

FINAL EXAMINATION

1. This examination consists of a total of 6 pages, inclusive of this cover page. There are 7 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. 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 time limit will be strictly observed. The examination period will last two hours.
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 the examination is complete.
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 available at the Law School.
8. All copies of the examination will be turned in with the answers.
9. Read the fact situations 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. (20 minutes)

The following language [omitting only the formal parts] was contained in an affidavit used to obtain a search warrant:

A certain building, house and place, occupied and used as a private residence, located in San Antonio, Bexar County, Texas, at 1234 Fajita Street, and being the building, house or place of JOE JONES, a white male approximately 23 years of age, and other persons unknown to affiants, is a place where I have reason to believe and do believe that said party occupying the house has in his possession a controlled substance, contrary to the provisions of law; that on or about the 20th day of April, 1986,

Affiants received information from a credible and reliable informant that JOE JONES is keeping and using marijuana at his residence. The informant has been present on numerous occasions when the subject was using and under the influence of marijuana. A water pipe is used to smoke the marijuana and it is kept in the master bedroom in the closet a majority of the time. The informant has seen marijuana in the possession of JOE JONES within the past two days.

- I. If you were a municipal court judge sitting as magistrate, would you issue a warrant based on this affidavit? Explain why it is or is not sufficient. Be specific.
- II. If the officer who executed a search warrant based on this affidavit seized a pistol during the search and ballistics tests showed it was used in an aggravated assault committed a week before the search, would the pistol or test results be admissible in a prosecution of Jones for the assault? Why or why not?

2. (20 minutes)

At a hearing on a motion to suppress defendant's oral statements to police, the following exchange took place between the prosecutor and the arresting officer:

ATTORNEY: How did you come upon the defendant after you left the scene of the robbery?
 OFFICER: Well, I had been told by the clerk that the robber was an Anglo male about 5' 10" tall, wearing blue jeans and a plaid shirt. I drove in the direction the clerk said the robber ran, and about a half hour later I saw the defendant standing on a corner not three blocks away from the store.
 ATTORNEY: What did you do when you saw him?
 OFFICER: I pulled over and told him to come over to the car. He took off running, and I chased him down and handcuffed him.
 ATTORNEY: Did you tell him he was under arrest?
 OFFICER: He didn't ask and I didn't say.

ATTORNEY: What did you say to him?

OFFICER: I said, "Where do you think you're going? I'm getting tired of people robbing that ice house."

ATTORNEY: And what did the defendant say?

OFFICER: He said, "Look, officer, I was desperate. Man, I can't even afford a place to stay. Last night I slept behind that ice house, and all I could hear was the sound of the cash register."

ATTORNEY: What did you do then?

OFFICER: I took him back to the ice house and found where he had been sleeping in a pile of cardboard boxes out back.

Is the statement of the defendant admissible? Why or why not? Discuss thoroughly.

3. (10 minutes)

During an examining trial, the following exchange took place between the judge and the defense attorney:

ATTORNEY: Your Honor, all I'm asking is that the court permit me to call the two witnesses I have subpoenaed.

COURT: What are they going to testify to, Counselor?

ATTORNEY: They will establish that the defendant was with them on the night of the offense and that he couldn't have done it.

COURT: Well, I think that is a matter for the trial court if this case gets that far. I have other cases to hear this afternoon, so I'm not going to have those witnesses called.

ATTORNEY: (Sarcastically) Thank you, your Honor.

COURT: If the State has nothing else, . . .

ATTORNEY: Your Honor! The State hasn't put on any evidence!

COURT: I know that. If you'll let me finish, I was going to say that I would discharge the defendant.

ATTORNEY: Gee, thanks, I guess.

Did the defense attorney "win" here? Why or why not? Did the judge commit error? If so, is it reversible error?

4. (20 minutes)

The following indictment was returned by the Grand Jury of Wayvest County:

INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, for the County of Wayvest, State of Texas, duly selected, empaneled, sworn, charged, and organized as such at the April Term, A.D. 1986, of the 999th Judicial District Court for said County, upon their oaths present in and to said court at said term that TOM TIRELESS, hereinafter styled Defendant, on or about the 23rd day of April, A.D. 1986, in the State of Texas,

was then and there legally married to FALINE FAITHFUL, and did then and there marry DORIS DUPED, said person being someone other than his lawful spouse under circumstances that would, but for the defendant's prior marriage, constitute a marriage, and further, that said Defendant did then and there live with a person other than his spouse, namely, DORIS DUPED, in this state under the appearance of being married,

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Fran Foreman

Foreman of the Grand Jury

I. What objections to this indictment would you make on behalf of the Defendant, and when and how would you make them? Discuss the merit, if any, of any objections you might make. Also indicate for any objection you would make whether the prosecutor could amend the indictment before or during trial to correct your alleged defect. [The Texas bigamy statute is reproduced in relevant part below.]

