and were frequently mistaken for one another. Indeed, they often had a drink or two together after work, as they had done on the evening of September 15, 2004.

When the suit was filed, Clarencia took her time making service on the defendants (Don Driven & San Samsdisco), and service was finally made on December 16, 2005 on both defendants. On New Years Eve, December 31, 2005, Dave Driver and Don Driven, were together at a party, and Driven told Driver that he (Driven) had been sued regarding the incident and wasn't sure what to do. They agreed that, since Driver was not insured, and had little money, it would probably be better not to say anything to anyone, and that is what they did.

Don Driven got a lawyer to represent him, as did defendant San Samsdisco, and in February, 2006, the lawyers answered the complaint, denying each and every allegation, and San Samsdisco as well claiming an affirmative defense to the injunction claim, of res judicata, in that San Samsdisco had been sued six years previously for an injunction as to the dangerousness of the intersection by the Golden State College, and had won that suit.

In May, 2006, Plaintiffs moved for certification of the class. Defendant City opposed the class, saying that the case wasn't appropriate for a class, but the court certified the class over its objections. Thereafter discovery occurred, and during the deposition of the defendant Driven in June, 2006, plaintiff Paul found that it wasn't Driven who had operated the car, but Driver. At that point, Paul brought a motion to amend the complaint to add Driver as a defendant, which motion was granted by the trial judge.

Before trial, defendant San Samsdisco moved for summary judgment as to the injunction, based on the res judicata defense, and the trial court ruled against the defendant City. When the case went to trial, defendant City objected to anything being heard by a jury, while defendants Driver and Driven said everything should be heard by a jury. The court ruled that everything should be heard by a jury, and the jury found for the plaintiff and granted full damages to Paul and the court then issued an injunction to Rita, Paul and the class.

Both defendants have appealed. The issues before the appellate court are: 1. the decision on the ruling regarding res judicata; 2. the decision on the motion for the class; 3. the decision on the motion for the amendment; and 4. the decision on the jury trial.

You are a clerk working for the appellate judge to whom the case has been assigned for initial research. She wants a memo of law on each of the points, separating each point by number, stressing the existent law if any, and including, but only if time permits, any variations on that law as well. Additionally, she wants you to analyze the law as it applies to the situations in the case. In particular, she wants you to write clearly, succinctly, and be as organized as possible. It is her feeling that a memo which is as short and precise as possible is superior to a long rambling one.

End of Section I: Essay Question