

UNIVERSITY OF THE PACIFIC
McGEORGE SCHOOL OF LAW

CIVIL PROCEDURE
FALL SEMESTER, 2010
MID-TERM EXAMINATION

PROFESSOR GALVES
DECEMBER 8, 2010
6:00 P.M. - 9:15 P.M.

Please READ THE EXAM INSTRUCTIONS BELOW CAREFULLY.

1. Please Write your student exam number: (1) on your Exam Booklets or (2) type it on the first page of your exam if you are using your laptop computer (and you have registered with ExamSoft).
2. Answer according to the applicable Federal Rules of Civil Procedure, Federal Statutes, U.S. Constitutional provisions, and/or applicable case law. This is a closed-book, closed note exam (so you may use NO materials on this exam). You will be able to use any and all materials on the final exam only.
3. **YOU MUST RETURN THE EXAM BOOKLETS (if writing) OR YOUR LAPTOP ANSWERS (if typing), but you should keep the exam itself.**
4. The following schedule (6:00 p.m. to 9:15 p.m.) will be followed for this exam (the weight of each Part is roughly commensurate with the time allotted).
5. The following schedule will be followed for this exam:

Reading: 6:00 p.m. – 6:15 p.m. FIFTEEN-MINUTE READING PERIOD. You will have 15 minutes to read the entire exam. You should use this 15-MINUTE reading period to think about, and organize your answers, and decide how you will approach the questions. You may NOT write in your Exam Booklets or type on your laptops during this reading period, but you may write/outline on the **four blank scratch pieces of paper** distributed with the exam (one blank page for each section and two pages for essay question one).

<u>6:00 pm – 6:15 pm (15 min.):</u>	Reading/Organizing (but no writing of the actual answer)
<u>6:15 pm – 8:00 pm (1 hour & 45 min.):</u>	Essay Question One
<u>8:00 pm – 8:50 pm (50 min.):</u>	Essay Question Two (2 subparts)
<u>8:50 pm – 9:15 pm (25 min.):</u>	Short Answer Questions (5 Questions)

3 Hours And 15 Minutes Total Time

6. *This mid-term exam is worth 33% of your final grade.*

**SPECIAL INSTRUCTIONS FOR
THE TWO ESSAY QUESTIONS**
(6:15 P.M. - 8:50 P.M.)

This part of the exam consists of two (2) essay questions. It is based on one (1) general factual situation for the two (2) essay questions. You have 2 hours and 35 minutes for this part of the exam. The actual time you should spend on each particular essay and issues contained therein is completely up to you (how much time you decide to spend on which issues reveals your legal judgment). In any event, be sure to **BUDGET YOUR OWN TIME. DO NOT RELY ON THE PROCTORS TO KEEP YOUR TIME.**

To the extent you use case names, U.S. Constitutional provisions, Federal Statutes, and the Federal Rules of Civil Procedure, make sure you explain how they are applicable and why they might be controlling. You need not cite any case names, rule numbers, or statutory section numbers if your discussion is otherwise clear.

Try to cover all **reasonable** arguments and state your reasoning as fully as possible within the time limit given. Note that **implausible** arguments or recognition of **non-issues** will NOT receive credit. Be sure to make necessary interrelationships between the rules, law, and facts. Also, try to do more than merely formulate competing arguments and make general conclusions; instead, make sure to **EVALUATE** the strength and weaknesses of all arguments made the way a court would.

The questions generally will be weighted based on the time suggested. But again, spend as much time as you deem necessary to answer the questions appropriately. Out of the 110 possible raw points, they breakdown as follows:

<i>Essay One (1 hour & 45 min.)</i>	<i>= 65 pts.</i>
<i>Essay Two (50 min.)</i>	<i>= 27 pts.</i>
<i>Short Answers (25 min.)</i>	<i>= 18 pts.</i>

CLARITY OF EXPRESSION, CONCISENESS AND EFFICIENT ORGANIZATION OF YOUR EXAM ANSWERS ALL CONTRIBUTE TOWARD A GOOD SCORE. THEIR OPPOSITES DETRACT. GOOD LUCK.

SPECIAL INSTRUCTIONS FOR
THE SHORT ANSWER QUESTIONS
(8:50 P.M. - 9:15 P.M.)

1. You have TWENTY-FIVE (25) minutes to complete this part of the exam. Use a SEPARATE EXAM BOOKLET/SECTION for your answer to these questions.
2. There are five (5) SHORT answer questions. Most of these questions are also based on the hypothetical factual situation set forth in Part One.
3. YOU HAVE AN AVERAGE OF FIVE (5) MINUTES PER QUESTION. None of the answers requires much more than a couple of paragraphs of explanation. You may be able to answer some questions in less than a minute, but others may take as much as 10 minutes to answer (so use your judgment).
4. These questions are designed to elicit fairly short answers that are direct and to the point – YOU EITHER KNOW THE ANSWER or YOU DO NOT.
5. Taking FIVE (5) minutes per question is a SUGGESTED AVERAGE time only. You must be careful to BUDGET YOUR OWN TIME. You will have to discern from the question just how much explanation is necessary for each particular question (remember, your good legal judgment as well as your legal knowledge and analytical skills are being tested).