II. If you discover that seven members of the Grand Jury voted the bill of indictment, does that fact provide you with grounds for challenge? If so, how and when would you make such a challenge and what problems, if any, do you anticipate?

Texas Penal Code Section 25.01. (a) An individual commits an offense if:

- (1) he is legally married and he:
 - (A) purports to marry or does marry a person other than his spouse in this state, or any other state or foreign country, under circumstances that would, but for the actor's prior marriage, constitute a marriage; or
 - (B) lives with a person other than his spouse in this state under the appearance of being married . . .

(e) An offense under this section is a felony of the third degree.

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5. (15 minutes)

Defense counsel filed the following motion (omitting the formal parts) in a murder case you are prosecuting:

DEFENDANT'S MOTION FOR DISCOVERY AND OTHER THINGS
COMES NOW THE DEFENDANT, SYLVESTER SHAGNASTY, by and through his attorney of record, and files this, his Motion for Discovery and Other Things, and in support thereof would show this Court the following:

I.

The State of Texas has in its possession certain objects, papers, or real evidence which is material to the guilt or innocence of the defendant, including, but not limited to the following:

- (1) a confession or incriminating statement given by the Defendant to police after his arrest on the charges prosecuted in this cause;
- (2) a pistol purporting to be the instrumentality with which the crime was committed;
- (3) a transcript of the Grand Jury proceedings held in this cause with contains statements by witnesses to testify at trial against the accused;
- (4) the name or names of witnesses the State of Texas anticipates calling to give testimony in its case in chief or for rebuttal;
- (5) other objects, papers, or real evidence material to the guilt or innocence of the defendant, the exact nature of which are unknown.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully prays this Honorable Court order the production, inspection, and copying of each and every item in the possession of the State of Texas to which Defendant is entitled.

How will you respond to this motion? Assess thoroughly the merit of your response and the defendant's requests.

6. (15 minutes)

In the bigamy prosecution of Tom Tireless, the following exchange took place between Tom's attorney, the judge, the prosecutor, and a prospective juror:

DEFENSE: Now, Miss Pristine, you raised your hand when I asked whether there was anything about this case that might cause anyone to not follow the judge's instructions. What is it that bothers you?

JUROR: Well sir, I was brought up proper, and it's just not proper for a man to have more than one wife, especially when one of them is my good friend, Faline Faithful.

DEFENSE: Are you saying that you have already made up your mind about the guilt of the defendant?

JUROR: No, but I must say, I don't think Faline would lie. If she says they were married and he married some floozy, I would not be very sympathetic. Any man who would do that ought to be shot, or worse, but certainly not believed! Besides, I've heard that Tom is a real womanizer.

DEFENSE: Your Honor, I move to have Miss Pristine excused for cause.

PROSECUTOR: If I may, I'd just like to ask Miss Pristine if she could swear to listen carefully to the evidence and judge the defendant on that basis only, following the court's instructions.

JUROR: I sure would try.

COURT: Motion overruled. Miss Pristine will not be removed for cause.

- I. Was the judge correct in his ruling? Why or why not?
- II. What should the defense attorney do now?

7. (20 minutes)

Using the indictment in Question 4 as the charging instrument in the case, the following language was included without objection in the charge to the jury:

Now if you believe from the evidence beyond a reasonable doubt that in Waywest County, Texas on or about the 23rd day of April, 1986, the defendant, TOM TIRELESS, purported to marry or married DORIS DUPED, and that he, the said defendant, at that date and time, if any, had a former wife then living, to wit, FALINE FAITHFUL, and he, the said defendant, had before the 23rd day of April, 1986, lawfully married the said FALINE FAITHFUL, and that he, the said defendant, at the date and at the time of said marriage or purported marriage to DORIS DUPED, if any, then was the lawful husband of the said FALINE FAITHFUL, and that said marriage or purported marriage to DORIS DUPED was under circumstances that would constitute a marriage but for his, the defendant's, prior marriage, if any, to FALINE FAITHFUL, then you will find the defendant guilty as charged. Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant.

If you are reviewing this charge as an appellate judge, would you reverse or affirm based on any errors it might contain? Explain why you would or would not.