

**UNIVERSITY OF UTAH
COLLEGE OF LAW
EXAMINATION COVER SHEET**

Student Examination Number: _____

Evidence

University of Utah – S.J. Quinney College of Law
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Fall 2009

FINAL EXAMINATION
Instructions

1. You will have **four hours** to complete the examination. *The examination is designed as a three hour and thirty minute exam, with thirty minutes of “buffer” time.*
2. The examination consists of **two (2) questions**, worth 66 and 34 points, respectively. You may want to allocate your time accordingly.
3. There are **four (4) pages** to this examination, not including the cover sheets. Please be sure that you have all of the pages.
4. You may consult your casebook, statutory and case supplement, the Federal Rules of Evidence, any handouts from the course as well as personally prepared notes and outlines (including materials prepared by classmates/former students with whom you have collaborated/shared materials). You may not consult any commercial outlines, commercial study aids or hornbooks.
5. I am not looking for a “treatise” on Evidence, but rather a thoughtful “treatment” of the issues presented by the questions. With respect to each question, I strongly recommend that you organize and outline your thoughts before you begin to write your answer.
6. Please pay careful attention to what each question is asking you to do.
7. If, in the course of answering a question, you believe that more information is required, describe that information and explain why it is relevant. Likewise, if you deem it necessary to make an assumption not otherwise provided in the question, please state your assumption.
8. Good luck on this exam and in all future endeavors! Please keep in touch!

GENERAL INSTRUCTIONS FOR ALL EXAMS:

1. Exams do not leave the exam room! Write your exam number on your copy of the examination questions, and return it to the proctor at the end of the exam.
2. Students may NOT take any bluebooks or scratch paper from the examination room, whether blank or used. Return to proctor.
3. If you are using a bluebook print your exam number, the title of the course and the instructor's name on the front of each bluebook.
4. Number each bluebook (1 of 3, 2 of 3, 3 of 3, etc.) and place all bluebooks and examination questions inside the first numbered bluebook.

I. Quite a Racquet (66 points/Approx. 2 hours, 20 minutes)

Al was the world's top-ranked racquetball player, a stellar athlete with a winning personality. He lived in the small town of Tigerville, Horrida, with his wife, the supermodel **Belle**. He had an impeccable reputation both on the court and in his personal life, which made him very attractive to corporate America. Although he earned significant prize money each year through his racquetball conquests, he managed to triple his income through commercial endorsements.

Al's seemingly perfect life began to crumble early one morning in January 2009. **Al's** neighbor **Charlie** called 911 to report that he was looking through his window when he saw **Al** drive into a tree on **Charlie's** lawn and that "right now **Belle** is smashing the rear window with a racquet and cursing up a storm! She's acting like an animal!" The 911 operator, **Dawn**, relayed this information to the police officer in Tigerville, **Ernie**. **Ernie** responded immediately and found **Al** passed out on the curb. He had bruises all over his face. **Ernie** snapped photographs of **Al**, including one where he looked like a corpse, as well as the car. **Ernie** called for an ambulance. The ambulance driver, **Felicia**, arrived at the scene, assisted **Al** into the vehicle, and asked him what happened. "Belle went ballistic on my face with a racquet," **Al** whispered before lapsing back into unconsciousness. **Felicia** was an avid racquetball player and a huge fan of **Al's**. When the ambulance reached the hospital, **Felicia** repeated **Al's** statement to the attending physician, **Gloria**.

Al and **Belle** kept a low profile for several days after the incident. Nevertheless, wild rumors exploded across the internet, with bloggers speculating that **Belle** had beaten up **Al** and that **Al** had further injured himself by trying to escape in his car. **Ernie** tried to interview **Al** and **Belle**, but they both refused to meet with him. When **Ernie** reached **Belle** by telephone, she simply muttered "he deserved it" before hanging up. Evidently, **Belle** said something similar – "you had that beating coming to you" – when she was speaking with **Al** while they were alone in his hospital room shortly after the incident.

Ernie succeeded in interviewing **Al** and **Belle's** landscaper, **Harvey**, who confessed to having a three-year affair with **Belle** and that they had plans to "run away together." **Harvey** informed the police that **Belle** had told him that she suspected **Al** of having "tons of affairs" himself. On one occasion **Harvey** observed **Belle** tear apart a

sports magazine that featured Al on its cover; another time he saw her pick up one of Al's racquets, approach Al from behind, and pretend to strike him. Harvey noted that Belle always took a racquet with her when she went outside the house. Harvey was also familiar with Al's behavior and considered him to be an aggressive bully.