**FACTUAL BACKGROUND FOR
THE TWO ESSAY QUESTIONS**

Phyllis has a personal “Facebook” account on which she is very active and has, at last count, 2,466 “friends” located in every state in the U.S., as well as in Europe, Asia, and Latin America. She also uses Facebook to sell used cell phones. She has sold thousands of used cell phones throughout the U.S. and Europe. Phyllis is currently living with her aunt in Sacramento, California, while she attends college at Sacramento State University. This coming summer in 2011, she will go to Europe for two years of traveling and working with the Peace Corps. Phyllis grew up and lived with her parents in Oregon before she started living with her aunt last fall in order to attend classes this academic year 2010-2011 at Sac State.

When Phyllis first arrived in Sacramento in August of 2010, she decided to sign up for a dating website called, “Dream Dates.” Dream Dates is incorporated in Oregon and has its principle place of business in San Diego, California. Dream Dates has thousands of people located throughout the U.S., and the world, who have submitted dating profiles on the Dream Dates website and pay a monthly fee of \$15 to use Dream Dates’ matchmaking services. Dream Dates does not research any users of its services and explicitly makes no guarantees as to the fitness of any user, or as to the truth of any user’s dating profile claims.

In early September, Phyllis met DuBois online using the Dream Dates online matchmaking service. Phyllis began conversing with DuBois and even met with him twice for dates in Las Vegas in October and November of this year. DuBois is a French citizen who has resided in Los Angeles, California, for the last 5 years. DuBois claimed on his Dream Date profile that he was a “Very Successful Hollywood Movie Producer and Director.” However, as Phyllis soon found out, DuBois simply makes low budget, homemade, “erotic” videos in the basement of his grandmother’s Los Angeles house, where he actually lives. DuBois has never made a movie that has been commercially released, and he is currently unemployed. When Phyllis met DuBois in Las Vegas for their two dates in October and November, unbeknownst to Phyllis, DuBois secretly videotaped her in her hotel room getting dressed and sleeping.

Phyllis recently has learned that DuBois is now using that footage he secretly took of her in one of his “movies.” Recently, he sent out a movie trailer (containing the very invasive and embarrassing footage of Phyllis) with an announcement to all of Phyllis’ Facebook friends saying, “*Check out my girlfriend, Phyllis, starring in my latest movie.*”

Phyllis has sued DuBois and Dream Dates in Federal Court in the Eastern District of California. Phyllis has sued Dream Dates for negligent supervision of its site because it allowed DuBois on its site, and she has sued DuBois for posting footage of her to all of her Facebook friends which is a violation of the “Federal Privacy Act of 2010” making it a federal crime to violate someone’s privacy using the internet. It has cost Phyllis \$75,000 to remove all of the copies of DuBois’ movie featuring her dressing/sleeping in her hotel room. DuBois has counterclaimed against Phyllis for selling him a broken cell phone and for defamation because she has posted to all of her friends that DuBois is a “*pathetic loser and a creepy stalker.*”

When Phyllis originally signed up on the Dream Dates matchmaking site, she clicked “I agree” to the statement, “*User agrees that any lawsuit brought against Dream Dates for any*

purpose must be filed in State Court in San Diego, California, and User also hereby agrees that Texas substantive state law will apply to all such disputes.”

DuBois recently agreed to meet Phyllis in San Francisco for one last “date” with her. Although DuBois brought flowers as he was excited that perhaps all was forgiven and Phyllis would start dating him again, Phyllis brought a copy of her complaint against DuBois and Dream Dates and served him. Phyllis also sent a Rule 4(d) Waiver to Dream Dates in San Diego. A receptionist signed it and sent it back to Phyllis’ lawyer 70 days after receiving it. Phyllis now wants Dream Dates to pay for the cost of service. DuBois also has decided to file both a petition to remove, and a motion to transfer, the case to state court in Arizona.

The California Long Arm Statute provides that, among other things: “*California courts will have personal jurisdiction over any business that causes injury within the state, or over any person that harms the business interests of anyone in the state.*”

FOR EACH OF THE FOLLOWING ESSAY QUESTIONS, ANALYZE THE PLAUSIBLE ARGUMENTS THAT WOULD BE PROVIDED BY EACH SIDE AND DISCUSS HOW AND WHY A JUDGE WOULD LIKELY RULE:

ESSAY QUESTION ONE
(6:15 P.M. - 8:00 P.M.)

Discuss all of the plausible reasons: (1) why Phyllis’ federal lawsuit in the Eastern District of California can or should be dismissed or resisted by defendants; (2) whether DuBois’ two counterclaims should be dismissed; (3) whether DuBois’ removal petition and motion to transfer the case to State Court in Arizona should be granted; and (4) whether Dream Dates must now pay for Phyllis’ Service of Process of Dream Dates.

ESSAY QUESTION TWO
(8:00 P.M. - 8:50 P.M.)

- A. In addition to the above, assume the following: California conflicts of law principles provide that one must apply the substantive law of the “place of the wrong.” However, all other states’ conflicts of law principles provide that one must apply the substantive law of the state that has the “most significant relationship” with the parties and with the dispute. As a result, which substantive law should be applied to which claims in Phyllis’ lawsuit?
- B. Assume for this question only, that Texas substantive law would apply to this dispute. Assume a Texas state statute provides: “(1) All internet and other cyber-crime type of cases must be tried in front of a judge only, in a bench trial, and not in front of a jury, because judges understand technology and the internet better than juries do; and (2) these kinds of internet cases must be tried only in the city where the defendant’s server is located.” (Assume both of the defendants’ servers are located in Phoenix, AZ). Would this Texas state statute apply in this lawsuit, and if so, how?

