

**FINAL EXAMINATION  
THREE HOURS**

**ESSAY EXAMINATION INSTRUCTIONS**

Your answer should demonstrate your ability to analyze the facts in question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem. There are three essay questions in the examination. You have **THREE HOURS** to complete the exam.

**Question One – One Hour**

David is a tax adviser who lives and works in San Diego. He usually advertises in the San Diego Gazette, but, wishing to expand his business, recently decided to advertise on the local cable channel run by Fox News. This cable station reaches the entire Southern California area, as well as parts of Arizona and Nevada. David's ad was heard by Peter who ran a car dealership in Arizona. After hearing the Ad extolling David, Peter did what the ad suggested and sent the last year's financial records for David to prepare his taxes. Somehow, the records were lost in David's office and the tax return for Peter was late. This cost Peter over \$100,000 in penalties and interest.

Peter sued David in the U.S. District Court in Scottsdale, Arizona, where he lives. He filed just two weeks before the statute of limitations on professional malpractice would have run. Peter had David served at his office in San Diego. David filed a Rule 12 motion to challenge the court's jurisdiction over him.

Several months later, Peter sees one of David's newspaper ads where he advertises that he does all his business as a professional corporation known as the "Tax King, Inc." From doing an asset search, Peter realizes that all of David's assets are held by the corporation and that David, himself, owns nothing. Peter now seeks an order from the Court allowing an amendment of the Complaint to add, as a new defendant the "Tax King, Inc." This is opposed by David.

During the discovery phase of the case, Peter learns from an investigator that 5 years before David was sued for malpractice and that, under an order from the judge, had to summarize all of his clients and their assets, as well as his own financial records. Peter sends a Document Request to David for these summaries. David objects.

After the Court denied the Motion to Amend, Peter proceeded to trial against David as an individual. He recovered \$50,000 from David, on the sole theory of negligence. After seeing that David could not pay the judgment, Peter sued the Tax King, Inc. for negligence and fraud. When the professional corporation denied liability, Peter moved for Summary Judgment on the issue of liability.

**Answer the Following Questions:**

1. Did the U.S. District Court have jurisdiction over David?
2. How should the Court have ruled on the Motion to Amend the Complaint?
3. Should the discovery be allowed?
4. How should the Court rule on the Motion for Summary Judgment?

**Question Two – One Hour**

Fast and Loose, Inc. is a California corporation which sells rebuilt and fast cars. Its only showroom is located in downtown Sacramento, next to the bus station. It is solely owned by Donald, who lives in Reno, Nevada and who drives to work every day in his cars. Fast and Loose, Inc. does no advertising, except on a small local radio station which is operated by Donald's brother. The business name and phone number are listed, however, in the Reno phone book and it sells cars to Nevada citizens from time to time.

Patrick is a resident of Wyoming. He and his girlfriend Monica are on vacation and are on their way to San Francisco when their car breaks down. They leave the car at the Reno Repair Shop which has branches all over California and Nevada. They intend to take a bus to SF. When the bus stops in Sacramento, they get out to stretch their legs and happen to see the showroom of Fast and Loose, Inc. They end up buying a car from the dealer and start to drive to SF. Due to a maintenance defect the steering is faulty and the car runs off the road injuring both.

Patrick and Monica sue Fast and Loose, Inc. and Donald in U.S. District Court in Wyoming for negligence. Patrick seeks personal injury damages in the amount of \$80,000 and Monica in the amount of \$50,000. Patrick includes a slander claim against Donald for laughing at him on the radio when he hears of the suit. Patrick seeks an additional \$25,000 for that slander. Donald files a Counter-Claim against Patrick claiming that Patrick still owes him \$25,000 for the purchase of the car and includes a battery claim arising out of a shoving match at the hospital when they met. Patrick also names as a defendant in that suit the Reno Repair Shop for breach of contract for failure to repair his car after he got out of the hospital and seeks damages of \$100,000 from it. Assume all pleading were properly and timely opposed.

Patrick wins in a jury trial against Fast and Loose, Inc. He is awarded "costs of suit". The Federal rule allows recovery of an expert's entire fee, both to prepare and to testify. Both California and Wyoming state rules only allow recovery of the fee to testify. Since the preparation cost was significant, Patrick wants to get all of the expert's fee back from Fast and Loose, Inc.

**Answer the Following Questions:**

1. Is Patrick and Monica's suit against Fast and Loose, Inc. and Donald properly in federal court?
2. May Donald maintain his Counter-Claim against Patrick?
3. May Patrick maintain his claim against the Reno Repair Shop?
4. May Patrick recover his expert's fees?

**Question Three – One Hour**

Paula is the Chief Executive Officer of Short-Out Corp., which makes electrical lighting fixtures. Short-Out Corp. is a Nevada corporation, but has a manufacturing plant in Stockton. Paula lives in Reno, Nevada. Short-Out Corp. sold electrical equipment to Stingy Bank in San Francisco. Stingy Bank is a federally chartered savings and loan. The equipment was faulty and when installed and turned on caused a fire to ignite which resulted in over \$100,000 of damage to the bank.

Stingy Bank sued Short-Out Corp. in the United States District Court in San Francisco. Short-Out Corp. timely filed a challenge to the Court's jurisdiction over it. Does the court have jurisdiction to hear this case?

At the same time, the Short-Out Corp. filed an alternative motion seeking to have venue changed to the Eastern District, since it was closer to Nevada and the financial records. How should the court rule on the alternative motion?

During the trial of the lawsuit, Stingy Bank used all of its peremptory disqualifications to eliminate from the jury panel anyone who had a checking account, thinking that they might be prejudiced against the bank. Short-Out Corp. objected to this. What ruling should the court make?

Before the jury started deliberations, Stingy Bank asked the Court for a Judgment as matter of law, claiming that the defendant's expert was not qualified, since he was young and this was his first case. The motion was renewed after the verdict for defendant was rendered. The judge said that he didn't believe the defendant's expert and granted the motion. Was this correct?

**Answer the Following Questions:**

1. How should the Court rule on the challenge by Short-Out Corp. to jurisdiction?
2. How should the Court rule on the alternative Motion to Change Venue?
3. What should the Court do about the Bank's use of peremptory challenges?
4. Was the Court's ruling on the Motion for Judgment as a Matter of Law correct?