Harvey was no angel either. Harvey had a general reputation in Tigerville for womanizing, specifically, for conducting multiple affairs at the same time while claiming to be faithful to each of his lovers. He once told Belle that he was working on a landscaping project for another client when, in fact, he was holed up in a hotel with another woman. In 1997, he was convicted of misdemeanor perjury for lying to a grand jury. Three years later he was convicted of burglary, a felony, after he put on a fake housing inspector uniform to gain access to a wealthy couple's home.

Horrida state prosecutors charged Belle with the crime of assault in April 2009. Before trial, however, Charlie crashed his car into a pedestrian who, coincidentally, happened to be Gloria; both Charlie and Gloria died as a result of the accident. Felicia testified about Al's statement at a pretrial hearing in Belle's assault case, but subsequently refused to appear at trial after receiving a subpoena.

Al and Belle remained married and continued their efforts at reconciliation. Belle briefly engaged in plea negotiations with the Horrida state prosecutors, but opted against pleading guilty and decided to proceed to trial; Al declined to meet with prosecutors to discuss the case. As for her trial strategy, Belle intended to testify that Al was injured in a traffic accident and that she, his dutiful spouse, tried to extract him from the car by breaking through the rear window.

Please discuss the evidence issues raised in the case against Belle and, specifically, whether and to what extent the trial court is likely to deem the evidence admissible, and what the evidence will be admissible to prove. You should focus on the evidentiary issues; you need not and should not address any possible criminal law or criminal procedure issues unless we covered them in class. **Horrida's Rules of Evidence are identical to the Federal Rules.**

II. **Coming Out of the Wood(s)work:** (34 Points/Approx. 1 hour, 10 minutes)

Please assume that the facts described above in **Quite a Racquet** have occurred and that Belle was not convicted at trial. In the aftermath of Belle's trial, rumors surfaced that Al was having an affair of his own, allegedly with his longtime lawyer **Ivana**. Indeed, the media had unearthed guest registration records indicating that Al and Ivana had spent the night together at a cheap motel on the outskirts of Tigerville on at least one occasion. What is more, a housekeeper at the motel, **James**, claimed to have seen them in what he characterized as a "romantic embrace" just before they entered their room that night. While Al and Ivana were alone in their motel room they discussed a number of topics ranging from the details of Al's endorsement contracts to Al's belief in polyamory (the practice of having more than one intimate partner).

As news of the purported affair with Ivana broke, Al's agent **Kevin** (who earned a 10% commission on every one of Al's endorsement deals) tried to engage in damage control to bolster Al's reputation by scheduling numerous joint appearances at public events by Al and Belle to show that the couple remained intact. Despite Kevin's best efforts, sports apparel manufacturer **Meebok** (whose corporate headquarters are located in the State of Woebagon) announced that it was terminating its contract with Al to serve as its spokesman due to Al's alleged violation of the contract's "morals clause" which allowed the company to break the agreement in the event Al demonstrated unfit or immoral character that would impair the company's earning potential. Eager to defend himself, Al sued Meebok for breach of contract in federal court in Horrida with diversity of citizenship serving as the basis for jurisdiction. Prior to trial, Meebok attempted to settle the dispute for \$1 million; Al rejected the offer out of hand.

Meebok plans to present trial testimony from **Nerdy**, a graduate student at the University of Woebagon who is writing a book on the "Economics of Immorality." Nerdy's work, for which he has a contract to publish but which he has not yet finished, focuses on how allegations of adultery involving celebrities dramatically hurt sales of the products they endorse—more so than any other type of purported misconduct by celebrity spokespeople. Other scholars have studied this issue (although none of them as thoroughly as Nerdy has), and most of them have reached results consistent with Nerdy's. Before trial, Nerdy chats with members of Meebok's marketing department and reviews

their sales figures. Al, in turn, wants to present testimony from **Oliver**, a tenured professor at the University of Horrida who is one of the scholars in the field who has reached results contrary to Nerdy's findings.

Please discuss the evidence issues raised in the case against **Meebok** and, specifically, whether and to what extent the trial court is likely to deem the evidence admissible, and what the evidence will be admissible to prove. Moreover, you need not and should not discuss any of the contract law issues in this case.

END OF EXAMINATION AND GOOD LUCK!