

WIDENER UNIVERSITY SCHOOL OF LAW
SPRING 2007 EXAMINATION
EVIDENCE, SECTION B

PROFESSOR MOULTON

May 7, 2007

Instructions:

1. Write your anonymous number in the space provided at the top of this page, and on the cover of each blue book you use. You must return this exam with your answer sheet and blue books.
2. This is a closed book exam. You will be supplied a copy of the Federal Rules of Evidence.
3. You have exactly three (3) hours to complete this exam. The exam consists of two (2) parts on seventeen (17) pages, including these instructions.
4. Part I consists of twenty-five (25) questions in multiple choice format. Each multiple choice question is worth four (4) points. For Part I:
 - A. On the answer sheet, write your anonymous number in the place for I.D. number, starting from the left, and fully darken the circles that correspond to your number. Do not use a sticker.
 - B. In the block marked "TEST FORM," darken the circle designated "A."
 - C. To be scored, your answers must be recorded on the answer sheet using side 1, numbers 1-25. Choose only circles "A" through "D."
 - D. Use only a #2 pencil. Fully darken the circle for the answer you select. Do not make stray marks on the answer sheet.
5. Part II consists of five (5) short essay questions, worth twenty (20) points each. Answer all the questions in Part II in one or more blue books or using ExamSoft. Be sure to write legibly, and please try to write only on one side of each blue book page. If I can't read it, I can't give you credit for it.
6. Each of the two parts of the exam is worth one-half (½) of the total exam grade. You should structure your time accordingly, but be aware that equally weighted parts or questions may not take the same amount of time to answer. Before beginning to write, take sufficient time to think about and organize your answers.
7. GOOD LUCK AND ENJOY THE SUMMER!

Part I - 25 Multiple Choice Questions - Four Points Each - 100 Points Total

Part I consists of 25 multiple choice questions. Select the one best answer to each question based on the facts provided and the Federal Rules of Evidence. The term “best answer” means the best among the alternatives provided; it is not necessarily the best possible answer, or the best expression of the correct answer. Sometimes the best answer will be arrived at by a process of elimination; that is, because something is wrong with each of the other choices.

MULTIPLE CHOICE QUESTIONS OMITTED.

END OF PART I

Part II - 5 Short Essay Questions - 20 Points Each - 100 Points Total

Part II consists of five (5) short essay questions, each worth 20 points. Answer all the questions in Part II in one or more blue books or using ExamSoft. For all questions in Part II, the Federal Rules of Evidence apply. Before making any argument that the Constitution should trump the Rules, be sure that the facts warrant such an argument.

Instructions for questions 1 through 3:

For questions 1 through 3, you are the judge and must rule on the admissibility of each item of evidence described in each question. You must not only rule, but also provide an explanation for your ruling. Assume that the opposing party has objected. Start your answer with your ruling. Next, explain your ruling, addressing the likely arguments made by both sides. If you have more than one justification for your ruling, state each such justification.

Background facts for questions 1 through 3:

Karl Duncan has been charged in federal court with possession of a firearm by a convicted felon. In 1988, Duncan was convicted in federal court of illegal narcotics distribution, for which he received a four-year sentence. In 1990, Duncan was convicted of violating the federal obstruction of justice statute, for making false statements in an affidavit seeking the recusal of a federal judge from presiding over his narcotics trial. Duncan received a one-year concurrent sentence for this offense, which he finished serving in 1992.

For the purposes of the upcoming trial, Duncan has stipulated that he is a convicted felon.

The charges in the current matter arise from the following facts: Duncan owns and operates a restaurant in downtown Wilmington. During the course of an investigation into possible violations of the Internal Revenue Code, IRS agents executed a search warrant at Duncan's restaurant. During the search, the agents found, in a wall safe in Duncan's office, the loaded handgun that Duncan is charged with illegally possessing. At the time of the gun's discovery, Duncan said to the agents: "I was never able to get that safe open – the gun's gotta belong to the guy I bought this place from." IRS forensic experts were not able to recover any usable fingerprints from either the gun or the safe.

The government has filed a pre-trial motion, seeking three preliminary evidentiary rulings.

1. Admissibility of a second gun, found earlier.

In 2000, state narcotics agents executed a search warrant at Duncan's home in Cherry Hill, New Jersey. While the agents did not find any evidence of drug activity, they did find a loaded handgun in Duncan's bedside table. Duncan was never charged in connection with that handgun. The government seeks to introduce in the upcoming trial the gun found in Duncan's Cherry Hill home, as a "prior bad act."

2. Admissibility of prior conviction for obstruction of justice.

The government also seeks to introduce evidence of Duncan's 1990 conviction for obstruction of justice, but only if Duncan testifies at trial.

3. Admissibility of confession.

The government seeks to introduce the testimony of Gordon Gumshoe, who owns and operates the Gumshoe Bar and Grille. Gumshoe, known to all his patrons as a former Detective in the Wilmington police department, would testify as follows: On the day of the search of Duncan's restaurant, one of Duncan's employees, Della Declarant, hurried into the bar, ordered a drink, and said to Gumshoe: "Gordo, you'll never believe it. The cops are searching the restaurant and they found a gun. I heard Duncan say to himself, about ten minutes ago, 'Oh crap, they found my gun and I'm screwed.'" Declarant died the next day of natural causes.

Instructions for questions 4 and 5:

For questions 4 and 5, you are assigned a particular role by each question. Follow the instructions for each question.

4. You are a junior associate assigned to assist Partner in the representation of Paul in his personal injury suit against Dana arising out of a car accident. On the first day of trial Partner calls Williams, an eyewitness to the crash. You and Partner expect Williams to testify that he saw Dana's car for several seconds before the crash and estimated that Dana's speed at the time of the crash was 50 miles per hour. Instead, Williams testifies that he estimated Dana's speed to be 25 miles per hour. Partner has scribbled you a note asking the following:

- (1) I have Williams' statement to the officer on the scene that he (Williams) estimated Dana's speed to be 50 mph. Do I have to show Williams the statement before asking him about it, and for what purpose may I use it?
- (2) If I use the prior statement to the officer on cross, will that open the door to Dana's lawyer bringing in Williams' good character for truthfulness?
- (3) If I do not ask Williams about the prior statement, may I later call the officer to testify about it?
- (4) If I want to introduce Williams' five-year-old conviction for embezzlement, what's my best argument?

The judge has taken a brief recess. Answer Partner's questions, and include a brief explanation for each answer.

5. You are a law clerk to Judge Akka Demic, a brand-new federal district court judge who is about to begin trying his first case. Demic, a former law professor with expertise in the primitive legal systems of isolated indigenous tribes in South America, calls you into his office and explains that he does not understand the rationale for the general ban on hearsay evidence in federal trials. “In the tribes I’ve studied,” he tells you, “disputes are often resolved at meetings where the tribal elders consider statements made elsewhere by people not present at the meeting. Here, I gather, such evidence will usually be excluded. I don’t get it.” Prepare a memo for Judge Demic that (1) explains the rationale for the general ban on hearsay evidence in the federal rules, including the particular concerns that the admission of hearsay evidence is supposed to raise, and (2) discusses why there are so many hearsay exceptions, including whether there is an overarching policy rationale for all or most of those exceptions. Judge Demic is chiefly interested in the general policy arguments, so you should not feel obligated to discuss individual exceptions, except by way of illustration.

END OF EXAM