

Midterm Examination
Friday, September 28, 2007

GENERAL INSTRUCTIONS:

1. Be sure to write the last six digits of your social security number in the place provided at the top of this page. You are required to turn these test questions in at the end of the examination. Failure to return the test questions will result in a grade of **F** for this examination.
2. This is a limited open book examination. You are permitted to have with you the Rules pamphlet.
3. There are three parts to this examination:

PART I - Short Answer (10%)
PART II - Essay (50%)
PART III - Multiple Choice (40%)
4. Specific instructions for each part are located with that part. Read them carefully!
5. This is a 1 hour and 10 minute exam.
6. If you wish to leave the room during the examination, you may do so. You must, however, leave your test questions and answer sheet in the classroom. Moreover, you may not speak with any member of the class while outside the room.
7. All the examinations at the law school are conducted under the Student Code of Conduct, which forbids cheating or collaborating on examinations. If you witness anyone cheating in any form, it is your responsibility to report this to the Registrar or the Dean of Students. You are required to sign the form indicating compliance with the Student Code of Conduct at the completion of your examination.
8. All students are required to have a Widener University School of Law picture ID card with a validation sticker for fall 2007 on the desk in front of them during the examination.

PART I
SHORT ANSWER QUESTIONS
(suggested time: 10 minutes)

IMPORTANT

Read the following instructions CAREFULLY:

1. There are five short answer questions in this part.
2. Limit your answer to one or two sentences at most.
3. If you are handwriting your exam, put your answers on this test paper. If you are using ExamSoft, include the answers on your typewritten exam, but be sure they are marked clearly so they can be easily distinguished from your essay.

1. Name two differences in procedure between a trial seeking damages for negligence and a trial seeking an injunction.

2. Who are David Dudley Field and Stephen Field?

3. When deciding a F.R.C.P. 12(b)(6) motion, why does a federal judge assume the facts in the plaintiff's complaint are true?

4. Why does F.R.C.P. 8(a)(1) require that a plaintiff state the basis for the federal court's jurisdiction in the complaint?

5. Name two underlying policies of the Federal Rules of Civil Procedure.

PART II

ESSAY QUESTION (suggested time: 40 minutes)

IMPORTANT

Read the following instructions CAREFULLY:

1. Unless you are using ExamSoft, use the “blue” books provided to write your answer. Be sure to put the last six digits of your social security number on each “blue” book. In addition, you **MUST** number each book, e.g., “1 of 1” or “1 of 3,” “2 of 3,” “3 of 3.”
2. If you are handwriting your exam, write only on one side of each sheet of paper. And remember, a legible exam makes a happy professor!
3. There is 1 essay question in this part.
4. If there are any facts you need to know to analyze the problem, indicate what they are and how they would affect your conclusion. Do not, however, rewrite the question!
5. Address only the issues of procedural law. Do not address the substantive law involved.

Carte Blanche is a national credit card company, which gives to cardholders the privilege of charging items at retail establishments. These retail purchases are recorded in a cardholder's Carte Blanche general account; are billed on a monthly basis; are payable upon receipt; and are not subject to finance charges. Cardholders may also use their credit cards to purchase airline tickets. Charges incurred for airline ticket purchases are billed in monthly installments under an extended payment plan and, in contrast to general account billings, are subject to finance charges.

Allen Seltzer purchased airline tickets with his Carte Blanche credit card under the deferred payment plan. His bill contained a statement of both his general and his airline accounts, including the minimum payment due on the airline account. Carte Blanche told him that he could make larger payments or even pay the entire remaining balance of the airline account at any time without penalty. What Carte Blanche did not tell him was that any overpayment was actually credited to his general account as a credit toward future use instead of to his airline account. Thus, while Mr. Seltzer thought he was paying down his airline balance and reducing the total finance charges, he was only being credited with the minimum payment on that account and incurring significant finance charges. Nowhere in the Carte Blanche literature were cardholders told that they could, let alone that they had to, indicate an allocation of the monthly payment to a specific account. This omission is a violation of the Federal Truth in Lending Act, a remedial consumer protection statute.

When Mr. Seltzer discovered what Carte Blanche was doing, he filed suit against Carte Blanche under the Federal Truth in Lending Act in federal court, seeking the damages provided for in that statute. Carte Blanche filed a counterclaim against him for the balance owing on his airline account with Carte Blanche plus interest. This counterclaim is called a debt collection action and is governed by state law. Mr. Seltzer is a citizen of the same state as Carte Blanche. He has therefore filed a motion to dismiss the counterclaim pursuant to F.R.C.P. 12(b)(1).

You are the law clerk to the judge assigned to this case. She has asked you for a memorandum advising her of the arguments for and against this motion and suggesting how she should rule. Be sure to explain your reasoning fully.

PART III
MULTIPLE CHOICE QUESTIONS
(suggested time: 20 minutes)

IMPORTANT

Read the following instructions CAREFULLY:

1. Using a #2 pencil, write the last six digits of your social security number on the answer sheet in the first six columns for I.D. number and fully darken the rectangles that correspond with your number. Do not use ExamSoft for this portion of the exam; you must use the answer sheet provided to get credit for your answers.
2. Using a #2 pencil, fully darken the letter “A” under Test Form.
3. There are 5 questions in this part.
4. To be scored, your answers must be recorded on the answer sheet using side 1, numbers 1-5. Do not use the “E” rectangle on the answer sheet. Choose only rectangles “A” through “D.”
5. You must use only a #2 pencil in answering the questions. Fully darken the rectangle for the answer you wish to give.
6. Unless otherwise indicated, assume suit is in federal court.
7. For each question, choose the best answer.