

Final Examination
Monday, December 12, 2011

GENERAL INSTRUCTIONS:

1. Be sure to write your anonymous number in the place provided at the top of this page. You are required to turn these test questions in at the end of the examination. Failure to return the test questions will result in a grade of **F** for this examination.
2. This is a limited open book examination. You are permitted to have with you the Rules book.
3. There are three parts to this examination:

PART I - Short Answer (maximum 2 points, to be added to Multiple Choice)
PART II - Essay (50%)
PART III - Multiple Choice (50%)
4. Specific instructions for each part are located with that part. Read them carefully!
5. This is a 3 hour exam.
6. If you wish to leave the room during the examination, you may do so. You must, however, leave your test questions and answer sheet in the classroom. Moreover, you may not speak with any member of the class while outside the room.
7. All the examinations at the law school are conducted under the Student Code of Conduct, which forbids cheating or collaborating on examinations. If you witness anyone cheating in any form, it is your responsibility to report this to the Registrar or the Dean of Students. You are required to sign the form indicating compliance with the Student Code of Conduct at the completion of your examination.
8. All students are required to have a Widener University School of Law picture ID card with a validation sticker for fall 2011 on the desk in front of them during the examination.

PART I

SHORT ANSWER

(suggested time: less than 5 minutes)

Write the answer to the following questions in your “blue” book or with ExamSoft:

Does 28 U.S.C. § 1332 require complete diversity? What is the authority for your answer?

PART II

ESSAY QUESTION (suggested time: 1½ hour)

IMPORTANT

Read the following instructions CAREFULLY:

1. Unless you are using ExamSoft, use the “blue” books provided to write your answer. Be sure to put your anonymous number on each “blue” book. In addition, you **MUST** number each book, e.g., “1 of 1” or “1 of 3,” “2 of 3,” “3 of 3.”
2. If you are handwriting your exam, write only on one side of each sheet of paper. And remember, a legible exam makes a happy professor!
3. If there are any facts you need to know to analyze the problem, indicate what they are and how they would affect your conclusion. Do not, however, rewrite the question!
4. Address only the issues of procedural law. Do not address the substantive law involved.

In July and August of 2010, Penny and Pete Pettigrew, professional gamblers, traveled from Las Vegas, Nevada, where both maintained residences, to casinos in Atlantic City, New Jersey, and San Juan, Puerto Rico, before returning to Las Vegas. On their return trip on August 8, 2010, they left from San Juan, boarded a connecting flight in Atlanta, Georgia, and then flew to Las Vegas, their final destination.

In San Juan, an agricultural x-ray inspection and other additional screening showed no contraband in Penny's or Pete's luggage. At a U.S. Transportation Security Administration (TSA) checkpoint, Penny and Pete were subjected to heightened security procedures because they were traveling on one-way tickets. They were screened for minute traces of illegal drugs; none was found. Search of their carry-on bags revealed approximately \$48,000 in Pete's carry-on bag and \$34,000 in Penny's carry-on bag, all carried openly. Pete also had approximately \$15,000 on his person. These funds, totaling approximately \$97,000 in U.S. currency, included approximately \$30,000 in seed money for gambling—their "traveling bank"—brought with them from Las Vegas.

After this cash was discovered, U.S. Drug Enforcement Administration (DEA) Agent Michael Cuento and two other agents arrived and questioned Penny. Pete was not questioned directly, but stood by and participated in the conversation. Penny explained that she and Pete had been staying and gambling at the El San Juan Casino property. When asked for identification, Penny and Pete showed their Nevada drivers' licenses and stated that their permanent residences were in Las Vegas. They further informed the DEA agents "that Las Vegas was the final destination of most if not all of the funds in their possession" and that they were returning to their Las Vegas residences. Agent Cuento escorted Pete and Penny to their plane and told them that they might be questioned further in Las Vegas. The two therefore called their attorneys in Las Vegas and arranged to meet them at the airport.

When they arrived at the Atlanta Hartsfield–Jackson International Airport for their connecting flight to Las Vegas, neither Pete nor Penny left the transit area near the departure gates. At their gate, DEA Agent Doug Dickerson and another DEA agent approached Penny and began questioning her. Penny said again that she was not carrying contraband, weapons, or drugs. She explained that she and Pete were professional gamblers and that the money in their possession was their gambling bank and winnings. In addition, Penny showed Dickerson her trip record, kept as support for tax purposes, which dated back to July 10, 2010, and listed casinos and gaming results. Pete, sequestered from Penny for questioning, explained that the documents evidencing that his trip was for gambling were in his checked bag.

