Exam and Examination Instructions

1. Turn your cell phone to silent mode.

2. The exam period is 150 minutes. (2 hours and 30 minutes)

3. Place your examination number on this booklet
   a. ExamSoft will record your exam number on each page of your ExamSoft response.
   b. Handwritten exams on this form: Please circle the NOTICE: at the top right of this page.
   c. Handwritten exams on bluebooks: Please place your exam number on each booklet, and where possible at the beginning of the 14 days of questions.

4. Skim the entire exam before you begin and make judgments about your time management

5. Each page of the exam will be weighted 1/14th of the overall raw score for the exam grade. You have about 10 minutes to complete each page of the exam. Limit your answers to two to three sentences, or you will not have time to finish the examination

6. You may not access the internet during your exam or copy and paste any information from a word processing document into your answers.

7. The exam ends at the end of page 14.

8. Return this exam booklet with your bluebooks or ExamSoft receipt.

Thank you for your participation in this course! My best wishes for an excellent holiday break!

Professor Sampson
Week 1: Jury Trials and Jury Instructions (Judge Brooks, Judge Fitzhugh, WHTaylor, Prof. Judges)

1. What is the difference between a bench trial and a jury trial?

2. A) Identify which of the following statements is not true about jury instructions. B) Explain your answer

   a. they set out the elements of proof
   b. they set out the elements of affirmative defenses and counter claims
   c. they help the jury anticipate which side the judges believes is stronger
   d. they provide case law research lead
   e. they can help you pass the bar exam
   f. they must be given, as set out in the Arkansas Model Civil Jury Instruction, together with any explanations for changes required by the current case facts.

3. Define the following terms

   a. Preliminary Jury Instructions
   b. Final jury instructions
   c. Verdict form
Week 2.1 Collecting Judgements (Matt Fryar)

1. Explain who the following entities are, who are routinely involved in a garnishment proceeding
   a. Garnishee
   b. Garnishor
   c. judgment debtor

2. True or false, when a creditor garnishes a bank account, the credit is able to recover 25% of the money that is in the bank account. If the answer is false, explain your answer.

Week 2.2 Guardianships (Melissa Burton)

3. A) What is a fiduciary duty?

   B) How can a guardian breach the fiduciary duty owed to a ward?
Week 3.1 Susan Fox, Taking Down a Law Practice

1. A) Identify which of the following is not required by Rule 1.16, when a lawyer decides to stop practicing law? B) Explain why you made the selection you made

   a. give the client notice of decision to cease practice
   b. return all papers and property that belong to the client
   c. refund all retainer fees

2. True or False, the Arkansas rules for how to take down a law practice are contained within the Arkansas Rules of Professional Conduct. If False, explain where an Arkansas attorney can obtain guidance for how to take down his/her law practice

Week 3.2 Justin Eichmann, Business Entities

3. Identify three types of business entities that Justin Eichmann discussed in his lecture.

   a.
   b.
   c. [Most common business entity]:

4. In the Eighth Circuit Kraus case, identify two of the business owner’s failures with regard to the corporate forms he had set up for his soccer stadium enterprise.

   a.
   b.
Week 4: Sean Keith and Drew Miller (starting up a law practice, depositions, experts)

1. In addition to social media information (e.g., Facebook, Twitter), identify three additional sources for background information about the incident or the deposed witness that at attorney should obtain and study before taking a live deposition.

   a. 

   b. 

   c. 

2. How can an attorney outsmart a well-educated and experienced expert witness?

   a. As to the topic about which the expert is an expert:

   b. As to how the expert relates to the jury:
Week 5: Daniel Faulkner (Department of Labor)

True or False

_____ 1. Employers may legally charge their employees for **work-related uniforms**.

_____ 2. A business that operates at a loss is able to employ **volunteers**.

_____ 3. An employee can waive his or her legal right to earn **minimum wage**.

_____ 4. A for-profit business can trade **overtime for comp time**, by allowing employees extra vacation time in January, to make up for heavy customer traffic times in the previous month (e.g., managing Christmas shopping season requirements).
Week 6: Lisa-Marie Norris (Appellate Practice)

True or False. Where false, cross out incorrect parts of the sentence, or rewrite the sentence to make it true.

