

**FINAL EXAMINATION**  
**EVIDENCE EVENING 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)**

Amy, a licensed real estate broker, sues Martha for breach of contract. Amy claims that Martha entered into an exclusive contract for Amy to sell her house and then Martha sold it herself. Amy is suing for the 10% commission on the purchase price called for under the contract.

Martha's defense is that after Amy had been unsuccessful in finding a buyer for almost a year, they both agreed to rescind the contract.

Amy offers this evidence:

1. A document titled California Department of Real Estate which says Amy Johnson, Licensed California Realtor.
2. Testimony of Martha's neighbor that on September 1, which other evidence shows to be the date Martha first showed the house to the buyer, the neighbor's husband was looking out the window and said, I wonder why Martha just ran out and took down the Amy's Real Estate For Sale sign just before that guy drove up and went into the house?
3. Amy's receptionist brings a book titled Amy's Real Estate Telephone Logs to court. The book contains this entry for September 1, Martha returned your call. She said it was OK to bring people to see the house this weekend.
4. Testimony of George, one of Amy's salesmen: George is asked if he showed Martha's house to potential buyers on September 1. He says he can't remember. He is shown a memo that he identifies as one he wrote for his activities on that weekend. The memo says, Showed 3 buyers Martha's house. The memo is put into evidence.

Martha's Defense evidence is:

- A. Sam, a former salesman at Amy's Real Estate testifies that 2 weeks before September 1 he heard Albert, now deceased, who was the Chief of Sales for Amy, talking on the phone. Sam testifies that Albert said, OK Martha, if you want out of the exclusive contract, consider it done. It has been a long time and we just can't seem to find you a buyer.'
- B. Albert's wife testifies that Albert called her a few weeks before September 1. He said, Terrible news. Amy says business is so bad we are going to close down. We will be canceling all our contracts. How are we going to pay our kids tuition with me out of work?

In rebuttal to this, Amy presents:

- (i) Testimony of Albert's bartender that Albert got drunk in his bar a few days before he died. The bartender testified that Albert said, I am doing all I can to ruin Amy's business so I can start my own company and get all of her accounts.
- (ii) Testimony of Amy's banker that, just around the same time Albert told his wife that Amy was going out of business, Amy came into the bank, paid off all of the Real Estate Company's outstanding loans, made a large additional deposit in the Company's account and told him, Business is booming. I am getting rich.

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

## **Part Two Essay**

### **(One Hour)**

Arnold, pastor of a church, along with Betty and Jack, a married couple who are church members, are all charged with numerous counts of theft, fraud and conspiracy. The prosecution contends that the defendants stole homes and other property from elderly church members.

The prosecution evidence is:

1. Testimony of Walter who is 93 years old and suffers from Alzheimer's disease who says. That signature on the deed transferring my house to Pastor Arnold ain't mine. It's a fake.

On cross-examination of Walter he is asked, When did you see the deed? Walter replies, What is a deed?

2. A letter from Betty to Jack stating, I just hope our kids never find out we are stealing. They would lose all respect for us.
3. Testimony of the church janitor that one night he was cleaning outside Pastor Arnold's office and heard a man and a woman talking with Arnold. The janitor testifies, The man asked, Pastor, will God forgive us for these crimes? Then the woman said, Since those old folks don't need it any more, God will understand, won't he Pastor?
4. Testimony of a neighbor of a deceased elderly woman who had signed over her home to the defendants in 2005. The neighbor says, That lady was totally senile since the mid 1990's.

On cross-examination the neighbor is asked, Isn't it true that your daughter dates that lady's grandson? he answers, No. He is then asked, Did you ever tell anyone that your daughter and the grandson date? he answers, No.

Later in the defense case, they call the neighbor's lawyer as a witness. The lawyer testifies, He told me his daughter dates the lady's grandson.

The Defense offers this evidence:

- A. Pastor Arnold testifies and says he is not guilty.

On cross-examination the prosecutor asks Arnold, Weren't you convicted of child sexual abuse 7 years ago. Arnold says, Yes, but I was framed. The prosecutor then asks, Haven't you been stealing from the Sunday church collection? Arnold says, No.

On rebuttal, the prosecution later presents a witness who testifies that Arnold sexually abused her when she was 8 years old. The prosecution also recalls the church janitor who testifies that he saw Arnold steal from the collection plate.

B. Betty calls her employer who testifies, Betty is the most honest person I know.

On cross-examination the prosecution asks the employer, Have you heard Betty is a shoplifter? The employer says, No. The prosecution later puts in evidence a 2-year-old misdemeanor conviction of Betty for theft at a cosmetics store.

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