

# UNIVERSITY OF THE PACIFIC McGEORGE SCHOOL OF LAW

During examinations, proctors remain in the room. If you have a problem that the proctor cannot resolve, you may report it to the Faculty Support Office.

## EXAMINATION INSTRUCTIONS

1. Use a separate exam answer book to respond to each question.
  - a. **WRITERS:** On the cover of each exam answer book used, write the examination number assigned to you, the name of the course, and the number of the question. **DO NOT WRITE YOUR NAME.**  
  
**ExamSoft** users: Follow these instructions only if your computer fails.
  - b. If you do not remember your examination number, write your 988/989 Student ID Number on each exam answer book cover.
  - c. You may write on both sides of page if necessary in the exam answer book.
2. Read carefully any special examination instructions provided by the professor. **Check the heading of the examination for time allocations, course title, and professor.**
3. Unless the professor otherwise provides, bring to examinations only pen(s) or laptops.
  - a. If it is impossible to make other arrangements for backpacks, briefcases, etc., place them in the front or back of the room before the examination begins. Do not retrieve such materials until a break, if any, or after the examination. (Purses may be kept with the student.) **Do not bring electronic devices such as cell phones; additional laptops, pagers, blackberries, i-phones, noise cancelling headphones, etc... into the examination room.**
  - b. If the professor has indicated materials that may be used during the examination (e.g., Tax Code), strictly limit the materials to those approved.
4. Do not begin reading questions or writing anything other than the identification information on the exam answer book cover until the proctor states you may begin. (This prohibition includes writing notes on scratch papers or in exam answer books.)
5. **STOP WRITING OR TYPING AS SOON AS THE PROCTOR CALLS TIME.**
6. Before leaving the examination room, place unused answer book(s) in the boxes provided by proctors. **WRITERS check in your exam books with proctors.**
7. **LAPTOP EXAMS MUST BE UPLOADED AS SOON AS POSSIBLE.**
8. If you finish your exam early, please quietly remove your belongings.

**CONDUCT DURING EXAMINATIONS SHALL BE IN ACCORDANCE  
WITH THE CODE OF STUDENT RESPONSIBILITY**

**UNIVERSITY OF THE PACIFIC  
McGEORGE SCHOOL OF LAW**

**EVIDENCE  
FALL SEMESTER, 2012  
MID-TERM EXAMINATION**

**PROFESSOR GALVES  
DECEMBER 11, 2012  
6:00 PM – 8:15 PM**

**TWO ESSAY EXAM QUESTIONS**  
(2 HOURS AND 15 MINUTES TOTAL TIME)

SPECIAL EXAM INSTRUCTIONS

In addition to the standard McGeorge exam instructions, please **READ THE SPECIAL 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 Evidence and/or applicable case law. This is a closed-book, closed note exam; you will NOT be given a copy of the Federal Rules of Evidence for reference. You may use NO materials on this exam (You will be able to use any and all materials on the Final Exam only). You may outline on the 2 pieces of scratch paper (pages 4 & 5 of 7) given to you during the reading period, but no other materials can be consulted.
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 8:15 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:

<b><u>6:00 pm – 6:15 pm (15 min.):</u></b>	<b>Reading/Organizing (but no writing of the actual answer)</b>
<b><u>6:15 pm – 7:15 pm (60 Min):</u></b>	<b>Essay Question One (6 questions/answers)</b>
<b><u>7:15 pm – 8:15 pm (60 Min.):</u></b>	<b>Essay Question Two (4 sub-parts)</b>

**2 Hours & 15 Minutes Total Time**

**Reading: 6:00 p.m. – 6:15 p.m. FIFTEEN-MINUTE READING PERIOD..** You will have 15 minutes to **read** the two essay exam questions. 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 **two blank scratch pieces of paper** distributed with the exam (one blank page for each essay question).

There are two (2) unrelated essay questions (the weight of each is roughly commensurate with the time allotted):

Q1: 6:15 p.m. - 7:15 p.m. (A trial transcript, with 6 numbered question & answer items where you are to discuss the applicable objections/motions to strike, legal analysis, strategy and likely rulings).

Q2: 7:15 p.m. - 8:15 p.m. (An essay question, with four subparts, regarding a trial, where you are to discuss the applicable bases for appeal, legal analysis, strategy, and likely rulings).

6. **This mid-term exam is worth 30% of your final grade.**
7. Please be sure to **keep your own time and budget your time** so you have enough time to answer each portion of each question.
8. To the extent you use case names, the Federal Rules of Evidence, make sure you explain how they are applicable and why they might be controlling. **YOU NEED NOT PROVIDE RULE NUMBERS, OR CASE NAMES**, if you are more comfortable discussing evidentiary concepts contained in the various rules, and in case law.
9. 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. Be sure to consider strategic courtroom concerns, such as whether it would be a good idea not to object even if a party could otherwise do so under the rules, to the extent such concerns are significant and ought to be considered by an advocate.

