

FINAL EXAMINATION
CALIFORNIA CIVIL PROCEDURE
PROFESSOR SCHWARTZ
FALL 2005

INSTRUCTIONS

1. You will have **two (2) hours** to complete this examination.
 2. This is a **closed book** examination with the exception of your text, Civil Procedure in California State and Federal. No other notes or materials are allowed.
1. The exam consists of two parts.
 - a. **PART ONE** consists of **20 multiple-choice questions**, the total of which is worth 50 percent of your final exam grade. Answer each multiple-choice question by indicating the letter corresponding to the response you believe to be most correct. Correct multiple choice answers are to be marked on the separate ParSCORE test form using pen or pencil and following the instructions 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 wrong answers.
 - b. **PART TWO** contains **one essay** which is worth 50 percent of your final exam grade. Time limits are suggested for each section. 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. If you are typing your response using exam software, be sure to save your work frequently to the diskette.
 2. Write your exam number on your exam envelope, at the top of this page, your ParSCORE test form, each page of questions and each blue book. **Do not** use your name, student ID number or Social Security number on any exam materials.
 3. At the conclusion of the exam, turn in **all** exam materials including the ParSCORE form, blue books, computer disks, scratch paper and the exam in the envelope provided and submit them to the exam proctor. **Do not seal** the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

PART TWO

Plaintiff Penny Pinter, age 15, was a guest in an automobile driven by defendant Danny Dugan, age 17. Danny was the owner and driver of the car. Both were wearing seatbelts. Nevertheless, Penny sustained injuries when the car overturned on Mission Street between First and Second about 2:30 a.m. on January 13, 2005. With her father joined as guardian ad litem on the complaint, Penny sued Danny in the Superior Court for San Francisco, State of California, for gross negligence based on willful misconduct. Danny demurred, based on Penny's minority. The court overruled his demurrer.

Two weeks prior to trial, Danny's attorney called Penny's attorney and offered her \$5,000 to settle. Penny's attorney summarily rejected the offer and hung up the phone.

The case was tried before the court with a jury. Penny testified at trial that Danny was passing all the cars that were on the street, some of them on the right and some of them on the left. She stated that Danny was dodging in and out among the cars, ultimately swerving to avoid hitting one car, in a way that caused his car to overturn. No evidence was introduced that Danny exceeded the speed limit. Danny then testified that the accident occurred because the brakes in his car were defective, but produced no witnesses regarding the brakes or his conduct on the night of the accident. At the conclusion of the presentation of all evidence, Danny made a motion for a directed verdict in his favor pursuant to CCP 630, which was properly denied.

Thereafter, the jury returned a verdict in favor of Penny and against Danny for \$36,000. Danny made a timely motion for judgment in his favor notwithstanding the verdict [JNOV]. He argued that the evidence was insufficient to support a verdict in favor of plaintiff because the record was barren of any evidence showing any willful misconduct amounting to gross negligence. At the same time, Danny reserved the right to apply for a new trial if such motion were denied. The court granted the motion for JNOV, and ordered judgment to be entered in favor of the defendant.

1. Did the court rule properly in rejecting the argument that Penny lacked the capacity to sue pursuant to California Code of Civil Procedure section 430.10?
2. How does Danny's offer in compromise affect Penny's recovery pursuant to California Code of Civil Procedure section 998?
3. Did the court rule properly in granting Danny's motion for JNOV under California Code of Civil Procedure section 629?

END OF EXAM