

FINAL EXAMINATION

1. This examination consists of a total of 9 pages, exclusive of this cover page. There are 8 numbered questions, and an indication, as a guide only, of the approximate time that should be used on each question. Grades will be weighted approximately in accordance with the amount of time required to answer the question.
2. Omit one 20 minute question (question # 2, 3, or 4) of your choice. No additional credit will be given for answering all questions. If questions #2, 3, and 4 are all answered, only the first two will be graded. Except for this one question omission, all questions are to be answered (i.e., you should answer a total of 7 questions). Watch your time carefully and reserve sufficient time to deal with all required questions. No additional time will be given, and the 2 hour time limit will be strictly observed.
3. No questions may be asked during the examination period unless the question deals exclusively with administrative matters and is asked of the person administering the examination.
4. No examination may be removed from the testing room for any reason without prior permission of the professor. Typists may take examinations directly to and from the typing rooms only.
5. Students may use Blue Books or other normal writing paper for their answers. Social Security numbers will be placed on each answer page. No names should appear anywhere on the examination answer. Students using Blue Books may place their Social Security number on the cover or first page only.
6. Students may use notes, outlines, casebooks, statutory or other resource material brought to the examination, but may not obtain any assistance from any other student. Students may leave as soon as they complete the examination.
7. Students wishing to receive their grade may do so by leaving a post card or envelope with sufficient postage with Professor Reamey. Grades will be mailed as soon as they are available. Please do not ask the secretary for grades. Students not leaving a post card or envelope will receive their grades when they are sent from the University. Students may leave a post card or envelope with Professor Reamey anytime until the grades are mailed by the University.
8. All copies of the examination will be turned in with the answers. Students may leave as soon as they complete the examination.

9. Read the fact situation and questions carefully. Answer only what is asked, and write your answers legibly. Remember that you do not receive credit for what you know if it does not appear in your answer. Remember also that you will get no credit for irrelevant or incorrect information included in your answer.

10. Have a relaxing Summer.

1.

(25 minutes)

Dirty N. Lowe was arrested for aggravated sexual assault on a child, read his Miranda warnings and taken to the police station where he was held in jail for four days. Finally, a detective came to see Lowe and asked if he wanted to talk about the crime. Lowe said, "Well, I don't know. Maybe I should see a lawyer first." The detective asked, "Why would you want a lawyer? Any good lawyer is just going to tell you to confess. Besides, you can tell your story this way; it might just help you with the jury." Lowe agreed to give a written statement in which he confessed the act but said the complainant consented and that he thought she was 18 years old.

Lowe was not taken before a magistrate until after giving his confession. When he was taken before the magistrate, the judge ordered him held without bail because of the seriousness of the crime.

1. If you are appointed to represent the accused, what defenses will you raise to the confession, what arguments would you make, and with what probable result? If you want to argue in a pretrial motion hearing that the confession was involuntary, what are the implications for trial and how would you handle the examination of the defendant? Discuss fully.

2. Can you get bail set? How would you do so; what would you argue? Can the prosecutor keep Lowe in jail on no bail or high bail? What would he have to do? Discuss fully.

3. If the confession is admitted at trial over your objection, what should you be watching for in the State's case that may help your client and what do you anticipate requesting in the jury charge? Discuss fully.

NOTE: OMIT ONE OF THE FOLLOWING THREE QUESTIONS (2,3, or 4)

2.

(20 minutes)

The police went to Frank Fortune's house to execute a search warrant based on the following affidavit:

"On the 13th day of April, 1984, affiant received reliable information from a credible person that a machine gun was being possessed by Frank Fortune, at 123 Mercenary Drive, San Antonio, Bexar County, Texas. Although I do not desire to name this person, on about four prior occasions he has given information to me concerning prohibited weapons being possessed by certain individuals, and on every occasion his information has proven to be true."

When the officers arrived, they knocked on the door and Frank's mother, the owner of the house, came to the door. They told her they had a search warrant and asked if they could come in and search. She said, "Sure, I don't mind."

Inside the house, the police found a machine gun in the hall closet and seized it. They also found a small quantity of methamphetamine in a jewelry box on Frank's dresser and two spent cartridges for the machine gun on the floor in Frank's room. Laboratory analysis confirmed that these cartridges came from the seized machine gun and that they matched another cartridge found at the scene of an unsolved murder.

After the search, the officers forgot to file the return of the warrant as required by Article 18.10 of the Code of Criminal Procedure. Frank was charged with possession of a prohibited weapon, possession of a controlled substance (methamphetamine), and murder.

I. As prosecutor, what defensive issues do you anticipate the defendant will raise? What merit do these issues have?

II. If the defendant claims the information in the warrant affidavit is false because no one has ever seen him with the machine gun, must the trial court order the revelation of the identity of the confidential informant?

