

Exam No

UNIVERSITY OF DAYTON  
SCHOOL OF LAW

Final Examination

EVIDENCE

Professor Dennis Turner

DECEMBER 14, 2002  
1:00 p.m. - 4:00 p.m.

CLOSED BOOK

THERE ARE 210 TOTAL POINTS ON THIS EXAM

INSTRUCTIONS

Read the questions carefully before writing. Some questions assume additional information that is not included in the previously distributed case materials (a clean copy of which is attached to this exam). In answering a question, you may mention in your analysis the additional information, plus any other relevant information that is included in the case materials. Remember, an exam question may not repeat or refer to specific information incorporated in the materials, but of course those facts included in the statements and documents which are relevant to your answer will necessarily find their way into your analysis.

GOOD LUCK.

QUESTION 1 (20 POINTS)

During the direct examination of Buffy Daniels, the prosecutor asked Buffy about how she kept house. Defense counsel objected. The prosecutor proffered that if permitted to answer the question, Buffy would testify: "I am a nut about cleanliness. I scrub my doors and door frames with soap and water at least once every two weeks."

How should the judge rule? Explain.

QUESTION 2 (30 POINTS)

Nita has a statute which says:

"Registered owners of handguns and other weapons are presumed to be in possession of such weapons at all times unless rebutted by competent evidence."

The parties stipulate that Anthony Daniels is the registered owner of a Smith and Wesson .357 Magnum #08693.

Assume that Daniels testified in conformity with his deposition and introduced the original of the pawn ticket. Further assume that the pawnshop owner Sam Levine testified at trial that "although the writing on the ticket was similar to his writing, he now was fairly certain it was not actually his writing." No expert handwriting analysis was offered by either party. Sam testified that he could not find a duplicate of the pawn form in his records. He also could not find the .357 caliber revolver in stock and had no record of what happened to the firearm.

The prosecutor has asked the judge to include in her instructions to the jury an instruction about the presumption. Defense counsel objects.

Assuming you were the judge, what would you do? Explain.

QUESTION 3 (20 POINTS)

Assume Donna Daniels testified for the defense and that part of her testimony was:

"When I picked up Anthony at the airport, I told him that his boss Slick Case had been killed. He was truly shocked. One could see it in his face. He said, 'I knew that Porsche would finally do him in.'"

The prosecution objected to this testimony and moved to have it stricken from the record. How should the judge rule? Explain.

QUESTION 4 20 POINTS)

Assume that Buffy Daniels testified in the case for the prosecution. On cross examination, defense counsel asked her "Isn't it true that prior to the shooting you were in bed with Slick Case and both of you were naked?" The prosecutor objected, but was overruled. Buffy replied, "No, I was fully clothed."

Later when Officer Ryder testified, he was asked on cross-examination about what Buffy was wearing when he first interviewed her. The prosecutor objected and was overruled. Officer then testified consistently with his statement found in the last paragraph on page 15.

If you had been the judge, how would you have ruled on the objections? Explain.

QUESTION 5 (20 POINTS

Assume that the prosecution also wants Buffy to testify as follows (Page 14):

" About 6:00 a.m., a light came on in my head. I realized that while the hall light was slowly waking me, Angela was yelling "Daddy." I immediately telephoned detective Ryder, whose card I had been given. I told him what I had just pieced together."

If defense counsel objects to this evidence, how should the judge rule? Explain.

QUESTION 6 (20 POINTS)

At the end of the State's case-in-chief, the prosecution requested that the judge take judicial notice of Air Nita's March/April flight schedule for flights which occur between Nita City and Clear Springs, in the State of Nita, on a daily basis. The schedule, as provided by Air Nita, is as follows:

<u>Flight Number</u>	<u>Departure Time and City</u>	<u>Arrival Time and City</u>
	7:00 a.m. Nita City	8:15 a.m. Clear Springs
	11:15 a.m. Nita City	12:30 a.m Clear Springs
	2:15 p.m. Nita City	3:30 p.m Clear Springs
	6:15 p.m. Nita City	7:30 p.m. Clear Springs
	9:30 a.m. Clear Springs	10:15 a.m Nita City
	12 noon Clear Springs	1:20 p.m. Nita City
	5:45 p.m. Clear Springs	7:00 p.m. Nita City
395	10:15 p.m. Clear Springs	11:30 p.m. Nita City

The prosecution also asks that the judge take judicial notice of the fact that Nita State Park is located  $\frac{1}{2}$  mile from State Highway 99, a major highway leading into Clear Springs, and that the distance from Nita State Park to the Clear Springs Airport is 60 miles.

How should the judge rule? Explain

QUESTION 7 (30 POINTS)

The defense wants to call Prospero Muggles as a witness. If

permitted to testify, Prospero would tell how he had been a cell mate of Iago DeZero 8 months after the death of Slick and that while sharing the cell, Iago told Prospero that he was the one who shot Slick. Iago was praising the virtues of the 357 Magnum and described how it did the job with Slick. Although the police have never been able to prove their suspicions about Slick, but many officers, including the Police Chief, believe Iago acts as an enforcer for the Nita gambling mob.

In support of its desire to have Prospero testify, the defense refers to the following:

1. Iago is still in prison, but Iago's lawyer says that Iago, if called as a witness, will take the 5<sup>th</sup> Amendment and refuse to testify.
2. Buffy Daniel's Amended Statement that includes information inadvertently left out by the court reporter, i.e page 12, last line. "I was afraid he wasn't the marrying kind because gambling was his first love and he was always putting down bets with bookies."
3. Anthony's statement at the bottom of page 35.
4. The February, 1992, minutes of Shadyside County Club Board which recommended that Slick be fired "because of his gambling problem."

The prosecution objects to Prospero's testimony. How should judge rule? Explain.

#### QUESTION 8 (30 POINTS)

Assume that Anthony Daniels testified during defense's case-in-chief. The prosecution wants to ask him on cross about the following:

1. The \$500 a month he made on side bets at the club.
2. His running around on Buffy after the baby was born
3. His conviction for bookmaking.

If Anthony's attorney objects to the questions, how should judge rule? Explain.

QUESTION 9 (20 POINTS)

The prosecutor also wants to call Suzanne Nelson to testify. If permitted to testify, she would tell the jury about what happened on flight from Clear Springs to Nita City, more specifically, the facts contained in the last paragraph of her deposition on page 26.

Assuming an objection by defense counsel, how should the judge rule? Explain.

END OF EXAM. HAVE A HAPPY HOLIDAY