READ BOTH THE GENERAL AND SPECIAL INSTRUCTIONS CAREFULLY

GENERAL INSTRUCTIONS:

1. **Signing and numbering.** Sign and print your name in the blanks above. Put the number found above on each of your answers to the examination (blue books or hard copy) and on the envelope. Both the envelope and your answers should contain your exam number, the course name, and the instructor's name. Do not put your name anywhere on the envelope or on the answers.

2. **Submission.** Upon completion of the examination, put your answers to the examination in the envelope, fasten the flap with the clasp, and hand in the envelope to the exam administrator. Be sure to enclose all of your answers— you will be graded only on what is inside the envelope. Do not put the exam questions in the envelope. Hand in the questions separately to the exam administrator.

3. **Time.** You will be graded only on examination papers received at the announced time. Each student is responsible for ensuring that all the completed examination papers and the examination question sheets are handed in to the exam administrator.

4. **Computers.** You may use computers on this examination. Computers may be used for wordprocessing only. Students must supply their own equipment. Students using computers must take the exam in the assigned typing room. The TAL Center, the clinic and other law school equipment and facilities are not available for student use on exams. Examinations papers must be completed and returned to the exam administrator according to the normal exam administration rules. No allowance for additional time will be given for printing, equipment failure, etc. Students must submit hard copy only.
SPECIAL INSTRUCTIONS:

This is an OPEN BOOK exam. You may have with you any printed or written materials you wish, except for commercially prepared outlines.

Each question will be weighted for grading purposes roughly in proportion to the time allocated for its answer. There are two questions - the first with twenty subparts, and the second with four subparts. Each subpart in question 1 should take approximately the same amount of time; the subparts in question 2 should take different amounts of time, as indicated at each subpart. You have been given an additional fifteen minutes to use as you see fit. Do not feel compelled to use the additional time.

Clarity and organization are virtues; sloppy writing is not. Skip every other line in the blue books!

Be sure to give your write-up of the CALI assignment to the proctor, and make sure your name is on the write-up. **Do not put the write-up in the envelope.**

Finally, remember the words of Karl Llewellyn: Technique without ideals is a menace, but ideals without technique is a mess.
QUESTION I
(45 minutes)

Answer true or false, and provide a short (1-3 sentence) explanation:

a. The minimum amount in controversy necessary to sustain diversity jurisdiction is $50,000.

b. All Federal District Courts employ the same rules of discovery.

c. Remedies are intended to put the plaintiff in the same position he would have been prior to the wrong of the defendant.

d. The Constitution requires complete diversity of citizenship in order to uphold diversity jurisdiction.

e. John is an engineer for Baltimore Gas & Electric ("BG&E"), and a nationally recognized expert on power-failure issues. He was on duty during a recent black-out in Baltimore. UM Enterprises is suing BG&E for damages they incurred as a result of the black-out. UM Enterprises seeks to depose John. BG&E argues that John is an expert, and hence cannot be deposed until after his report is provided or upon the showing of exceptional circumstances. BG&E’s argument is correct.

f. You are sued by a classmate for breach of contract after you refuse to turn over your portion of a group-prepared outline. You believe that your classmate waived her right to the outline, but there was no enforceable contract in any event. You respond with a general denial of her allegations, which is sufficient to place both of your defenses in issue.

g. Civil rights complaints must be plead with particularity, especially if qualified immunity is likely to be raised as a defense.

h. An amended pleading will relate back to an earlier pleading so long as it does not add any new parties to the case.

i. A federal court has jurisdiction over civil cases in which a federal question is in issue.

j. A lawyer who signs a pleading containing factual assertions for which there is no evidentiary support has violated Rule 11.

k. A federal district court can only hear claims over which it has subject matter jurisdiction.
1. The due process clause imposes limits on the procedures which a state can employ in awarding punitive damages, but there are no due process limits on the amount that can be awarded as punitive damages.

m. Because the federal rules require amendment to the pleadings to be freely granted, pleadings are unhelpful at delimiting the issues in controversy.

n. Long-arm statutes can extend the personal jurisdiction of a state's courts no further than the boundaries allowed by the due process clause of the U.S. Constitution; a state may constitutionally choose a long-arm statute which falls well short of this boundary.

o. Interrogatories and depositions may be used to gather information from parties and non-parties.
The Newark Times publishes "cutting edge" news (UFO abductions, Elvis sightings, and the like). They recently published a follow-up article on the life of Silly Sam, who made a brief splash in the 1960s by crooning in an affected baritone. The article recounted how Silly Sam's career took a nosedive after he was dropped from a recurring role on the Hollywood Triangles, a popular TV quiz show featuring washed-up celebrities. The article stated that Silly Sam had spent the intervening decades awash in drugs and liquor, and had consorted with underworld elements. The article was written by a free-lance reporter, who has never been to California, Illinois, or Connecticut. He prepared the article after catching Silly Sam's act in New Jersey, and relied on phone calls to contacts in various places, including Illinois.