3.  
(20 minutes)

Officer D. Doright received a call to investigate an accident. When he arrived on the scene, he found that a car driven by Larry Lush had jumped a curb and run into a stop sign, causing some slight damage to the bumper of the car. He also noticed that Lush appeared to be intoxicated; he smelled of alcohol, had glassy eyes and stumbled when he walked. Billy Bob Boozer, a passenger, was still sitting in the car. When the Doright ordered him out of the car he also seemed intoxicated.

The officer placed Lush and Boozer under arrest, searched Lush and found a baggie of marijuana in his pants pocket. He then started to search the car. Lush asked the officer to call Lush's wife to come get the car, but his request was refused and the search continued. In the trunk Doright found a switchblade knife; in the glove compartment he found a film cannister which, when opened, was found to contain cocaine.

I. If Lush is charged with D.W.I., possession of marijuana, possession of a prohibited weapon, and possession of cocaine, what defenses do you anticipate the defense will raise and how will they be resolved. Discuss fully.

II. If Boozer is charged with Public Intoxication and possession of cocaine, what defenses do you anticipate he will raise and how will they be resolved. Discuss fully.

4.

(20 minutes)

Ross Parrot had been Superintendent of schools for many years, and he had fallen into the habit of taking school owned supplies home for the use of his children. Over the past year his pilfering had become worse, and the District Attorney told him that a Grand Jury was being empaneled to look into the accusations of theft.

In the mean time, the local newspaper got wind of the pending investigation and the police, under intense political pressure, obtained a felony theft warrant for Ross. Parrot was now plenty scared and hired a good local attorney who requested an examining trial and subpoenaed witnesses for the defense.

At the examining trial, the State called as its sole witness the purchasing agent for the school district, who was also a personal friend of Ross's and who had seen the supplies in Ross's home. Defense counsel was limited in his cross examination of this witness to five minutes. The witnesses for the accused consisted of several community leaders who were prepared to testify about his reputation in the community for honesty. After hearing only one of these witnesses, the judge refused to permit the defendant to call any of the five other witnesses he had subpoenaed and ordered the defendant bound over to the Grand Jury.

When the matter came before the Grand Jury, Ross was not notified and not given an opportunity to appear and tell his story. His request to have his lawyer appear was denied. A transcript of the proceedings was made for the use of the District Attorney at trial, but the defendant's lawyer was told that he could not see the transcript.

During the Grand Jury hearing on the case, the District Attorney presented a great deal of hearsay evidence against the Superintendent, much of it coming from dissatisfied employees of the school district. The Grand Jury bailiff, who had been present during the presentation of the evidence, also testified that he had heard the Superintendent remark at a party that his kids never ran out of pencils.

The Grand Jury indicted the accused for felony theft. Shortly after the trial in the case began, one of the Grand Jurors was struck by lightning on the 18th green of the local golf course and died. While reading about the freak accident in the newspaper, the defendant learned that the deceased Grand Juror had himself been accused of shoplifting and his trial was pending during the Grand Jury hearings on the Superintendent's case.

Also killed by the same bolt of lightning was the purchasing agent who had testified against the defendant in the examining trial. Since he had not yet testified, the State was permitted, over defense objection, to read the transcript of the agent's testimony from the examining trial to the jury. A defense request to see the transcript was again denied and the defense counsel, in utter frustration, made no Bill of Exception.

If the defendant is convicted, and you are sitting on the appellate court reviewing all of the issues that could be raised, how would you rule on each and why? (Suggestion: consider the issues relative to the proceeding in which they arise.)

5.  
(15 minutes)

In the case against Superintendent Ross Parrot for stealing school supplies (the facts are in the previous question but unnecessary to answer this question), the Grand Jury returned the following indictment:

INDICTMENT

STATE OF TEXAS    )  
COUNTY OF BEXAR    )

THE GRAND JURY, for the County of Armadillo, State of Texas, duly selected, empaneled, sworn, charged, and organized as such at the April Term, A.D. 1984, of the 300th Judicial District Court for said County, upon their oaths present in and to said court at said term that ROSS PARROT, hereinafter styled Defendant, heretofore, on or about the 3rd day of May, A.D. 1984, in the State of Texas,

did then and there deprive the owner, ARMADILLO INDEPENDENT SCHOOL DISTRICT, of property, to-wit: supplies, by unlawfully exercising control over and obtaining such property which had a value of SEVEN HUNDRED NINETY DOLLARS,

Against the dignity of the State.

  
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Foreman of the Grand Jury

Discuss any objections you would raise at any time to this charging instrument, discuss their relative merits, and explain when and by what means you would raise these objections and why. On the next page you will find a copy of Section 31.03 of the Texas Penal Code, the statute under which your client has been charged.

Sec. 31.03. **Theft.** (a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.  
(b) Appropriation of property is unlawful if:  
(1) it is without the owner's effective consent; or  
(2) the property is stolen and the actor appropriates the property knowing it was stolen by another.