After about ten minutes of questioning, another DEA agent arrived in the boarding area with a drug-detecting dog. The dog did not react to Penny's carry-on bag, but pawed Pete's bag once. The agents informed Penny and Pete that the dog's reaction sufficiently signaled contraband to indicate that their money was involved in drug transactions and then seized *all* the funds that Penny and Pete had in their possession. Although Penny and Pete asked to be allowed at least taxi fare for their arrival in Las Vegas, the agents denied the request. Dickerson told Penny and Pete that if they later produced receipts showing the legitimacy of the funds, their money would be returned. With this understanding, Penny and Pete boarded their flight to Las Vegas. When they arrived in Las Vegas,

Penny and Pete learned that their checked luggage also had been searched in Atlanta.

On August 30, 2010, and September 15, 2010, Penny and Pete sent Dickerson, from Las Vegas, various documents showing the legitimacy of their funds, including federal tax returns demonstrating that they were professional gamblers; the itinerary, hotel records, and receipts from their trip, which showed the legitimacy of their seized money; and a win record on El San Juan Casino letterhead stationery stating that Pete left the hotel with over \$30,000 in winnings immediately before leaving for Las Vegas via Atlanta. Penny and Pete asked that their money be returned to them as Dickerson had promised.

The funds, however, were not returned to Penny and Pete. Instead, the matter was forwarded to DEA headquarters in Virginia for additional investigation. According to the complaint, the DEA's background searches on Penny and Pete showed them to be "squeaky clean." Nonetheless, according to the complaint, Dickerson and another DEA agent provided a false probable cause affidavit to the U.S. Attorney in the Northern District of Georgia, to assist in bringing a forfeiture action. Specifically, Penny and Pete allege in the complaint that this probable cause affidavit falsely stated that Pete had been uncooperative and had refused to respond to questions; that Penny and Pete had given inconsistent answers during questioning; and that there was sufficient evidence for probable cause to forfeit the funds as drug proceeds. Also, according to the complaint, Dickerson left out exculpatory evidence he knew about when he submitted the affidavit: that Penny and Pete had no history of unlawful drug use or trade; that they had documentation showing them to be professional gamblers; that their bags had passed through an agricultural x-ray and other inspections used for contraband detection without incident; that Penny and Pete had provided actual receipts for most of the funds that they carried; and that the \$30,000 Pete was carrying could be traced directly to a legal source, his winnings at El San Juan Casino.

The case was referred to Assistant U.S. Attorney Dahil Goss. After determining that Dickerson had in fact omitted information, with the result that the probable cause affidavit he provided was misleading, Goss concluded that there was no probable cause for the forfeiture of the funds. Goss contacted Penny and Pete and offered to return their funds in exchange for a release, presumably of any possible legal claims, but they refused to execute one. Nonetheless, Goss directed the DEA to return Penny and Pete's money. The \$97,000 was returned to them in Las Vegas on March 1, 2011, nearly seven months after the seizure at the Atlanta airport and six months after Penny and Pete had provided Dickerson with the requested documentation showing the legal source of their funds.

Penny and Pete brought a federal civil rights action in the U.S. District Court for the District of Nevada against Dickerson and three other, unnamed DEA agents or attorneys (not relevant here), alleging that Dickerson and the other agents had violated their Fourth Amendment rights by (1) seizing their money without probable cause; (2) continuing to hold the funds for nearly six months after receiving information conclusively demonstrating the legal source of the cash; (3) knowingly compiling a false and misleading probable cause affidavit to support a forfeiture action; and (4) referring the matter to the U.S. Attorney for prosecution on the basis of deficient or falsified information, while willfully withholding known exculpatory information.

Dickerson, who is a citizen of Georgia and has never been to Nevada, moved to dismiss the complaint for lack of personal jurisdiction, pursuant to F.R.C.P. 12(b)(2), and for improper venue, pursuant to F.R.C.P. 12(b)(3). You are the clerk to the judge assigned this case. She has asked you to draft a memorandum to her outlining the arguments for and against the motion and advising her on how she should rule. The Nevada long-arm statute is as follows:

2 NEV. REV. STAT. § 14.065. Commencement of Actions.

1. A court of this state may exercise jurisdiction over a party to a civil action on any basis not inconsistent with . . . the Constitution of the United States.

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PART III
MULTIPLE CHOICE QUESTIONS
(suggested time: 1½ hour)

IMPORTANT

Read the following instructions CAREFULLY:

1. Using a #2 pencil, write your anonymous number on the answer sheet in the first six columns for I.D. number and fully darken the rectangles that correspond with your number. Do not use ExamSoft for this portion of the exam; you must use the answer sheet provided to get credit for your answers.
2. Using a #2 pencil, fully darken the letter “A” under Test Form.
3. There are 20 questions in this part.
4. To be scored, your answers must be recorded on the answer sheet using side 1, numbers 1-20. Do not use the “E” rectangle on the answer sheet. Choose only rectangles “A” through “D.”
5. You must use only a #2 pencil in answering the questions. Fully darken the rectangle for the answer you wish to give.
6. Unless otherwise indicated, assume suit is in federal court.
7. For each question, choose the best answer.