The examination consists of two essay questions of equal value. I would suggest that you read the fact patterns very carefully and answer each question fully and concisely. As lawyers make their living not only through their oral skills, but also through their written word, I expect a well written answer. Good luck and happy holidays!

Question No. 1:

Joe "General" Sherman ("Sherman"), a resident of the state of Pennsylvania who had never been in the state of Texas nor had he ever conducted any business in Texas, was driving his white steed (a "Corvette") through Texarkana, Texas late one afternoon after having pillaged ("gotten drunk") in Little Rock, Arkansas, when his steed collided with a vehicle owned by Robert E. Lee, V, ("Lee") and driven by his fiancee, Southern Mist ("Mist"). Sherman immediately floor boarded his steed and headed back to Arkansas with the express intent of never visiting the Lone Star state again. One and a half years later, Lee sued Sherman in a county court-at-law in Texarkana, Texas (which had subject matter jurisdiction over all cause of action where the amount in controversy was less than $50,000.00) seeking to recover property damage for his vehicle. In his petition, he alleged the court had personal jurisdiction over Sherman pursuant to the Texas Long Arm statute and asked that the clerk serve citation on Sherman by serving the chairman of the State Highway and Public Transportation Commission in Austin, Texas. He further alleged that the defendant Sherman had been negligent in driving his vehicle and that such negligence was a proximate cause of the damage to his car in an amount of $25,000.00. He also sought attorneys' fees in the amount of $26,000.00. Although attorneys' fees are not recoverable in this type of action, Lee's lawyer thought that they were. Sherman subsequently received by (regular) United States mail the citation from the State Highway and Public Transportation Commission's office and threw it in the trash can without reading it or consulting an attorney as to the legal effects of the citation. The sheriff's return indicated that the State Highway and Public Transportation Commission was served on December 1, 1989. Lee took a default judgment against Sherman for $25,000.00 in property damage and $25,000.00 in attorneys' fees on December 16, 1989. The district clerk failed to notify Sherman of the judgment. Sherman was then served a new citation in his resident state in a suit to enforce the judgment filed thirty (31) days later. Sherman hired a lawyer to defend the suit. The lawyer filed an answer stating that the initial
judgment was based on defective pleadings because the petition was vague and ambiguous and subject to special exceptions. While he was defending that lawsuit in Pennsylvania, Sherman hired a Texas lawyer who advised him that he needed to file a "writ of error" in Texas in order to preserve his rights. He instructed the attorney to file the writ of error. While both of these proceedings were pending, Sherman then filed his own lawsuit in district court of Texarkana, Texas against Lee and Mist to recovery for personal injury damages. His petition claimed that Mist had failed to stop at a stop sign and that as a result the collision occurred. He sought a judgment against Lee and Mist, jointly and severally. Both Mist and Sherman filed their answers and defended the suit.

Assume that the statutes, rules, and case law is identical in Texas and Pennsylvania. Please discuss what additional arguments you would make in defense of the lawsuit in Pennsylvania and whether any of such arguments would be successful. Please state whether the writ of error would be successful (and why or why not). In the event that Sherman lost both of the above-referenced suits, what additional legal advice, if any, could you give Sherman? If you were Lee and Mist's lawyers state what defenses you would assert, if any, in the lawsuit being brought against them in the district court of Texarkana, Texas, and whether such would be successful and discuss whether such defenses would be successful.

Question No. 2:

In January 2, 1989, Yankee National Bank ("Bank") regrettably in Lubbock, Texas made four separate loans to Bubba Jackson ("Bubba"), the great-grandson of T. J. "Stonewall" Jackson ("Stonewall"), each in the amount of $1,000.00 and each due with interest and principal on June 1, 1989. Bubba (unlike his brilliant great-grandfather) took the money, went to Las Vegas and lost it. Thus, he was unable to pay the Bank its money back when it made demand. Bubba was a resident of Jackson, Mississippi and other than the transaction described above, his recollection was that he had never in his entire life been in Texas nor had he conducted any business operations in Texas. The Bank hired Dirty Rotten Yankee ("Dirty Rotten") to pursue the litigation against Bubba. Dirty Rotten (whose intelligence level was just below that of a rock) decided to file a lawsuit in Lubbock district court on the first note. His pleadings were proper and the service was made on the Secretary of State who subsequently forwarded the citation to Bubba in Jackson. Bubba hired a Texas lawyer to file a Rule 120(a) motion on his behalf. The Rule 120(a) motion stated that Bubba was not amenable to service because he had never been in the state of Texas and because there were numerous defects in the service. The alleged defects included the fact that a copy of the petition was not attached to the copy of the citation, the date of issuance of the citation was blank, the name of the District Clerk was not on the form, and the citation was directed to the Secretary of State. Dirty
Rotten having made a large political contribution to the district judge was able to get the clerk of the court to set the special appearance down for hearing without giving any notice to Bubba's lawyer. The special appearance was overruled and a default judgment was entered as Bubba's lawyer had failed to file an answer. Shortly upon learning of this disastrous occurrence, Bubba's lawyer filed an injunction suit in another county to stop enforcement of the first judgment as the sheriff was about ready to execute that judgment on a piece of property allegedly owned by Bubba (his aunt had left it to him but had not told him). The court granted the injunction finding that the judgment of the district court in Lubbock was void. At this time, Dirty Rotten filed a second lawsuit in another Texas district court to recover under the second note. The lawyer for Bubba filed an answer that contained only special exceptions to the plaintiff's pleadings and a general denial. He immediately requested a hearing on the special exceptions which the court granted, and without giving the Bank leave to amend, dismissed that lawsuit. Dirty Rotten was now extremely frustrated and decided to file a third lawsuit on the third note. By this time, Bubba had conceded that he was amenable to the jurisdiction of the Texas courts but wanted to be sued in a county other than that in which suit had been filed. The notes required that payments be made in Dallas County as opposed to Lubbock County where the third suit was filed. His attorney then filed an answer which contained only a general denial and various affirmative defenses (I hope you know which ones they should be). Subsequent to that time, he amended his pleadings seeking to assert a Motion to Transfer Venue to Dallas County. That case finally went to trial. During the trial of the lawsuit the Plaintiff sought to introduce evidence that was not contained in his pleadings. Bubba's lawyer did nothing. Then questions (special issues) were proposed by both the plaintiff's lawyer and Bubba's lawyer based on his pleadings. There were no objections to the questions (issues). The jury came back and nailed Bubba to the floor and a judgment was prepared. At this time, Bubba's lawyer objected on the grounds that the judgment did not conform to the plaintiff's pleadings. A fourth lawsuit was then filed by the Bank. Bubba's lawyer answered and filed a counter-claim against the Bank alleging a lender-liability claim (usury) on all four notes. The court after a non-jury trial denied the bank recovery on the note and entered judgment on Bubba's counter-claim.

Discuss all procedural problems generated by this fact situation. Specifically take each lawsuit (all five of them) and discuss in detail (1) the validity of the court's judgment or order; (2) what remedies, if any, are available for the party or parties adversely affected by such action; and (3) what should be the final outcome of each lawsuit.
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of personal service. Thus the pleading should have
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The affirmative case.

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approximately $51,000, exceeded the limit of the court by $1000. This is true despite the fact that attorney's fees are not recoverable, as it is the petition to which one looks to determine the amount in controversy. The judgment, which was for $50,000, would effectively preserve jurisdiction on a collateral attack with respect to the amount in controversy, since a judgment that affirms shows jurisdiction will support the action of the court. On direct attack, however, the entire record may be examined.
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For new trial (30 days after judgment signed) had passed, and a writ of error (W.O.E.) may be filed within 6 months of its entry. A party to the first judgment can make a direct attack on the validity of the judgment. A copy of the judgment can be used as long as the record does not otherwise show prejudice. Here, the original petition asked for $25,000 to pay attorney fees. Two allegations

$20,000 and

$10,000.
Both of these arguments should succeed as defenses to Sherman's action for personal injury damages.

