Evidence
Preliminary Examination

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FIU College of Law
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Format:
This Preliminary Examination will be administered over one week. It will be available to see and download beginning at 12:30 p.m. on Tuesday, October 14 from the blog (fiuevidence.blogspot.com). It is due, in hard copy, at the beginning of class on Tuesday, October 21.

The exam consists of **six (6)** Short-Answer Essays. Each question indicates the point value; the exam is worth **135 points** towards your final grade. You may write up to **500 words** on each question, except Question # 3, on which you can write up to **850 words**.

The first page of your exam answer must be a cover page containing your Blind ID #; begin your answers on the second page. *Staple* the pages (no paper clips or binder clips). Please begin each answer on a new page. Double space your answers.

Each answer must include the word count for that answer, as described below. Two (2) points will be deducted from any answer not followed by a word count.

Once the exam becomes available, you may not discuss it, the questions, the answers, or anything about it—in any oral, written, non-verbal conduct intended as an assertion, or other form—with your classmates, me, any faculty member, your friends, your family, strangers, pets, extra-terrestrials,

inanimate objects, or anyone in the known universe. Please respect your classmates, yourself, me, and the legal profession by adhering to this rule.

The use of ChatGPT and other generative AI, LLM, or similar programs is prohibited and will be deemed a violation of College of Law and university academic policies.

A Note on the Case:

The questions all derive from one federal civil rights action in federal district court. The introductory material provides a Complaint with the basic facts, the basic substantive law at issue, and some evidentiary documents; everything else is in the trial transcript.

Subsequent questions add additional facts, information, and issues relevant to that question, which can then be used for subsequent questions. Once some fact or piece of information or event is introduced, it can be used for ***all*** subsequent questions—that is, later questions may require that you refer to or use (and cite to) information provided earlier. In other words, everything presented in the entire case could be fair game in answering the final question. Some questions cross-reference the answer to a prior question (e.g., Question # 3 may ask an additional question as to something discussed in Question # 2). Some answers may vary, depending on how you resolved a prior question; later answers should be consistent with prior evidentiary rulings, including those you made. Multiple questions may address distinct aspects of one issue. Some questions break the legal rule from the application (e.g., Question # 2 asks for the legal standard, Question # 3 asks you to apply it).

Read the entire case at the outset, before beginning to answer individual questions. That will help you understand the case and the information involved and how everything fits together, rather than focusing too narrowly on each atomized question.

Questions are in **bold**. All facts and information necessary to answer a question have appeared *before* that question. Any new information appearing after a question is for the *next* question and any *subsequent* questions.
The case is in federal court and governed by the Federal Rules of Evidence and applicable federal procedural statutes, as well as additional legal rules or cases provided in the exam.

Read the facts carefully. Information is provided as court documents along with a transcript of court proceedings and witness testimony, so you must parse out what was said to find the key facts and information. There is not necessarily a question following each bit of testimony; some information is provided to give you a full picture of the trial and evidence for use in later questions and analyses. The portions of transcript provided do not constitute the entirety of the information provided at trial, but they give you everything you need to conduct the necessary analysis. You will have everything you need to answer every question. Do not assume important information was in the missing sections, but do not draw any inferences from pieces you have not seen, unless the information states otherwise. Breaks in testimony are indicated by * * *.

Read the questions carefully. Answer only the question asked, looking carefully at the information provided in the transcript excerpt and the prompts it provides. The questions and issues to

be drawn out of each question are straightforward. Do not look for tricks or hidden balls and do not fight the facts provided. Most questions are discrete, narrow, and precise, asking you to resolve a specific question or issue. The questions likely do not require you to scroll through multiple issues or possible rules. Any rule or issue you introduce or mention should be analyzed and applied to the facts in detail. Do not mention a rule in passing as a conclusion.

If you discuss a document, piece of testimony, or other evidence, be specific about where you found that information (cite the document or piece of testimony). If you discuss a piece of substantive law, the first name of the case is sufficient. Questions and Answers for each witness are numbered; you can cite by Witness name and the number of the question or answer (e.g., *Dart* A5).

