

**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.

There are three essay questions in this examination.

You have **THREE HOURS** to complete the exam.

### **QUESTION ONE**

Paula, a TV newscaster and resident of San Francisco, traveled to Las Vegas, NV on vacation. One morning while shopping at “Shining” a small “mom & pop” jewelry store, she was detained and searched because one of the salesmen thought she had pocketed a ring. She was innocent. Just before the statute of limitations ran, Paula filed suit against the store and its owner in the U.S. District Court in SF for battery and false imprisonment. It turned out that Dan, the owner of the store, had written a book on the history of rings and had sold several copies to California customers who called and asked for a copy to be sent to them. Dan challenged the court’s jurisdiction over him.

In discovery, it turns out that Paula was seeking \$50,000 in personal injury damages and \$10,000 in property damage from clothing damaged during the detention struggle in the store. She claimed an additional \$30,000 in mental distress damages for the fear she felt. Dan sought to dismiss the case for lack of subject matter jurisdiction.

After her return to SF Paula went on the air and told the story of what happened. She also told the listening public that the book Dan wrote was plagiarized. Dan believed that the sales of the books dropped significantly as a result. When Paula’s lawsuit resulted in a settlement and was dismissed, Dan filed a new lawsuit against Paula in SF Superior Court. Paula filed a motion for summary judgment claiming the suit was barred.

During the trial of Dan’s lawsuit, Paula tried to exclude from the jury anyone who had been to the Dan’s store, regardless of whether they liked the shop or not. Since Dan was of Asian heritage, Paula also tried to exclude Asians from the jury. Dan protested this.

### **ANSWER THE FOLLOWING QUESTIONS**

#### **HOW SHOULD THE COURT RULE ON THE QUESTIONS PRESENTED?**

1. Dan’s challenge to the jurisdiction of the court over him?
2. Dan’s attempt to dismiss Paula’s complaint?
3. Paula’s attempt to dismiss Dan’s new lawsuit?
4. Dan’s objections to Paula’s jury selection?

## QUESTION TWO

Peter and Danielle each own a small parcel of land next to each other. The two owners each dispute the boundary line between their properties and the dispute has become heated. Peter files a lawsuit in the U.S. District Court in San Francisco under the authority of a federal law called the Federal Title Ownership Statute. He includes two additional claims, one that Danielle had allowed crab grass to migrate into his prize begonias and the other that Danielle had insulted his son at a soccer game they both attended. These were minor claims at best. Frank, a potential purchaser of the prize begonias, joined the lawsuit as a plaintiff claiming that he was bumped by Danielle at a flower show when she was in a hurry.

Danielle is married, but her husband Mike was not named and he is out of the country and out of contact. Danielle seeks to have the two “non-title” claims dismissed and the whole case dismissed because her husband is not a part of the case.

During the discovery phase of the trial, Danielle hired an investigator to interview Peter’s family and friends looking for “dirt.” Some of the people the investigator talked to have moved to Europe and are out of contact and one has died. Peter seeks the investigator’s notes for all of the interviews taken and Danielle resists. How should the court rule?

The jury determined that Peter’s boundary lines were too far apart on all sides and found for Danielle. After the case was final Thomas, who owned property on another border sued Peter seeking to have the property line moved back. He moved for summary judgment on this issue and cited the earlier case with Danielle. How should the court rule on this new action?

### ANSWER THE FOLLOWING QUESTIONS

#### HOW SHOULD THE COURT RULE ON THE QUESTIONS PRESENTED?

1. How should the court rule on the Rule 12 motion to dismiss the “non-title” causes of action, including Frank’s claim?
2. How should the court rule on the attempt to dismiss the complaint because of the missing husband?
3. How should the court rule on the demand for the investigator’s notes?
4. How should the court rule on the motion for summary judgment brought by Thomas?

### **QUESTION THREE**

Patty, a California resident, was a patient at Good Results Regional Hospital in Reno, NV. She went in for a simple wart removal, but was sent to the wrong department and had her appendix removed by mistake. She sued the doctor that she thought had done the surgery, Dr. David Smith. She filed in the U.S. District Court in Reno claiming malpractice.

Nevada law provides that an expert report supporting the malpractice claim be given to the doctor before a lawsuit can be filed. If the complaint is filed before this report is provided, the case must be dismissed. There is no corresponding rule in federal court. Dr. Smith moved to dismiss the complaint since he did not receive the required report.

Assuming that the case proceeds, Dr. Smith files a third party complaint against Nancy, the admitting nurse, claiming that she was the one who completed the wrong form and caused the operation to be confused. Nancy challenges this action and seeks to dismiss it.

It turns out that Patty named the wrong doctor. The doctor who operated on her was Dr. Susan Smyth. Dr. Smyth and Dr. Smith joked about the mistake, which they saw all the time. When Patty realized her mistake, she sought leave of court to amend to name the correct doctor. Unfortunately, the statute of limitations had expired and the motion was opposed.

Patty's complaint was the fourth such complaint against Dr. Smyth. His insurance company knew that its policy limits would be greatly exceeded and wants to file an interpleader action in federal court and have all of the unhappy patients of the doctor who live all over the United States come to court to litigate their claims and share the policy limits. Some have serious claims and some have very small claims. None want to participate.

### **ANSWER THE FOLLOWING QUESTIONS**

#### **HOW SHOULD THE COURT RULE ON THE QUESTIONS PRESENTED?**

1. The motion to dismiss for failure to file the expert report?
2. The motion to dismiss the third party complaint against Nancy?
3. The motion by Patty to amend her complaint and sue the right doctor?
4. The effort by the insurance company to bring all patients together?