

## FINAL EXAMINATION

### EVIDENCE

Peter Keane

FALL 2007

### 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 two parts

**Part I** consists of 20 multiple choice questions. The multiple choice questions are worth 1/3 of the total grade. Please mark your responses to the multiple choice questions on the separate "ParSCORE TEST FORM" using pen or pencil and following the instruction on that form. If you change your answer, place a clear **X** through the wrong answer and mark the correct answer. A machine will score the exam and any ambiguities will be counted as a wrong answer.

**Part II** consists of two (2) essay questions. 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. Please write your response in the blue book provided. Please write clearly. Write on every other line and every other page to permit instructor comments.

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 materials, including the 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 II: Essay 1 of 2**

**Recommended Time: 1 hour**

Rachel, Aaron, and Heather are all charged with murder and conspiracy after a buried roadside bomb, made from fertilizer, killed a work crew that was about to cut down a grove of ancient oak trees in order to put up a new Wal-Mart.

The prosecution presents the following evidence:

1. Testimony of Oscar, who says:
  1. He is spiritual leader of the group "God is the Earth," which the defendants all belong to, and that he overheard Rachel tell her husband Eddie (who is not charged), the day before the bombing: "Pick up a couple of shovels at the hardware store."
  2. Heather once asked him, "Aren't trees antennas of the Earth's soul?"
2. Testimony of FBI agent who says Rachel's husband Eddie came to see him a week after the bombing and said, "My wife blew up those guys." On defense objection the prosecutor says one of the reasons, among others, for which the statement is offered is to show the state of mind of Eddie.
3. Eddie is put on the stand and asked what he knows about the bombing. He refuses to answer. The judge rules that his talking to the FBI agent waived his right to not answer. When Eddie still refuses, he is held in contempt.
4. Testimony of Wanda who lives near the grove who says that the night before the bombing her husband Sid said to her, "I wonder what those two women and that guy are doing out there in the woods?"

On cross-examination, Wanda admits that her husband suffers from dementia and night blindness. The defense moves to strike her testimony.

The Defense evidence is:

1. Testimony of Rachel who says Oscar's daughter Emily told her after the bombing, "I blew those guys up. My father will put the blame on someone else if the FBI ever comes poking around here."
2. Testimony of the manager of Ace Garden supply who says, "Our records show someone named Emily bought a half ton of fertilizer on April 7." The bombing was on April 8.
3. Testimony of Heather who says she saw Emily looking through the phonebook a week before the bombing and that the page opened to was one that listed garden supplies.

In rebuttal, the prosecution calls a witness who testifies that Oscar told him a month before the bombing about Heather's question (1.B. above). The witness also says Oscar told him about Rachel's statement (1.A.above).

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

## Part II – Essay 2 of 2

### Recommended Time: 1 hour

Chloe owns stores called “Chloe’s Exquisite Nails.” She sues her ex-partner Robin, whose interest Chloe bought out several years before. Chloe claims Robin is violating a non-competition agreement by being a silent partner in a competing chain of nail salons named “Cutey Claws.” Chloe claims emotional injuries as part of her damages.

Chloe presents the following evidence:

1. Testimony of Jake, the lawyer who represented Chloe and Robin during their partnership who says:
  1. Robin told him in several private meetings that she intended to stay in the nail business.
  2. In a partnership with another person and Robin several years before, where he was Robin’s individual lawyer, Robin asked him for advice on breaching that agreement.
2. Testimony of Professor Umschlager who says he is the founder and head of the Department of Nailology at a local private college. He says he has a PH.D in Chemistry and testifies that he examined the nails of customers from “Cutey Claws” and that the work done was identical to the unique features he saw in pictures of customer’s nails which had been done by Robin while at Chloe’s salon.
3. Sarah, a blogger on health and beauty news items is asked if Robin placed the advertisements on her site for nail treatments. She refuses to answer.
4. A flyer distributed to pedestrians that states, “Chloe’s nail work is inferior since Robin left. Go to Cutey Claws to get what you used to get at Chloe’s.”
5. The custodian of the records of the State franchise tax board testifies. He lays the foundation for documents he has brought as being the business records of the agency. Several of the documents which show Robin paid the business taxes for Cute Claws are put in evidence. Robin objects.

Robin’s evidence is:

1. Testimony of Chloe’s psychiatrist that Chloe has always had a pathological hatred for Robin.
2. Testimony of Dr Umshlager’s former lover that he told her he never finished high school.
3. Testimony of Sandra who says she has known Chloe for 30 years and that Chloe has sued 4 former business partners from 4 separate ventures alleging that the partners had cheated her and that Chloe lost all 4 suits.
4. Testimony of Robin that Chloe telephoned her a week before trial and said, “Okay, so my suit is all B.S. Give me a check for \$5,000 and I’ll drop it.”

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

**END OF EXAM**