Approaching Short-Answer Questions

Note the assigned word counts. The counts are intentionally wide figures to give you maximum room to write, although you probably will not (and should not need to) write that much on many questions. Do not feel that you must write to the limit on every question; if you can give a complete answer in fewer words, do so. Save your words. Avoid throat clearing. ("The issue is" "As the Court, I would find . . ." "The defendant will argue . . ."). Jump right into your answer. When asked to be a party or the court, do not begin with "the party is likely to argue" or "the court is likely to find." You are the party or the court, so just argue or find. If asked to reach a conclusion, do so. Do not italicize or bold or underline words you want the reader to see; the reader can figure it out.

Begin each answer on a separate page, clearly identifying the question being answered at the start (write the question number in bold above the paragraph--e.g., **Question 1**). In a parenthetical at the end of each answer, you must state the number of words in that answer. Please double-space your answers.

Each answer should be concise, brief, and direct. A good answer must identify and state the applicable rule (or relevant portion of the applicable rule), then apply it to the facts at hand to produce a conclusion with a short explanation. Your statement of the rule should include any elaborations from the notes, cases, class discussion, or other sources. Your application should discuss specific facts and explain ***why*** the rule is or is not satisfied.

Some questions address similar issues and are governed by the same rule. Unless oindicated, you must provide the rule anew for each question (even if it means cutting-and-pasting). Do not *supra* to prior answers.
Do not combine the rule and application into a single sentence. Do not simply recite legal conclusions (e.g., "The evidence is relevant because it makes a fact more probable than without.") or conclusions in the case (e.g., "The evidence should be admitted."); explain it, applying the specific facts you have to a rule you already have described. Do not recite a legal principle without providing its source, but do not simply cite a rule by number without explaining its content (e.g., "This evidence is admissible under 401 because")—I need to know what the rule says and means. The questions lend themselves to short, quick answers, as if you were making, responding to, or ruling on an evidentiary objection at trial. State the rule, explain it, and apply it to the facts that you are given. Answer only the question asked. It is enough to cite to §

___ or FRE ___, although cite to the precise provision in proper format (*e.g.*, FRE 804(a)(5)(A)(ii)).

You cannot write a full and complete CREAC in this short space, so do not try. Provide a very brief conclusion at the beginning or end of your answer (not both)—"this evidence is admissible" or "the objection is granted." Use the bulk of space on the Rule, Explanation, and Application/Analysis ("REA"), in which you are more than conclusory and you get into detail about the law and the facts. Avoid repetition.

Do not employ random abbreviations for concepts as a way to save words. For example, do not shorten "fact of consequence" to "FOC" or "truth of the matter asserted" to "TMA."

Please refer to the Good Writing and Talking Procedure for reminders about how to write, how to cite rules and statutes, and other details.

Note that this structure (treating the exam as, essentially, a paper) removes all time pressure and gives you time to write clear, clean, well-organized, and proofread answers.

Materials:

You may use all assigned materials from the class, including LCS, your rules pamphlet, blog posts, and any rules, statutes, cases, and other materials provided or assigned. You may use any original notes, outlines, or other study document that you were at least 25% responsible for creating (i.e., a communal outline created by a study group). You may not use commercial outlines, supplements,

or other materials and books that were not assigned as part of the class.

Again, you may not discuss the problem, the questions, the answers, or anything about this exam--in any oral, written, non-verbal conduct intended as an assertion, or other form—with your classmates, me, any faculty member, your friends, your family, strangers, pets, extra-terrestrials, inanimate objects, or anyone in the known universe. Please respect your classmates, yourself, me, and the legal profession by adhering to this rule.

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Academic Policies and Rules

This examination is administered and conducted according to provisions of the Florida International University College of Law Academic Policies, *reprinted in* the College of Law Student Handbook. Students are expected to be familiar with and to conduct themselves in accordance with those policies and regulations.

Good Luck.