

FINAL EXAMINATION
EVIDENCE DAY SECTION

Professor Peter Keane

FALL 2006

INSTRUCTIONS:

1. You have three (3) hours to complete this examination.
2. This is a **closed** book exam. No outside materials are allowed.
3. The exam consists of one section of 20 Multiple Choice Questions and a section of 2 essay questions. The 20 Multiple Choice Questions are worth 1/3 of the total grade. Each of the 2 essay questions is worth 1/3 of the total grade. So you should budget your time to devote one hour and not more to each question.
4. 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.
5. 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!

Part Two Essay

(One Hour)

Edna sues the Friendly Insurance Co. to collect for the value of the loss of her Union Street Spa, which was destroyed in an explosion. The blast occurred from an incendiary device that was planted in the basement of the building. The Insurance Company refuses to pay claiming that Edna blew up the building.

The Insurance Company presents the following evidence:

1. The testimony of Blanche that a few hours before the explosion she saw two women standing outside the Spa. She heard one of the women say, That damn place is losing so much money. I am going to blow it up for the insurance.
2. Testimony of a San Francisco Police Inspector who brings a business ledger to court. He says, I examined these financial records of Edna's Spa and she was losing a lot of money. The ledger is then put into evidence.
3. Testimony of an ambulance attendant who says he came upon the scene right after the explosion and attended to Phyllis who had been getting a mud facial at the time of the blast. The attendant says he immediately gave Phyllis a heavy injection of morphine to stop the pain from her injuries. The attendant testifies that, in the ambulance, Phyllis said, I am so badly burned. How could I ever come through this? Edna blew the place up.

The attendant says that Phyllis heart stopped twice in the ambulance on route to the hospital and then once again at the hospital, however each time the medical personal were able to resuscitate her. Phyllis survived but now lives in Tibet.

4. Testimony of the Insurance Company claims adjustor who says that he arrived at the Spa immediately after the explosion. He says he saw a man standing nearby screaming, Oh my God! I saw it all! It was horrible! It was done for the insurance money!
5. The adjustor also testifies that he spoke to Edna's Spa receptionist at the scene. He says he cannot remember what she told him. He produces a report he wrote of their conversation just a few minutes after speaking with the receptionist. The report says, The receptionist told me she saw Edna walk out of the basement about a minute before the explosion. The report is put in evidence.
6. Testimony by Edna's former attorney that Edna was prosecuted in Los Angeles, 7 years before, for arson regarding a coffee shop she owned. The attorney says Edna was acquitted after he and Edna bribed the members of the jury in her trial.
7. Edna's present lawyer then cross examines the former attorney and asks him, Isn't it true that you were convicted of rape 9 years ago. The attorney denies it and Edna's lawyer then calls a woman as a witness who testifies that 9 years ago the attorney raped her.

Discuss all issues raised by these facts. State how these issues should be resolved and why.

Part Three Essay

(One Hour)

On April 3, Audrey, in her 6th month of pregnancy, suffers a sudden miscarriage that kills the child and also causes her to have a severe stroke. She is paralyzed and lapses in and out of periods of coma. She sues Bigbucks Pharmaceutical Co. claiming that an anti-depressant medication she took on April 2 caused the miscarriage and stroke. She had obtained the medication by a mail order prescription from the Pharmaceutical Company, which had a mailing date on the label of March 1.

The Company's defenses are:

1. She never took the medication on April 2.
2. She was taking other medications which could have caused her injuries.
3. Her injuries occurred as a result of other complications of her pregnancy, which began during the latter part of March.
4. The written warnings they sent to her along with the packaged prescription told her that she should not take the medication if pregnant.

At the trial:

- A. Her attorney calls Audrey, in court on a hospital gurney with multiple tubes attached, as a witness. She is told to blink her eyes once for Yes and twice for No. She is asked if she swears to tell the truth and blinks once. She is asked if she took the medication on April 2 and blinks once.
- B. Audrey's husband testifies that the bottle of pills from the Pharmaceutical Company were the only medications of any kind that they had in their house at the time of the stroke. On cross examination, the husband is asked if Audrey told him that she was taking other medications. He refuses to answer.
- C. A physician, Dr. Umschlagger, testifies for Audrey that he examined Audrey's chart at the emergency room after she was admitted on April 3 and saw notations for elevated levels of glucose. The physician testifies that this is indicative of severe reaction to some type of anti-depressant type medication.
- D. A biochemist testifies for Audrey that he has conducted extensive studies on the effects of this anti-depressant on pregnant rabbits. He says that the results of his studies cause miscarriage and brain damage to the rabbits. He gives his opinion that the same would occur in pregnant humans taking the drug. He states that several other chemists agree with him and that over 50 professional research papers on this point have been published.
- E. In defense, the Pharmaceutical Company calls Brenda, mother of three children and next-door neighbor to Audrey. Brenda testifies that she saw

Audrey several times in the last week of March. She says that, Audrey looked very sick, like she was having complications with her pregnancy.

- F. The defense also calls Audrey's psychotherapist who is asked whether Audrey suffers from a number of severe psychiatric disorders requiring extensive medication. The psychotherapist refuses to answer.
- G. A mailing department employee of the Pharmaceutical Company testifies that he packed and shipped Audrey's prescription on March 1. He also says that along with the prescription he addressed and mailed, in a separate envelope, a warning statement that said, Don't take this anti-depressant medication if you are pregnant.
- H. Dr. Umschlagger's bartender Benny is called and testifies that the doctor told him in January that he was going on vacation to South America for the months of March and April.
- I. In Audrey's rebuttal evidence her husband testifies that he was at home when the prescription package arrived in early March. He says there was no other letter that came along with it.

Discuss all issues raised by these facts. State how these issues should be resolved and why.

END OF EXAM