

ESSAY EXAMINATION INSTRUCTIONS:

1. This portion of the examination contains three essay questions. Together, they are worth approximately 50% of the total examination grade. You have 1 hour and 15 minutes to complete this portion of the exam. Be sure you answer all questions asked; do not omit any. No additional time will be given, so watch your time carefully.
2. No questions may be asked during the examination period unless the question deals exclusively with administrative matters and is asked of the proctor.
3. **NO EXAMINATION OR EXAMINATION ANSWER MAY BE REMOVED FROM THE ASSIGNED TESTING ROOM FOR ANY REASON OTHER THAN GOING DIRECTLY TO OR FROM A TYPING ROOM.**
4. Students are to use the Blue Books provided unless typing, in which case other normal typing paper may be used. Examination numbers will be placed on each answer page unless a Blue Book is used. If a Blue Book is used, the number may be placed on only the cover of each book used. No student's name or other identifying mark may appear anywhere on the examination answer.
5. This is an "open-book" test. You may use any written materials you have brought with you, including any information contained in a computer storage device and accessible through a computer. **You may not ask for or receive information, directly or indirectly, from any other person, or from materials brought to the examination by another person.**
6. All copies of the examination will be turned in with the answers. You may leave as soon as you complete the examination. If you leave early, please be quiet so you don't disturb your classmates, and do not remain in the hallway outside the testing room.
7. Read each fact situation and questions carefully. Answer only what is asked, and write your answers legibly.
8. Happy Holidays!

Essay Question 1
(50 minutes)

Natalie Attired, a student at Texas State University, had just finished her fall semester exams and was going to South Star Mall with a friend to do a little last minute Christmas shopping (for herself). Natalie's roommate, Susan B. Toker, was driving her brand new, yellow VW "Bug," complete with matching rose in the bud vase, when she glanced in the rear view mirror and exclaimed, "Oh, shoot!" Natalie looked behind her and saw that a large police car with flashing red and blue lights was right on their bumper.

Susan gunned the car and took off, causing Natalie to scream, "What are you doing??? Stop the car!!!" Susan yelled back at her, "I can't stop; there's a lid of 'Galveston Gold' under your seat. Pitch it, quick!" Natalie found the plastic bag of marijuana and threw it out the window.

Susan finally was forced off the road and she and Natalie were ordered to get out of the car and lie face down on the pavement while they were handcuffed. The officer left them in that rather humiliating and uncomfortable position as he searched Susan's car. Using her remote door lock control, the officer opened the car's trunk and found a backpack, which he searched. Inside, he found a roach clip and other paraphernalia, along with a notebook containing names and addresses and notations of dollar amounts beside the names.

"Well, ladies," said the officer, "who's goin' to claim this lovely designer leather backpack?" Natalie replied, "Oh, for heaven's sakes; it's mine. Are you going to hassle us for a lousy roach clip?" About that time, another officer who had been involved in the pursuit arrived on the scene with the bag of marijuana Natalie had thrown out. He told the first officer what he had found and Natalie and Susan were arrested. Susan was charged with Evading Arrest; both of the women were charged with Possession of a Controlled Substance with Intent to Deliver.

Answer all of the following questions completely and carefully:

1. If you are the Assistant County Attorney assigned to prosecute these charges against Natalie, what do you expect the defense to argue; when will the arguments be raised; how will you

respond to the defense arguments; how do you expect the court to rule on those arguments; and why? Don't argue the substance of the offenses (e.g., whether Natalie knew that the marijuana was under the seat); address only the procedural law and processes.

2. You anticipate that the defense will file a Motion to Produce pretrial, and will seek production of other materials during the trial. What do you expect the defense to request; when will they request it; and what ruling do you expect from the court?

Essay Question 2
(17 minutes)

Assume that the following statutes are in effect in Texas at the time of Natalie's arrest for Possession of a Controlled Substance (Marijuana) with Intent to Deliver.

Section 481.001.

- (1) "Deliver" means to transfer, actually or constructively, to another a controlled substance, including marijuana, a counterfeit substance, or drug paraphernalia, regardless of whether there is an agency relationship. The term includes offering to sell a controlled substance, including marijuana, a counterfeit substance, or drug paraphernalia.
- (2) "Delivery" or "drug transaction" means the act of delivering.
- (3) "Marijuana" means the plant *Cannabis sativa* L., whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds.
- (4) "Person" means an individual, corporation, government, business trust, estate, trust, partnership, association, or any other legal entity.
- (5) "Possession" means actual care, custody, control, or management.

Section 481.1211. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses with intent to deliver a usable quantity of marijuana.

(b) An offense under Subsection (a) is:

- (1) a Class A misdemeanor if the amount of marijuana possessed is four ounces or less;
- (2) a felony of the third degree if the amount of marijuana possessed is 50 pounds or less but more than four ounces; and
- (3) a felony of the second degree if the amount of marijuana possessed is more than 50 pounds.

The County Attorney where Natalie was arrested filed the following information:

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

COMES NOW the County Attorney in and for Armadillo County, Texas, and charges that on or about the 12th day of November, 2000, NATALIE ATTIRED, hereinafter referred to as the "Defendant," did then and there, and anterior to the filing of this information, possess a usable quantity of marijuana with intent to deliver same, and said marijuana then and there possessed weighed less than four ounces

AGAINST THE PEACE OF THE STATE.

U. R. Busted, County Attorney for Armadillo County,
Texas

If you are the Assistant County Attorney prosecuting this case, what objections do you expect the defendant to raise to this charging instrument; when and how do you expect them to be raised; what will be your response to the objections; how do you expect the judge to rule; and why?

Essay Question 3
(8 minutes)

Of the 42 person jury panel summoned for trial, 8 are African-Americans. All 8 of these veniremen are acceptable to you. The prosecutor unsuccessfully challenges each of the 8 for cause. Following this unsuccessful effort, the prosecutor uses 8 of his 10 peremptory strikes on these veniremen.

Describe the procedure you should employ to contest the action by the prosecutor, at what stage of the proceedings must you employ it, and what remedy should you ask the judge to grant? Explain fully.