



The University of New Mexico

School of Law Library
MSC11 6080
1 University of New Mexico
Albuquerque, NM 87131-0001
Telephone (505) 277-0939
FAX (505) 277-0068

This document was scanned pursuant to the express permission of its author and rights holder.

The purpose of scanning this document was to make it available to University of New Mexico law students to assist them in their preparation and study for Law School exams.

This document is the property of the University of New Mexico School of Law. Downloading and printing is restricted to UNM Law School students. Printing and file sharing outside of the UNM Law School is strictly prohibited.

NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is no to be "used for any purpose other that private study, scholarship, or research." If the user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

**532 Evidence
Fall Semester 2006**

**UNM School of Law
Final Examination
Three Credits**

**Professor Bay
Saturday, December 09, 2006
Tuesday, December 12, 2006
Part II (90 minutes)**

Examination Format

Essay Answers

1. **Laptop** computer users: Start the Securexam program entering your examination number, course name, professor's name, & date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam.
2. **Bluebooks** for writing: write in INK, write on every-other line and only on the front page of each sheet. On the front of bluebook record the class name, professor's name, date of exam, and your examination number. Make sure to number each bluebook in order. DO NOT WRITE YOUR NAME ON BLUEBOOKS.

A five-minute warning will be given prior to the conclusion of the examination. When time is called, stop immediately. If you are handwriting, lay down your pen & close bluebook immediately. If using a laptop, save & exit the program.

Go to the exam check-in table at the conclusion of Part II of the exam & fill out an examination receipt.

Professor's Instructions

Part II

This examination has two equally-weighted parts: (1) a multiple-choice section (ninety minutes) and (2) an essay section (ninety minutes). Please note that time saved in one section of the exam cannot be carried over to the other section. (Thus, if you finish Part I in less than 90 minutes, you will not be allowed to begin Part II. Similarly, if you complete Part II in less than 90 minutes, you will not be allowed to return to Part I.)

For the essay section, you may use your Federal Rules of Evidence and these rules govern unless the question specifically asks for the application of some other rule. You may also use the case book, supplement, class notes, any outline that you helped prepare, and any materials distributed in class. You may not use hornbooks, treatises, or any other commercial materials.

The essay section consists of three questions.

If you hand write, please write as legibly as you can, in ink, skipping lines, and using only one side of the paper.

The questions on this examination are not intended to be released. You may not have in your possession or have access to any of these questions following the administration of this examination

Part II: Essay Questions (90 minutes)

Question A (30 minutes)

On March 19, 2004, around 11:00 p.m., Saul Cook, a cabdriver, was robbed, shot twice in the chest, and killed. The police recovered a .38 caliber bullet from Cook's body. No other clues were found at the crime scene, which was in the Northwest part of the City of Columbia. The gun was never recovered.

On April 9, 2005, around 8:30 a.m., Ernest Samuel, a barber, was robbed, shot once in the back of the head, and killed. The police again recovered a .38 caliber bullet from the victim's body. No other clues were found at the crime scene, which was in the Southeast Columbia.

Based on a tip from an informant, Seymour Donaldson became a suspect in the case. On April 11, 2005, the police searched his parent's house and recovered a .38 caliber handgun. Forensic tests later revealed that the gun fired the bullets that killed Cook and Samuel. Donaldson was arrested on the same day as the search.

Donaldson turned 18 on April 2, 2005. The State filed juvenile charges against him for the death of Cook; adult charges were filed against him for the murder of Samuel. He was held without bail pending trial.

Donaldson was also an aspiring rap artist who wanted to be "the next Eminem." His stage name was "King Justice." The police recovered the following song from Donaldson's cell as he awaited trial:

The Ruckus

Ruckus, I believe you're a perpetrator, gold and platinum hater, cause me and J.D. is a force like Darth Vader. Who do you despise, a strong enterprise? Do the greed in your eyes lead you to tell lies? Victimize me and call security or else there'll be death in this industry. Want to let go, set it fo' sho', I get hype like Mike put your blood on the dance flo'. Blow fo' blow, toe to toe, with that no mo'. Like the 4th of July, I spray fire in the sky. If I hear your voice, better run like horses or like the apocalypses, turn y'all to corpses. No fingerprints or evidence at your residences. Fools leave clues, all I leave is a blood pool. Ten murder cases, why the sad faces? Cause when I skipped town, I left a trail of bodies on the ground. Your whole clique ain't nothin' but tricks, nothin' but shtick, ain't worth a lick. No one bring ruckus like King Justice, but toughest the So So Def most corruptest.

The lyrics to one other song were found, "*Why Family Is Everything to Me and My Source of Serenity.*"

Please assume that all searches that occurred in this case were lawful.

Before trial, the prosecutor gives notice that she intends to introduce evidence of (1) the cab driver shooting and (2) the rap song "*The Ruckus*" at Donaldson's trial for the barber shop homicide. Defense counsel objects. Please articulate the prosecution's best arguments in support of admissibility and the defense's best arguments against admissibility, and how the trial court should rule and why.

