

**FINAL EXAMINATION  
CIVIL PROCEDURE II  
PROFESSOR OPPENHEIMER  
SPRING 2005**

**INSTRUCTIONS**

1. This examination is scheduled for three (3) hours. You may apportion your time as you like.
2. This is a closed book exam. You may not use any material in preparing your answer.
3. It consists of forty (40) objective questions and one essay question. The objective questions will account for two thirds ( $2/3$ ) of the grade; the essay question will account for the other one third ( $1/3$ ) of the grade.
4. Please mark your answers to the objective questions on the separate ParSCORE form. If you change an answer, please fully erase your first answer. If more than one answer is marked you will receive no credit for the question.
5. If you are hand writing your essay, please write in the blue book(s) provided. Write only on the right side of each page, and on every other line. Please write legibly. Read the question carefully, and be sure to respond to the call of the question.
6. Write your exam number on your exam envelope. Put your student exam number at the top of this page, each page of questions, and each blue book. Do not use your name, student ID number or Social Security Number on any exam materials.
7. At the conclusion of the exam, you must return all exam materials to the exam 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 will be given an "F" for the course.

**GOOD LUCK!**

**PART II: ESSAY QUESTION**

Plaintiff, a citizen of California, was one of five passengers in a mini-van that collided with a truck on Interstate 80. The truck was owned and operated by Defendant, a citizen of Nevada. The mini-van driver (a citizen of Nevada) and all five mini-van passengers (all of whom were California citizens) suffered serious injuries.

Plaintiff brought a civil action against Defendant in the United States District Court for the Northern District of California, alleging that Defendant had negligently operated his truck, and that as a result of Defendant's negligence Plaintiff had been struck by the

truck, causing him serious injuries, with approximately \$100,000 in medical damages plus great pain and suffering. Defendant denied that he had been negligent.

At trial, Plaintiff testified that he did not see how the accident occurred; he was sitting in the back seat chatting with a friend, and then the next moment he was waking up in a hospital several weeks later. He did not call any witnesses to the accident. He did put on evidence establishing the extent of his injuries.

When Plaintiff rested, Defendant moved for judgment as a matter of law. The trial judge stated: "I don't see any evidence here from which a jury could find negligence, but I'm sure the jury will do the right thing, so let's just move along counsel." Defendant then rested without putting on any evidence, and renewed his motion for judgment as a matter of law. The trial judge stated: "Well, let's see what the jury says."

The jury returned a verdict for Plaintiff in the amount of \$25,000.

Defendant moved for judgment as a matter of law, and, in the alternative, for a new trial. The trial judge ruled as follows: "I just don't get how this jury did what they did. What evidence could they have relied on? It sure looks wrong to me. But, I'm a great believer in the Seventh Amendment. I hereby deny the Defendant's motions, and enter judgment for Plaintiff in the amount of \$25,000."

You have been retained by Defendant's insurance company to advise them on whether to appeal this judgment. The insurance company has instructed you that the cost for an appeal will run \$30,000, and the cost of a new trial would run an additional \$50,000.

Please write a memo to the insurance company advising them on how they should proceed.

**END OF EXAM**