

2010 Mid-Term Exam

EXAM NO. _____

RAW SCORE	ADJUSTED SCORE

ESSAY QUESTION ONE

	ISSUE	POSSIBLE POINTS	YOUR POINTS
	PHYLLIS' LAWSUIT IN THE EASTERN DISTRICT OF CALIFORNIA		
	<u>(1) MOTIONS TO RESIST THE LAWSUIT</u>		
I.	<u>Rule 12(b)(1) Motion for Lack of Subject Matter Jurisdiction</u>	1	
	A. <u>§1331 Federal Question</u>		
	1. <u>DuBois</u>	2	
	2. <u>DD</u>	1	
	B. <u>§1332 Diversity</u>		
	1. <u>Citizenship</u>		
	a. <u>Phyllis</u>	2	
	b. <u>DuBois</u>	2	
	c. <u>DD</u>	.5	
	d. <u>Diversity of Citizenship Impossible.</u>	1	
	2. <u>Amount in Controversy</u>		
	a. <u>DuBois</u>	1	

	b. <u>DD</u>	1	
	C. <u>§1367 Supplemental Jurisdiction for Claim against DD</u>		
	1. <u>§1367(a) – Same Case or Controversy</u>	.5	
	2. <u>§1367(b) – But No Destruction of Diversity</u>	.5	
	3. <u>§1367(c) – Discretion to Dismiss Anyway</u>	.5	
	II. <u>Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction.</u>	1	
	A. <u>Jurisdictional/Long-Arm Statute – CA</u>	1	
	1. <u>DuBois</u>	3	
	2. <u>DD</u>	1	
	B. <u>Constitutional Due Process Fairness Test – Minimum Contacts</u>	1	
	1. <u>Traditional Bases</u>		
	a. <u>Presence – DuBois</u>	1	
	i. <u>Brennan v. Scalia (Burnham) Issue</u>	1.5	
	ii. <u>Service Done Incorrectly, So Presence Impossible</u>	1.5	
	b. <u>Domicile – DuBois and DD</u>	1	
	c. <u>Consent – DD’s Argument</u>	1	
	2. <u>Case-By-Case Analysis</u>		
	a. <u>General Jurisdiction</u>		
	i. <u>DuBois</u>	2	
	ii. <u>DD</u>	1	
	b. <u>Specific Jurisdiction over Each of the Claims</u>		
	i. <u>DuBois – Invasion of Privacy.</u>	2	
	ii. <u>DD – Negligent Supervision</u>	1	
	c. <u>Other Considerations</u>		
	i. <u>Purposeful Availment</u>	1	
	ii. <u>Convenience/State’s Interest</u>	.5	
	iii. <u>Reasonableness</u>	.5	
	III. <u>Do Nothing and Then Do a Collateral Attack Whenever Phyllis Attempts</u>	1	

	<u>to Enforce the Default Judgment Against the Defendants</u>		
IV.	<u>Rule 12(b)(3) Motion to Dismiss for Lack of Venue</u>		
	A. <u>DD – Consent</u>	1	
	B. <u>§1391(a)/(b)(1) & §1391(c)</u>	1	
	C. <u>§1391(b)/(b)(2)</u>	1	
	D. <u>§1391(a)/(b)(3)</u>	.5	
	E. <u>§1391(d)</u>	.5	
V.	<u>Rule 12(b)(4) & (5) Motions to Dismiss for Lack of Process & Lack of Service of Process (Notice)</u>	1	
	A. <u>DuBois – Improper Personal Service</u>	1	
	1. <u>No Summons [see above] – 12(b)(4)</u>	1	
	2. <u>Service by a Party [see above] – 12(b)(5)</u>	1	
	B. <u>DD – Improper Rule 4(d) Service by Waiver on DD</u>		
	1. <u>No Summons or Complaint</u>	1	
	2. <u>Receptionist Signed It (Not Authorized)</u>	1	
VI.	<u>Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim upon which Relief Can Be Granted</u>		
	A. <u>DuBois</u>	1	
	B. <u>DD</u>	2	
VII.	<u>12(b)(7) – Failure to Join a Required Party</u>	2	
VIII.	<u>Motion for Forum Non Conveniens</u>	2	
	(2) DUBOIS’ TWO COUNTERCLAIMS		
	I. <u>Personal Jurisdiction over Phyllis Regarding the Counterclaim</u>	2	
	II. <u>Subject-Matter Jurisdiction of the Counterclaims</u>	2	
	(3) <u>VENUE: TRANSFER & REMOVAL MOTIONS TO STATE COURT IN AZ</u>	3	
	(4) <u>DD TO PAY FOR SERVICE</u>	2	