1. ______ The Supreme Court will not examine the transcript of a trial to reverse a trial court, but it will examine the transcript of a trial to affirm the trial court’s decision.

2. ______ To perfect an appeal in Arkansas, it is the Appellant’s obligation to prepare the abstract of the trial testimony and pertinent documents and filings.

3. ______ The same rules of appellate procedure apply to both Civil and Criminal appeals.

4. ______ The appellee has the option to amend the abstract of record to include details the appellant has left out, and the appellee has the option to change the order of the arguments that the appellant used if it helps the appellee’s advocacy position.

5. ______ The law of the case is established at the trial court level; appellate attorneys cannot add new theories on appeal where those theories could have been presented to the trial court judge.
1. Place an X on each line where the following proposition is true: in 2015, it is possible for the noncustodial parent to withhold child support where the child and/or the custodial parent refuses to allow the non-custodial parent visitation rights.

   ___ In New York
   ___ In Arkansas
   ___ In Oklahoma

2. What is “divorce from bed and board” and what types of marriages should use this method of marital separation as opposed to a traditional divorce?

3. A) Why is it dangerous to fact-plead the “fault” reason for a divorce in cases where one of the parties is “at fault.”

   B) If an Arkansas attorney cannot in good faith plead the “fault” reason for the petition for divorce, what alternative is generally accepted by Arkansas courts?

4. What is Administrative Order #10 and what role does it have in setting the amount of child support the non-custodial parent pays the custodial parent?

5. What are the three elements of the “divisible” divorce, according to Mr. Zega?
Week 8.1: Ray Schlegel (Client Intake/Personal Injury)

True or False

1. _____ [Underinsured Motorist Coverage is coverage that a policy holder has to reject in writing; thus,] a personal injury attorney should ask the client’s insurer to provide the attorney with the signed rejection of coverage before assuming the client has failed to purchase underinsured motorist coverage.

2. Explain why Ray Schlegel does not charge the client’s recover for the property damage (e.g., the damage to the vehicle) part of an auto accident.

Week 8.2: Bo Morton (Client Intake/Criminal)

3. From Bo Morton’s remarks, name at least three events that will end representation in the criminal matter (that is the subject of the attorney/client representation agreement).

4. Compare and contrast the criminal client intake in Bo Morton’s office and the criminal clinet intake in the local jail.

5. What role does a family scrapbook play in the Bo’s negotiations with the prosecution as to a plea deal for his criminal defense client?
Week 9.1  DWI Defense (Paul Reynolds)

1. Choose those three field sobriety tests that are part of the Standardized Field Sobriety Testing protocol approved by DOT/NHTSA
   a. Portable Breath Test   f. Alphabet Test
   b. BAC Sampling   g. Reverse Counting Test.
   c. Walk and Turn   h. Horizontal Gaze Nystagmus test.
   d. One Leg Stand   i. Coin pick-up test
e. Finger to Nose Test

2. DUI or DWI -- Which one applies to drivers who are under 21 years of age?

3. True or False, in Arkansas, DWI charges can be dismissed by a prosecutor who believes the prosecution has insufficient evidence to convict beyond a reasonable doubt.

4. True or False, in the interim time, between losing a license and having it reinstated, a DWI former-driver can use a motorized bicycle to get to work.

Week 9.2 Section 1983 Civil Action (Bo Morton and Jason)

5. A 42 U.S.C. section 1983 civil action is filed in federal court, seeking relief from official governmental actors who have done harm to the plaintiff. In the discussion of section 1983 litigation by Morton and Bailey, they identified two separate cases their office is working on. Briefly explain what the harm is in each of the cases:
   a. How did a Section 1983 complaint arise from an abscessed tooth in Benton County Arkansas?

   b. How did a Section 1983 complaint arise from defective (vehicle) bridges in Washington County, Arkansas?
Week 10: EEOC

10.1 David Gonzales

1. Young v. UPS and EEOC v. Abercrombie & Fitch were two of the cases that Mr. Gonzales described in some detail in his presentation. Provide the basic facts
   a) What was the adverse employment decision – what did the plaintiff want and what did the employer not give the plaintiff?
   b) What type of discrimination that was alleged by the plaintiff?