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(d) An offense under this section is:  
(1) a Class C misdemeanor if the value of the property stolen is less than \$5;  
(2) a Class B misdemeanor if:  
(A) the value of the property stolen is \$5 or more but less than \$20; or  
(B) the value of the property stolen is less than \$5 and the defendant has previously been convicted of any grade of theft;  
(3) a Class A misdemeanor if the value of the property stolen is \$20 or more but less than \$200;  
(4) a felony of the third degree if:  
(A) the value of the property stolen is \$200 or more but less than \$10,000, or the property is one or more head of cattle, horses, sheep, swine, or goats or any part thereof under the value of \$10,000;  
(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave; or  
(C) the value of the property stolen is less than \$200 and the defendant has been previously convicted two or more times of any grade of theft;  
\*(C) the value of the property stolen is less than \$200 and the defendant has been previously convicted two or more times of any grade of theft; or  
(5) a felony of the second degree if the value of the property stolen is \$10,000 or more;  
\*(5) a felony of the second degree if:  
(A) regardless of the value, the property is combustible hydrocarbon natural or synthetic natural gas, crude petroleum oil, or equipment designed for use in exploration for or production of natural gas or crude petroleum oil;  
(B) the value of the property stolen is \$10,000 or more; or  
(C) regardless of the value, the property was stolen by threat to commit, in the future, a felony offense against the person or property of the person threatened or another.  
\*\*(6) regardless of the value, if the property was unlawfully appropriated or attempted to be unlawfully appropriated by threat to commit a felony offense against the person or property of the person threatened or another or to withhold information about the location or purported location of a bomb, poison, or other harmful object that threatens to harm the person or property of the person threatened or another person.



6.

(10 minutes)

Using the indictment of Ross Parrot in the preceding question as the charging instrument, assume that at trial the prosecutor offered proof that the defendant obtained the school supplies but did not prove that he ever personally exercised control over the property. The defense counsel moved for an instructed verdict after the close of evidence which was overruled by the trial court.

Also assume that the evidence showed that the official name of the school district is actually the Amarillo Independent School District, a fact that escaped the notice of the lawyers and the court until after the verdict was rendered. The defense counsel has raised this point on appeal.

Finally, the defendant contends on appeal that the indictment did not define "owner" and his motion to quash was therefore improperly overruled because the term "owner" is defined in three different ways.

If you are writing the opinion for the appellate court, how would you rule on these three contentions and why?

## 7.

(15 minutes)

Assume that in the voir dire of the case against Ross Parrot one venireperson admitted that he was previously convicted of a misdemeanor theft charge, placed on probation and later discharged after serving out the term of probation. Ross's attorney challenged this venireperson for cause.

A second venireperson said that she worked for the school district and knew several of the witnesses subpoenaed to testify. Also, she had heard rumors about the case at work. When questioned about this by the defense counsel, she admitted that from what she had heard, she believed Mr. Parrot had stolen the supplies. "Everyone down at the school knows he did it," she said. But upon further questioning by the judge, she said, "Well, it would be hard for me to believe that my co-workers would lie on the witness stand, but I can follow your instructions, Judge. I wouldn't want to be unfair to Mr. Parrot." This venireperson was also challenged for cause.

A third venireperson responded to a voir dire question by saying, "I just couldn't believe that a school teacher would lie. Administrators might; they're just politicians, but not a classroom teacher." Two of the State's witnesses are school teachers. This venireperson was challenged for cause.

I. In each of these three cases, what arguments would you make to have the venireperson stricken? In which cases should those arguments succeed and why?

II. If they don't succeed but should, what procedure will preserve error?

8.  
(15 minutes)

Officer Mike Macho received a call that a silent alarm had gone off at a liquor store two blocks from his location. He quickly and quietly drove to the store and observed a man inside the store bent over the cash register. Outside the store was a car with the motor running and the driver's door open. Mike turned off the car and took the keys from the ignition before concealing himself behind the trash dumpster beside the back door.

When the suspect came out of the door with his hands full of cash, the officer with his .44 magnum drawn confronted him with, "Go ahead, punk, make my day." When the suspect put his hands in the air, Macho asked, "What are you doing here, working the late shift?" The suspect replied, "Can't a guy steal a few lousy bucks without being hassled? This happened the last time I broke into this place." Macho then took the suspect to the police station where he booked him for burglary and completed his arrest report.

Eight months later when the case came to trial, Mike Macho couldn't remember much about the details of the incident. He went over the notes he had made the night of the arrest while the D.A. talked to him about the case. During this discussion, he admitted to the D.A. that the suspect had told him on the way to the station that he had been confined in a mental hospital three times in the past seven years, a fact that the officer found in his notes but had forgotten to put in his report.

The defendant wants to take the stand at trial and deny his guilt in this or any similar enterprise. If you are representing the accused, what defensive issues do you anticipate raising in this case? What materials can you discover about the State's case and how will you do so? What will you tell the defendant about his taking the stand and testifying? Discuss.