	Overall Clarity, Persuasiveness, Organization, Creativity, etc.	5	
	TOTAL FOR ESSAY QUESTION ONE	65	

ESSAY QUESTION TWO

	ISSUE	POSSIBLE POINTS	YOUR POINTS
A	<u>SUB-QUESTION “A.”: CONFLICTS OF LAW”</u>		
	A. <u>California Conflicts of Law – “The Place of The Wrong.” Which Substantive Law Applies to which Claim(s)?</u>	1	
	1. <u>Phyllis v. DuBois – It Would Be Federal Substantive Law If the Invasion of Privacy Claim Against DuBois Is a §1331 Federal Question Claim</u>	2	
	2. <u>Phyllis v. DuBois – If the Invasion of Privacy Claim Against DuBois Is a Diversity Claim & the Phyllis v. DD Negligent Supervision Claim is a §1367 State Law Claim and/or Diversity Claim (If Possible)</u>	4	
B	<u>SUB-QUESTION “B.”: ERIE – CHOICE OF LAW”</u>		
	B. <u>Erie Doctrine – Texas Substantive Law or Federal Law (Bench v. Jury Trial)</u>		
	1. <u>Application of Texas Substantive Law.</u>	3	
	2. <u>Application of Part (1) of The Texas State Statute – Allowing Only a Bench and Not a Jury Trial</u>		
	a. <u>The Federal-State Law Conflict Cannot Be Harmonized</u>	1	
	b. <u>Check the Source of the Federal Law/Apply Appropriate Test</u>	.5	

	(i) <u>Federal Constitutional Law</u>	1	
	(ii) <u>Federal Statute</u>	1	
	(iii) <u>Federal Rule of Civil Procedure</u>	1	
	(iv) <u>Federal Practice/Local Rule of Practice</u>	1	
	3. <u>Application of Part (2) of The Texas State Statute – Allowing the Case to Be Tried Only Where the Defendants’ Servers Are Located (Phoenix, AZ)</u>		
	a. <u>The Federal-State Law Conflict Cannot Be Harmonized</u>	2	
	b. <u>Check the Source of the Federal Law/Apply Appropriate Test</u>		
	(i) <u>Federal Constitutional Law</u>	.5	
	(ii) <u>Federal Statute</u>	2	
	(iii) <u>Federal Rule of Civil Procedure</u>	.5	
	(iv) <u>Federal Practice/Local Rule of Practice</u>	.5	
	Overall Clarity, Persuasiveness, Organization, Creativity, etc.	3	
	TOTAL FOR ESSAY QUESTION TWO	27	

SHORTANSWER QUESTIONS

5 QUESTIONS	POSSIBLE POINTS	YOUR POINTS
1. <u>Contingency Fee; Hourly Fee – Advantages/Disadvantages</u>	4	
2. <u>Injunction; Declaratory Judgment – Difference</u>	3	
3. <u>Erie Did NOT Eliminate “Federal Common Law,” Only General Common Law in State Law Areas by Federal Courts</u>	4	
4. <u>§1367 Provides Federal Subject-Matter Jurisdiction For DD’s Impleader Claim (even if DD & DuBois Were Both from Arizona)</u>	4	

5. <u>No, §1441 Removal Is From State Court To Federal Court In Same Federal Venue, Not Fed to State, or Fed to Fed, or State to State</u>	3	
TOTAL FOR MULTIPLE CHOICE	18	

FINAL RAW SCORE

EXAM SECTIONS	POSSIBLE POINTS	YOUR POINTS
ESSAY QUESTION ONE	65	
ESSAY QUESTION TWO	27	
SHORT ANSWER SECTION	18	
TOTAL SCORE	110	

**PLEASE NOTE THAT YOUR
“ADJUSTED SCORE” – NOT YOUR**

**“RAW SCORE” -- IS YOUR
ACTUAL GRADE FOR THE MID-
TERM EXAM**