Question B (30 minutes)

Rex Von Reekum owned a mink ranch, an alligator farm, and a strawberry farm. For many years, he obtained feed for his mink and alligators from Rolfson & Putreeda (R&P), a national rendering business that manufactures various types of animal feed. Two years ago, R&P, having seen how profitable Von Reekum's business was, opened its own mink ranch and alligator farm. It also stopped selling feed to Von Reekum, who was forced to declare bankruptcy in February 2005.

On April 4, 2005, the Columbia Police Department received an anonymous letter that warned, “R&P’S FEED WILL KILL! DON’T LET IT HAPPEN.” Subsequent tests of the feed revealed that, in fact, it had been contaminated with Avermectin, a pesticide used by fruit and vegetable growers.

The police began an investigation and interviewed disgruntled former R&P employees in early May 2005. One of them, Jim Jasper, described conditions at the R&P plant. He said the stench was “overpowering” and described maggots crawling on the floor and wall of the plant.

On June 2, 2005, the police received a second letter that said, “THE PLACE STINKS! CAN’T YOU SEE IT’S A MAGGOT NIRVANA?! CLOSE IT OR ELSE.”

On June 5, 2005, the police interviewed Jasper’s wife, Elena. She recalled that one Saturday, as they drove to the grocery store, “Jim said a bunch of things. But what I remember is that he said that he had to repair a conveyor belt at the plant. He said there were maggots mashed all over the rollers, and he hated the bastards who ran the place. He said it ought to be shut down, the sooner the better.”

Ultimately, in June 2006, the District Attorney decides to charge Von Reekum with tampering with consumer products. Please assume that three weeks before trial a valid grand jury subpoena has been served on Von Reekum compelling him to produce “samples of any and all pesticides in his possession.” In addition, Von Reekum’s defense theory is that Jasper was the actual perpetrator. Von Reekum seeks to compel the testimony of Elena Jasper, who by time of trial has gotten divorced from Jim. Jim nevertheless asserts a marital privilege.

The defense moves to (1) quash the subpoena for “samples of any and all pesticides” possessed by the accused; and (2) compel Elena’s testimony. Please articulate the defendant’s best arguments on each of these issues, the best arguments to the contrary, and how the trial court should rule and why.

Question C (30 minutes)

On December 21, 2004, Phyllis Killjoy was on the third floor of Proffitte’s Department Store engaged in holiday shopping. Killjoy wanted to use the elevator to go to the first floor, but the line was too long. She went to the escalator but noticed that it was not running and was stationary. She assumed it would be safe, as she had seen other people going down it.

Alas! It proved to be a perilous journey. During her descent, Killjoy observed that the risers of the escalator created what she considered an “optical illusion” as she looked down the escalator. Instead of retracing her steps up the escalator, she continued to descend. As she neared the bottom of the escalator, the uneven height of the steps caused her to lose her balance and she fell, breaking a leg and her wrist.

Killjoy sued Proffitte’s Department Store. She has proffered the expert testimony of Bart Barnes, a licensed architect who has practiced architecture for a decade. Barnes has never designed a department store or a building that contained an escalator. He has a Mechanical Engineering degree but has never worked as an engineer. He has published two articles in peer-reviewed journals on energy-efficient construction. As an architect, he says that he must always be conscious of potential safety issues in building design.

If allowed, Barnes would testify to three propositions: (1) a stationary escalator is dangerous and should not be used as a stairway, because the risers at the bottom are not uniform in height; (2) a stationary escalator is dangerous and should not be used as a stairway, because the escalator creates an “optical illusion” that causes disorientation and confusion; and (3) because of those dangers, the owner of the escalator must take certain safety measures (warning bells or whistles, signs, and cordoning off the escalator) to ensure that the escalator is not used as a stairway.

In support of the first proposition, Barnes relied on a website from the Escalator Safety Foundation, which has a section entitled, "Escalator Myths and Fears." This section says, "Myth: If an escalator is standing still, it is just a set of stairs. Truth: Not at all. Escalator steps are not the correct height for normal walking. Escalator steps in general are of a greater height than ordinary steps in a stairway."

In support of the second proposition, Barnes relied on (a) a website article entitled, "Wallpaper Illusion Causes Disorientation and Falls on Escalator," and (b) his own personal experience riding escalators. The internet article stated, "Because the striations on the top of the steps, the steps tended to merge together in appearance, thus causing an optical illusion." The article, however, did not provide the research or methodology on which it relied.

In support of the third proposition, Barnes relied on "common sense" and "industry standard," though he was unable to produce any evidence of an industry standard. Indeed, he admitted in deposition that the building code did not require such safety measures. Nor did he point to any research that determined that such measures were effective.

Proffitte's Department Store has filed a motion to exclude each of the three propositions to which Barnes sought to testify. How should the trial court rule and why?