

FINAL EXAMINATION
CALIFORNIA CIVIL PROCEDURE
Professor Lois Schwartz
SPRING 2008

1. You have three (3) hours for this examination.
2. This is a **partial open** book examination **limited to** Kane and Levine, *Civil Procedure in California: State and Federal*. It is OK if you have written in the book, but **no** other notes or materials are allowed, including the case book.
3. This examination contains two equally weighted parts:

Part I consists of twenty-five (25) multiple-choice questions. 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 a wrong answer.

Part II consists of one (1) essay question. Please write your response in the blue books provided. Please write clearly. Write on every other line and every other page to permit instructor comments.
4. Write your student exam number on your exam envelope. Put your student exam number 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, all examination papers—including the Part I ParSCORE test form, your answer for Part II, the examination questions, these instructions, and all notes—must be placed back in the exam envelope. Failure to return all materials will result, among other sanctions, in a failing grade of “F” for the course. **Do not** seal the envelope.

GOOD LUCK!

Part II: Essay Question

Paula, a citizen of California, purchased a painting from Daniel, a citizen of New York. The transaction took place in Los Angeles, and Paula paid Daniel \$100,000. Daniel delivered the painting. Paula then hired Alice, a professional appraiser, to assess the painting. Alice concluded that it was worth \$500. Paula paid Alice \$650 for her services. Paula then sued Daniel in Los Angeles Superior Court for damages.

After Paula filed the original complaint, but before Daniel had responded, she grew suspicious about other works of art that she had purchased from Daniel. Alice conducted further appraisals, and found that two sculptures Paula had purchased from Daniel for \$50,000 were each worthless. She also found out that Daniel maintained an underground blog in which he boasted of his exploits and identified Paula as one of his “easiest victims.”

Paula requested the court to grant leave to amend her complaint to add causes of action for the sculpture and Daniel’s defamatory remarks. The court declined to rule on her request.

Daniel filed an answer to the original complaint, denying Paula’s allegations of fraud and breach of contract, and also alleging as an affirmative defense that the court lacked jurisdiction over the case. The court ruled that it had jurisdiction over Daniel on multiple grounds and allowed the original complaint to proceed.

Paula and Daniel conducted discovery. Daniel discovered that Paula’s appraiser had had eye surgery immediately prior to appraising Paula’s works of art and was legally blind. In order to impeach Alice’s testimony, he wanted to have his own doctor check Alice’s eyesight, so he served Alice with a Notice to Appear before a Licensed Ophthalmologist to be Chosen by Daniel. Paula objected.

Daniel also discovered that Paula maintained a current insurance policy on her art collection. He demanded that Paula produce the policy. She declined, stating that it was not relevant to the litigation. Daniel requested that the court grant an order to compel discovery. Over Paula’s opposition, the court granted Daniel’s motion.

After discovery concluded, Daniel moved for summary judgment, basing his statement of undisputed facts on the information in the insurance policy. He stapled a copy of the insurance policy to his motion. Paula also filed a motion for summary judgment, basing her statement of undisputed facts on Alice’s assessment, and attaching a photocopy of the appraisal. Each party filed an opposition to the other’s motion. The court denied both motions.

The case proceeded to trial. At trial, and over objections from both Paula and Daniel, the judge provided the jury with a version of CACI Rule 1920 stating that:

If you decide that Paula has proved her claim against Daniel, you also must decide how much money will reasonably compensate Paula for the harm. This compensation is called "damages."

Paula must prove the amount of her damages. However, Paula does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. You must not speculate or guess in awarding damages.

The following are the specific items of damages claimed by Paula:

1. The difference between the amount that Paula paid and the fair market value of the property at the time of sale; and
2. Amounts that Paula reasonably spent in reliance on Daniel's false representation if those amounts would not otherwise have been spent in the purchase or acquisition of the property.

Daniel moved for a directed verdict. The court denied his motion.

The jury returned a verdict of \$1,000,000. Daniel moved for JNOV and a new trial. The court denied his motions and entered the judgment 30 days later.

1. Did the court act properly in declining to rule on Paula's request to amend her complaint? Discuss.
2. What were the likely grounds for the court's assertion of jurisdiction over Daniel? Discuss.
3. How should the court have ruled on Daniel's demand for an independent medical examination of Alice? Explain.
4. Did the court rule properly in granting Daniel's request for an order to compel discovery of the insurance policy? Why or why not?
5. Did the court act properly in denying the motions for summary judgment? Discuss.
6. Did the court rule properly in denying Daniel's motion for JNOV? Explain the basis for his motion and discuss the propriety of the court's ruling.

END OF EXAM

You have been a great class.

Have a wonderful and productive summer and keep in touch!