In addition, Lee and Must could specially except to Sherman's petition, which states no theory of recovery, since they are entitled to know what capacity they are being sued, but again, they could just as well find this out in discovery.

As for Sherman, he could proceed (B.R) to file a Bill of Review within 4 years of the signing of the judgment. However,
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broaden of proof would return to Lee, who
would have to prove his case over again.

Sherman would not be barred
from using this equitable remedy because
he could have used a legal remedy and
won, since his notification of the suit
came after 30 days, and the judgment was
final. The failure to notify him cost
Sherman the opportunity to file a
regular motion for new trial, and he
cannot be held accountable for his
failure to file one.
and were facilitated in the same portion. However, there was no expected result on the front page, and the expected result on the front page that the issue took on the first stage of unsatisfactory. The 3-year test started with enthusiasm, and the expected result on the front page was filed with the English lawsuit, which was filed within the first aspect to locate. Moreover, measures, caution, and caution, have been taken as expected against Blauvokw, such that the issue of the event must not be allowed to proceed in a fraud concealment, as well as proceed in a fraud concealment.

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If long as the notice says to proceed by

Additionally, even on sophisticated service.
defeat. Judgment can withstand any attack. Here, the lack of notice is fatal. Since no
the lack of notice affects the right of the court
without notice to Petition to proceed to judgment (the default), void.
get the hearing set down on the default
The fact that Petitioner did not inform the court of
proceedural, procedural, the defect go to the profit
notice that were lacking procedural
The principal mistake was to be preoccupied pretently.

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"impaired." Another for new trials within this stage of the
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b) This is not an easy issue of

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however, teachers who not factor to this case, however, get the role of their accommodation, this
of the guidance (at least, there are cases, however)
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accommodation, two paragraphs with the
problem, having considered his
issues to be tried by implied consent, since no objections were raised at that time.

Therefore, under Rule 67, OK is entitled to amend his pleading to conform with the issues, since Bob’s lawyer waited too long to object. His objection that the judgment did not conform to the pleading was proper under Rule 321, which requires that one be supported by the other; however, his failure to object even once to the evidence or issues created the presumption of implied consent, and therefore the objection was useless, and OK is without recourse.
black sheet have flowed over another. Then
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until a foot of the 4th note, and the

novels may were included.

computer-chattered since they are not so
were breezily, and as a computer

et al. notes of the time those could
have been reduced with respect to the

the last note, since the piano sounded
4 notices is effective only with respect to

afternoon; computer chatted & uneasy enough
in the spring on the 4th note, bridge...
though counterclaim defendants are presumed to have filed a general denial, such a denial would be insufficient against a claim of usury. Usury is listed in Rule 93 Verified Denials as a subject to which one must make a sworn denial or it will be consented to as true. A general denial will not suffice to deny usury charges.

If the bank was remiss in filing such a verified denial, then the court properly allowed Bobka to succeed with his counterclaim. However, the action of the court
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"Bubba by serving the Sec'y of State," (i.e. the name is correct), and the citation was served in the proper manner with a proper return, it still fails since the copy of the petition was not attached, and the purpose of the citation notice. Despite the fact that the citation would contain the name of the party bringing suit, and Bubba would therefore have reason to know about the suit on the notes, Courts tend to be formalistic in nature on citation issues. Thus, since the copy of
The petition was missing, the judgment is void, and the collateral attack failed. However, the preservation of validity accorded judgments on collateral attack protects the judgment where the record affirmatively negates the jurisdiction. (No copy attached to citation, but no extrinsic evidence is allowed in the absence of fraud.) Here, the fraud was perpetrated in that the clerk did the bank attorney a favor, on this basis, Bubba should be able to get in the evidence on the lack of a copy of the petition, and the collateral attack should
reactor that is.

Clerk: Law. Are the same in TX + Pennsylvania.

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apply to the first 3 ideas, such an attack