INSTRUCTIONS

There are four additional pages to this examination. You have three hours.

Do not change the facts. Do not challenge any stated legal conclusions.

Budget your time. Be sure to answer all of the questions.

Legibility will be appreciated.

GOOD LUCK

1.

The United States District Court for the District of Capitalia has recently found the Capitalia City schools to have been illegally segregated. As part of the desegregation plan approved by the court the city has agreed to establish 5 magnet schools with special programming in order to attract an integrated student body. Magnet schools have been found to be an effective desegregation technique that has been incorporated into many desegregation plans. One of these magnet schools is to be located at 665 South High Street just south of the main business district. Unbeknownst to the school authorities who have already invested a considerable amount of money in renovating the building at 665 South High Street, the Capitalia Department of Corrections has just purchased building adjacent to 665 S. High Street and plans to establish a halfway house for state prisoners.

Fearing that the halfway house will destroy the attractiveness of 665 S. High Street as a magnet school the plaintiffs in the desegregation case have filed a motion to enjoin the Capitalia Department of Corrections from locating the halfway house next to the school. As U.S. District Judge, please rule on the motion.

11.

Sleazey, a magazine best characterized as soft core pornography, recently published a photograph of an orgy in which it mistakenly identified novelist Jackie Colours as one of the participants. Ms. Colours has sued for damages claiming that she has been publicly humiliated by the magazine. The magazine has argued that sales of Ms. Colours' books have greatly increased since the publication of the photograph and therefore she has suffered no damages.

As law clerk to the judge trying the case, please write a proposed jury instruction on the damage issue explaining to the jury those factors they may consider in setting damages assuming they find liability.

On April 1, 1990 Sam Swindler convinced Gary Gullible to give him \$2000.00 for 100 shares of the IBN Co., a fictitious company whose shares are worthless. Swindler invests the \$2000.00 in 20 shares of IBN which cost him \$2000.00 on April 1, 1990. On April 2, 1990 Swindler sold 100 shares of IBN to Harry Helpless for \$2000.00 and immediately bought \$2000.00 worth of the Zoomar Corp. stock. On April 3, 1990 Swindler sold another 100 shares of IBN for \$2000.00 to Peter Pathetic. He used Pathetic's money to pay his personal expenses, i.e. rent, utilities, food, etc. When Pathetic's money was gone Swindler filed for bankruptcy. He listed debts of \$25,000.00 including the \$2000.00 taken from Gullible, Helpless and Pathetic and the following assets:

20 Shares IBN \$6,000.00 100 Shares Zoomar Corp. \$ 0.00

You have been retained to represent Gullible. Please indicate the theories you will argue on Gullible's behalf and the recovery you expect.

IV.

Manny Nowayman the former president for life of the country of Coca has recently been arrested by federal agents to face charges in the United States for violations of federal narcotics statutes. Nowayman is held in a federal maximum security facility while he is awaiting trial. Unbeknownst to either Nowayman or his attorney all of the telephone conversations between Nowayman and his attorneys are being secretly tape-recorded by the government.

The government discovered on November 12, 1990 that the Federal Broadcasting Company (FBC) purchased 20 of the tapes and plans to begin broadcasting them within twelve hours. They apply to the United States District Court for the District of Capitalia and seek a temporary restraining order to prevent the broadcast. The judge issues a temporary restraining order on an ad hoc basis and schedules a hearing on a preliminary injunction for November 15, 1990. A copy of the temporary restraining order is served on the Federal Broadcasting Company before it can broadcast any of the tapes. Notwithstanding the order FBC broadcasts the tapes on November 12, 13, and 14. At the hearing on the 15th the trial judge orders FBC to turn over all copies of the tapes to the court. FBC refuses and informs the court that it believes it has a First Amendment right to broadcast the tapes and that the court lacks the power to prevent the broadcasts.

The court orders Tom Turnip, the president of FBC to spend 10 days in jail for defying the temporary restraining order, orders FBC to pay a fine of \$20,000.00 per day until the tapes are produced in court and orders FBC to pay any increased costs incurred by either the government or Nowayman as a result of having the tapes broadcast. FBC appeals.

Assuming that FBC is correct in its position that the First Amendment protects its broadcast of the tapes how should the appellate court rule with respect to the additional penalties imposed by the District Court?

Ida Mae Puckett has recently published her last will and testament in which she completely disinherits her three adult children. She gives one half of her multimillion dollar estate to a trust to care for her 3 pet dogs with the corpus going to the local humane society upon the death of the last of her 3 dogs. The other half she bequeaths to the veterinarian who cared for her pets. Being 85 years old and knowing her children will try to undo the will she asks her lawyer to file a declaratory judgment action in state court to establish that she had sufficient testamentary capacity to make the will. Her children who believe that the veterinarian has exerted undue influence over their mother have come to you with the complaint for declaratory relief. How would you advise them to proceed?

VI.

Sally Straighter is a very successful orthodontist. Her office has six patient chairs and she and her dental assistants go from chair to chair during the course of a day. Patients are not charged on a per visit basis. Rather they are charged on a fixed fee basis with treatment extending over several years. For example she may charge \$3600.00 to straighten a patient's teeth with treatment lasting 48 months. The patient would typically make monthly payments over the first two years of treatment if the orthodontic work was not covered by insurance. Ms. Straighter does know that she sees on average one hundred patients per working day (she only works three days per week, devoting two days per week to teaching at the local dental school) and averages daily revenue of \$4300.00 per working day.

On September 4, 1990, a truck negligently was driven into the building housing Straighter's office by Bad Driver. As a result of the accident Straighter could not use 2 of the chairs in her office for the next 5 weeks (15 working days) while repairs were made. Approximately 33 patients each day were rescheduled for the following month and new patients were similarly deferred for a month. No patients were lost and six months after the accident Straighter has not been able to show a decline in income.

Please write a letter to Driver's insurance carrier setting forth Straighter's demand for compensation and explaining how you arrived at the figure demanded.