   1. Young v. UPS

   2. EEOC v. Abercrombie & Fitch

10.2 Panel (Denise Hoggard, Eva Madison, Dean Nance, David Lopez, moderator Annie Smith)

   2. What is the “banning the box” movement and why is particularly important for people of color who have found themselves in the criminal justice system? [Dean Nance]

10.3 Panel (Jessica Yarbrough, Michael Moore, Abtin Mehdizadega, David Lopez, moderator Danielle Weatherby)

   3. True or false, on the subject of paid maternity/paternity leave, the EEOC is focusing its energies on women and childbirth, and is using the “most favored nation” argument to urge employers to give women maximum maternity leave.

   4. True or false, with the large number of Baby Boomers remaining in the workforce past 65, a problem on the horizon for employers is the problem of “cognitive impairment” in the workforce.
Week 11: Small Law Practice

Week 11.1 (Steve Vowell on Ethics)

1. Steve Vowell discussed five scenarios where a friendly beginning and an agreement share legal expense can lead to a conflict of interest for the attorney. Identify two of those scenarios and what problems can develop to create the conflict of interest for the attorney.
   a.

   b.

2. Set out Steve Vowell’s advice for what to do with a potential client who has been persistent in seeking legal advice over the telephone – both during the conversation and after you have hung up the telephone.

Week 11.2 (Steve Kay on Business Management)

3. Set out Steve Kay’s tips for being paid, up front (when you have first agreed to represent the client), after several phone contacts (assuming an hourly rate), and when the retainer balance has reached a low point.
   a. Up front

   b. After several phone contacts

   c. When retainer balance had reached a low point

4. What is Steve Kay’s advice for how to manage overlapping (and conflicting) court dates in different courts?
Week 12: Depositions (Vince Chadick)

1. What can happen when the attorney who calls the deposition fails to serve a subpoena on the not party witness (and because of that failure the witness fails to attend the deposition)? State the potential result and the rule that gives you the answer.
   a. potential result:
   b. Arkansas Rule of Civil Procedure rule that provides the answer:

2. Rule 26 Federal and State sets out the parameters for discovery. Vince Chadick discussed this rule by comparing the number and range of questions that can be asked of a deponent and contrasted that number and range with question and answers at trial.
   a. Governed by Rule 26, what type of questions are allowed during a deposition?
   b. As between an examination by oral deposition and a examination through trial testimony, which examination would Vince Chadick compare to:
      i. ________________________________A small dot in the middle of a large circle.
      ii. ________________________________The large circle that surrounds the small dot.

3. ______True or False, under the Federal Rules of Civil procedure, the Rule of Sequestration (Rule of Evidence 615) does not apply, meaning the potential witnesses who can observe a deposition is large, and it is not limited by the Rule of Sequestration.

4. ______True or False, the Rule of Sequestration applies to depositions taken in cases that will be heard before an Arkansas state court, meaning the attorneys are able to exclude potential witnesses from a deposition.
Week 13: Estate Planning

1. True or False, a trust is preferable to a last will and testament for a settlor who owns real property in two states,

   a. _______ to avoid ancillary probate administration in the foreign state

   b. _______ to avoid publicity of the settlor’s financial records through the probate process

2. What does the acronym “GST” tax stand for and what was Congress’s goal in amending the Internal Revenue Code to allow for a GST?

   a. GST =

   b. Congress’s goal in GST tax

3. What should an attorney do when both the elderly client and the elder’s child or the elder’s care giver attend a meeting with the elder and the trust and estate attorney to draw up trust documents?

Joseph Reccedraw

4. What does it mean to “fund a trust”?

5. What is an “incentive trust”? 
1. Identify why and how digital homework has become increasingly important in property settlement cases in divorce litigation.

2. What are some “hidden assets” in most couples’ financial resources that should not be overlooked when collecting and dividing property in a divorce settlement?

3. True or False, the most important document in a property settlement in a divorce is the Affidavit of Financial Means.