The Newark Times is incorporated in New Jersey, where it has its principal place of business. The paper is primarily distributed on the East Coast. However, they have a subscription-by-mail service, and five copies, out of a circulation of 500,000, are sent to California. Consistent with advertisements they run in the paper every week, the Newark Times pays modest sums to free-lance photographers who send them embarrassing pictures. Some of the pictures are of celebrities who live in Hollywood, but they were taken wherever the photographer happened to find the celebrity in an embarrassing position -- including Hollywood. However, the free-lance photographers are independent contractors, and the Newark Times has no advance knowledge of where such pictures will be taken, let alone whether there will be any pictures. The picture of Silly Sam that the Newark Times used to accompany the article was a publicity shot that Silly Sam's agent blanketed the nation with, in the hopes of getting him some bookings. The Newark Times has never purchased a picture of Silly Sam from a free-lance photographer. The Newark Times has no other contacts with California.

Silly Sam is on a come-back tour through the heartland (Illinois) when he finds a copy of the Newark Times left in his dressing room after his performance. The paper was left there by Devoted Don, who picked up the paper in New Jersey, and brought it to Illinois hoping to have it autographed by Silly Sam. The Newark Times has no subscribers by mail in Illinois, and no other contacts with Illinois. Don lives in New Jersey, and came to Illinois only to see Silly Sam. Don left the paper because he had to leave to conduct additional business elsewhere, but he attaches a note requesting Silly Sam to send it back to him after he has signed it. Don has never been to Illinois before. Don has never been to California, but many years ago he invested in a company which owns some property in California. Don gets regular dividend checks from the company.

Silly Sam is incensed by the article, because he believes it has defamed him. He is also angry at Devoted Don for circulating what Silly Sam believes is a defamatory article. Silly Sam lives in California, which has enacted favorable defamation laws to protect its home-grown movie/celebrity industry. Silly Sam has been to Illinois only once, on the come-back tour.

a. Consistent with the due process clause, can Silly Sam obtain personal jurisdiction over the Newark Times and Devoted Don in California? Explain your answers. (25 minutes)
b. Consistent with the due process clause, can Silly Sam obtain personal jurisdiction over the Newark Times and Devoted Don in Illinois? Explain your answers. (15 minutes)

c. Silly Sam's lawyer wants to litigate in Connecticut, where the defamation laws are even more favorable than in California. He discovers that the Newark Times does not circulate in Connecticut, nor does it have any subscribers by mail in that state. However, the Newark Times does sponsor an annual skiing party for all its staff. The lawyer anonymously sends the person at the Newark Times responsible for arranging the party some brochures about the great skiing in Connecticut, and he also encourages his friends in the skiing business in Connecticut to try and attract the Newark Times party. Although they usually go to Pennsylvania, the Newark Times schedules its skiing party in Connecticut because of these efforts. While in Connecticut, the editor-in-chief is served with process. Silly Sam has never been to Connecticut. Consistent with the due process clause, can Connecticut secure personal jurisdiction over the Newark Times? (15 minutes)

d. Which, if any, of the following states have general jurisdiction over the Newark Times: Connecticut, Illinois, California, New Jersey? Explain your answer. (10 minutes)

e. The case of Silly Sam v. Newark Times has been assigned to a District Court judge for whom you are clerking after graduating from the University of Maryland with highest honors. The jurisdictional issues have all been resolved. The judge calls you in and says, "the lawyers are giving me a hard time about the kind of issue that always ends up on law school exams. The applicable state law requires that defamation claims be submitted to a joint media/citizen task force, which will make its own determination about the merits of the suit. The task force can order the defendant to apologize if it determines the conduct was defamatory. If the plaintiff is unsatisfied with the results of the task force (either because an apology is insufficient, or because the task force finds the statements were not defamatory), the plaintiff can proceed to court. There is a federal statute which encourages the use of arbitration by eliminating state restrictions on the enforceability of an arbitration term in a contract. Pursuant to another statute, the federal courts have also been experimenting with alternative dispute resolution (court-annexed arbitration/mediation). However, those statutes don't involve anything like the media/citizen task force. What should I do and why?" (25 minutes)
f. The parties have engaged in extensive pretrial discovery, and have reached an impasse. They have filed cross-motions for enforcement of their respective discovery. To what extent do you advise your judge to enforce the following requests, and why?

   i. Silly Sam wants to know about whether the Newark Times has liability insurance coverage for defamation claims.

   ii. Silly Sam wants to know about any instances where the Newark Times settled defamation claims, but the settlement was not made public. Sam specifically wants to know how much the Newark Times paid, and the factual allegations that were alleged to be defamatory.

   iii. The Newark Times wants to know whether Silly Sam has ever sought or received treatment (psychiatric, pastoral, or otherwise) for substance abuse problems.

   iv. The Newark Times wants Silly Sam's Christmas card list, so they can determine whether he ever sent cards to any organized crime figures. (15 minutes)