

EXAM NUMBER _____

Final Examination

Civil Procedure II

Professor Ramo

Spring 2008

INSTRUCTIONS

1. You will have a total of two (2) **hours** to complete this exam.
2. This is a closed book exam.
3. This exam consists of two parts, divided as follows:
 - a. **Part I** is **twenty** (20) multiple choice questions. You will have **fifty minutes** to complete Part I, the multiple choice questions. If you finish early, please double check your answers. You will **not** be permitted to move on to Part II of the exam until the end of the 50 minute period. Once the 50 minute period is over, please put the multiple choice questions and answer sheet in your exam envelope. You are **not permitted** to go back to Part I once the 50 minute period is over and the essay portion of the exam has started.
 - b **Part II** is one essay question. You will have a total of one (1) **hour, 10 minutes** for the essay question. Please be sure to fully answer *all parts* of the essay question.
 - c. **Part I** of the exam represents **40% of the final exam grade**. **Part II** of the exam represents **60% of the final exam grade**. **The final exam** represents **75% of the class grade**.
4. Please answer the essay question in the blue books provided to you, unless you are using a computer. If handwriting, write only on the right hand side of the page (skipping a page each time) and double-space your work. Please write legibly.
5. Write your exam number on your exam envelope. Put your student **exam #** at the top of this page, each page of questions, each blue book and your ParScore answer form. **Do not** use your name, student ID number or Social Security Number on any exam materials.
6. At the conclusion of the exam, 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 may not be graded.

GOOD LUCK!

Part II: Essay Question

One Hour, 10 minutes

John and Mary own an \$800,000 home in San Francisco. They bought it with a subprime mortgage loan, with no down payment and a low interest rate that would adjust as national interest rates changed. John and Mary both work, but they have low paying jobs and could just barely afford to pay the monthly mortgage payment. The bank, headquartered in San Francisco, said it was unlikely interest rates would go higher, and if they did, the bank would renegotiate the length of the loan so it would be at the initial interest rate.

In Fall, 2007, the housing market collapsed in the United States. Housing prices dropped, but interest rates started to climb and John and Mary's mortgage payments were increased above a level they could afford. When they went to the bank to renegotiate the mortgage, they were told that since the value of their homes have declined, the bank did not want to renegotiate.

John and Mary went to a friend who is a lawyer, and whose sole experience is as a criminal law specialist, and told them of their plight. The lawyer said, "I can help you, I have taken Civ Pro II." The lawyer soon filed a federal class action in San Francisco Federal District Court against the bank on behalf of all of the subprime loan bank recipients (estimated as 1000 people) alleging the bank violated the new Federal Banking Assurance Act, which bars banks from misrepresenting their loans. The class action seeks an injunction on any foreclosures and to hold mortgage payments at their original interest rates. John and Mary are named as class representatives.

John and Mary soon begin to hear from other customers of the bank regarding the bank's improper business loan activities. The bank apparently also misstated the applicable interest rates and terms of its business loans. John and Mary, before any answer is filed, amend their complaint and enlarge their class to include recipients of business loans as well as those with subprime mortgages and amend their prayer for relief to add an injunction suspending interest rate increases for all class members.

Thirty days after the bank answers, John and Mary file a motion to again amend their complaint and join as individual plaintiffs Tom and Jane, who have consumer auto loans from the bank. Tom and Jane have their own lawyer. Tom and Jane's lawyer had contacted John and Mary's lawyer having heard of the lawsuit. Tom and Jane's car had been repossessed and they want their car back and the original loan. The amended complaint adds allegations that the bank misstated Tom and Jane's interest rates and the fact that the rates could increase, just as with the mortgage loans and the business loans. The prayer for relief is amended to include returning John and Mary's car and restoring the original loan.

John and Mary also file a motion for class certification. Fearing the bank may lose, a large creditor of the bank who had loaned the bank money and not been timely repaid, then filed a motion to intervene in the lawsuit, either as of right or by permission of the court. The creditor seeks to file a breach of contract complaint for failure to repay the loan, seeking the return of its money plus interest. The creditor argues that the bank's assets will be depleted if the creditor stands by and the class action is successful, so it needs to intervene now. Indeed, as a result of the housing market collapse, the bank is teetering close to bankruptcy.

The bank opposes the motion for class certification, the motion to amend the complaint and join John and Mary and the motion to intervene. The parties all agree that there is personal and subject matter jurisdiction over all parties and claims, so there is no need to discuss these issues.

You are the judge. Please provide your ruling as to:

1. The motion to amend the complaint and join Tom and Jane.
2. The motion for class certification.
3. The creditor's motion to intervene.

PLEASE NOTE THAT MORE POINTS WILL BE GIVEN FOR THE CLASS CERTIFICATION MOTION AND THE INTERVENTION MOTION THAN FOR THE JOINDER MOTION. BUT PLEASE PROVIDE YOUR RULINGS AS TO ALL OF THE MOTIONS.

END OF ESSAY QUESTION

END OF EXAM