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 105 possible raw points, they breakdown as follows:

<b>Reading Period (15 min.)</b>	<b>N/A</b>
<b>Essay One (1 hour)</b>	<b>= 55 pts.</b>
<b>Essay Two (1 hour)</b>	<b>= 50 pts.</b>

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





**FOR EACH OF THE FOLLOWING ESSAY QUESTIONS, ASSUME THE FEDERAL RULES OF EVIDENCE APPLY, AND 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. - 7:15 P.M.)**

Dustin has been charged with participating in a robbery of a federal bank on the morning of March 1 of this year. At Dustin's trial in a federal court, the prosecution called Wendy, who was Dustin's wife when the robbery took place. Dustin and Wendy divorced a month before trial and Wendy was eager to testify against him.

During the direct examination of Wendy, the following questions were asked and answers given corresponding to each numbered item:

- (1) Prosecutor: When Dustin was very desperate for money two years ago; he robbed a bank, didn't he, and so he definitely knows how to rob a bank, doesn't he?  
Wendy: That's right. Just before this bank robbery that Dustin is charged with, he told me that he again needed some money very badly; and then he said, "banks are where the money I need is at, you know."
- (2) Prosecutor: What did Dustin say to you on the morning of March 1, the day of the bank robbery?  
Wendy: He said he'd be late coming home that night because he was going to have to meet some people to divide up some money.
- (3) Prosecutor: Later that evening, did you speak with anyone else?  
Wendy: Yes. I spoke with my friend, and Dustin's friend, Nancy.
- (4) Prosecutor: What did Nancy say to you?  
Wendy: Nancy said that she was scared because she and Dustin had "pulled off a big job" that afternoon.
- (5) Prosecutor: Did Nancy explain what she meant by saying they had "pulled off a big job"?  
Wendy: No, but I assume that she meant that she and Dustin committed some sort of crime, and now I know it was this bank robbery and that is why she was scared.
- (6) Prosecutor: Did Dustin say anything else to you about this bank robbery case against him?  
Wendy: Yes, he said that he had told the police officer who arrested him that he would plead guilty only to attempted bank robbery and would be willing to pay a big fine because his home owner's insurance would cover such a fine; and that the officer said, "maybe."

Assuming all proper objections, claims of privilege, and motions to strike were timely made for each numbered question and answer item; did the court properly admit the questions and the corresponding testimony answers in items (1) - (6)? Discuss.

**ESSAY QUESTION TWO**  
**(7:15 P.M. - 8:15 P.M.)**

David and Vic were farmers with adjoining properties. They had been fighting for several years about their respective water rights. In May, Vic and his wife, Wanda, were sitting in the kitchen when Vic received a telephone call. During the call, Vic became quite angry. As soon as he hung up, he said the following to Wanda: "That rat, David, just called and told me that he was going to make me sorry! He tried to disguise his voice, but I know it was him!" In June, while at a nearby US military base, Wanda and Vic passed a truck driven by David, who made an obscene gesture as they drove by. Vic immediately stopped and yelled that if David wanted a fight, then that was what he was going to get. Both men jumped out of their trucks. After an exchange of blows, David began strangling Vic. As US military police arrived on the scene, Vic collapsed and died from a massive heart attack. David was charged with manslaughter in Federal court.

- (1) At David's trial, the prosecution called Wanda, who testified about: (a) Vic's description of the May telephone call with David, (b) all of what happened in June on the US Military base, and (c) David's alleged violent sexual assault of a young woman that Wanda had read about in a story on the Internet.
- (2) On cross-examination of Wanda, the defense introduced a sworn statement by Wanda that she knew the story on the Internet about David allegedly assaulting a young woman was definitely not true.
- (3) During the defense's case, David claimed that he only defended himself when Vic got out of his truck and punched David in the mouth. David also testified that he knew about two other fights involving Vic. In the first, which took place four years before his death, Vic broke a man's arm with a tire iron. In the other, which occurred two years before his death, Vic threatened a woman with a gun. David testified that he had heard about the first incident before June, but that he had not heard about the second incident until after his trial had commenced.
- (4) On rebuttal, the prosecution introduced evidence that Vic had a great reputation in the community for being peaceful, and also introduced evidence that David had a bad reputation in the community for being violent, and that David was in the habit of picking fights with his neighbor Vic every chance he got.

Assuming all appropriate objections were timely made, discuss the admissibility of:

- (1) Wanda's testimony on direct about Vic's statements regarding the May phone call, about what she saw on the military base, and about David's alleged sexual assault.
- (2) On cross-x, Wanda's sworn statement about David's sexual assault not being true.
- (3) David's testimony on direct during the defense's case-in-chief.
- (4) On rebuttal, the prosecution's evidence about Vic and David.