

MASSACHUSETTS SCHOOL OF LAW

**District Court Practice & Procedure
Spring, 2003 Semester**

Judge Peter Agnes, Jr. - Judge Robert Cornetta

FINAL EXAMINATION

Instructions: This examination consists of four (4) questions of equal weight. Question 1 is a ten part question. In answering question one, please number each part's response in your exam booklet.

Questions 2, 3 & 4 are essay questions requiring you to write out your answers. Please note the following:

a) read the questions carefully, b) do not repeat the fact pattern in your answer; c) do write legibly; d) do identify as many legal issues as you are able to identify in the fact pattern; e) do arrive at a final conclusion or opinion in your answer; f) do be concise and to the point.

Remember: quality, not quantity is what counts. Good luck !

Question 1:

Indicate whether each of the following statements is "true" or false."

- (1) Any person who is arrested and held by the police for more than 24 hours before he or she is brought to court is entitled to a hearing and a judicial determination of probable cause under the Jenkins case.
- (2) The District Court is authorized to hold persons without bail whenever there is evidence that their release would pose a danger to the community or to any particular person.
- (3) In a District Court case governed by G.L. c. 278, § 18, the defendant is entitled to discovery that encompasses all relevant and material information in the possession or under the control of the prosecutor.
- (4) In Massachusetts, an individual has a constitutional right to be proceeded against by indictment before he or she can be convicted of a felony.
- (5) An admission to sufficient facts coupled with a continuance without a finding and the eventual dismissal of the charges can be ordered over the objection of the Commonwealth unless prohibited by a specific statutory provision.
- (6) In Massachusetts, under the defendant-capped plea system, any sentence of incarceration imposed by the court may not exceed that which is recommended by the defendant, but the court may impose any conditions of probation that it deems appropriate whether or not the defendant gives his or her assent.

- (7) Under no circumstances can a defendant be sentenced by a District Court judge and required to serve more than 2 ½ years in the House of Correction.
- (8) If the defendant received a split sentence of 2 years to the House of Correction, six months to serve and the balance suspended for 2 years, and while on probation is convicted of another crime, upon a determination that the defendant is in violation of his probation, the court is required to revoke his probation and impose the balance of the suspended sentence.
- (9) Hearsay is admissible in a probation violation proceeding only if it is shown to be reliable and that there is good cause for not calling a live witness.
- (10) In a criminal case tried in the district court, each side is entitled to one peremptory challenge for each juror seated.

QUESTION 2

You are employed as a junior associate in the firm of Deer, Deer and Antelope of Andover-Essex Massachusetts. A senior partner in the firm advises you that she is scheduled to try a case next week in which the defendant is charged with operating under the influence of alcohol, operating to endanger, and a marked lanes violation. She wants your advice about several issues. First, are there any motions that should be filed. Second, can she offer a guilty plea in circumstances in which the defendant is not willing to accept anything more than a continuance without a finding for six months with no special conditions of probation after an admission to sufficient facts, and if so, what will the procedure entail. You are advised that all discovery is complete, a motion to suppress evidence seized from the automobile has been heard and denied, and the defendant and his wife are prepared to testify that the defendant only consumed 2 beers at dinner and was not drunk at the time. The arresting officer's police report reads as follows:

"This is the report of Officer John Smiley. At 12:45 a.m. on January 30, 2003, I was on routine patrol on Main Street in Andover Essex, Massachusetts. I was operating a marked cruiser. I received a radio call from my dispatcher that indicated a man had called the police station on his cell phone to report a red corvette that was weaving "all over the road" on Main Street. The report further indicated that the car was headed in my direction. I pulled my cruiser over to wait for the vehicle to pass. There were no other cars on Main Street at the time. In one minute, I spotted the red corvette and saw it cross over the center line. I activated my blue lights and pulled onto Main Street behind the Corvette. It appeared that there were two people in the front seat. Suddenly, the corvette accelerated and turned off Main Street. I pursued it but lost sight of it on Appleton Street. About five minutes later, I was back on Main Street when I saw the same red corvette parked in front of Ed's all night diner. Both doors were wide open and the car was parked illegally. I entered the diner and saw two people seated in the first booth. The defendant, later identified as Harry Potter, was slumped over the table and reeked of alcohol. He had blood shot eyes. His clothing was disheveled. There were two cups of black coffee in front of him. His female companion was seated opposite from him. I heard her say, "Honey, drink

your coffee. They'll be here any minute now. We've got to go." I approached the pair and asked if the defendant was the operator of the corvette. The women answered, "None of your business. We were just about to leave." I informed the defendant that I wanted him to perform several field sobriety tests. He tried to stand up, but fell back to his seat to his severe degree of impairment. When he tried to speak, his speech was slurred and barely audible. I told him he was under arrest for operating a motor vehicle on a public way while under the influence of alcohol. When I went to secure the car, I found the car keys on the front driver's seat. The keys were on a key ring with a tag that said "Harry Potter." The defendant was taken to the police station and booked in the ordinary course. These are the essential facts."

You should assume that Operating Under the influence of Alcohol requires proof that the defendant operated a motor vehicle on a public way while under the influence of alcohol and the Main Street in Andover-Essex is a public way. Also, assume that there are no statutory limitations or restrictions on the sentencing authority of the judge other than those that apply generally to all criminal cases in the district court.

What advice will you give your senior associate in reply to her two questions?

Question 3:

On April 18, 2003 the Andover-Essex Police Department received a 911 call from a distraught elderly female. She was obviously in fear, crying and begging for police to come and protect her. She continued to cry out on the phone to the dispatcher that her son had attacked her and was trying to do so again.

Officers Starsky and Hutch responding to the call in a marked cruiser pulled up at 35 Reston Street within five minutes and observed 56 year old Lucian Hightower seeking to break down the door of apartment one with a tire iron.

The officers immediacy took Hightower into custody and entered the apartment. Inside they found 87 year old Imelda Hightower in obvious fear, clutching her phone and crying. She began to scream when she saw Lucian and trembled as she told the police to take him away from her.

Imelda related to the officers that Lucian lived with her and had been in the apartment earlier, had struck her repeatedly with a hard bound bible and told her she was not a worthy subject of God. Lucian then left, telling her he was going out and would return to her with faith. Imelda was found with wounds to her head, arms, neck and back and she was bleeding from her forehead. The apartment was in total disarray. Imelda's walker was upside down in the back stairwell.

An ambulance was called and Imelda was immediately transported to the hospital for treatment of her wounds and shock.

The officers then transported Lucian to the station in custody. He was booked, printed and photographed and placed in a cell. During the booking process, police found three five dollar twists of cocaine on his person together with assorted pills and various religious objects. A prescription for paxil was also found, made out to Lucian from the Essex Street Mental Health Clinic. Lucian had a strong odor of alcohol on his person and kept mumbling that he was "an instrument of almighty God" as he was being transported, booked and locked up.

Lucian was held until his appearance in court on Tuesday, April 22nd since Monday was a holiday. On Monday afternoon, police entered his cell, took away his belt and shoe lacings when he threatened to hang himself in his cell. He arrived at the Andover-Essex District Court on Tuesday morning and as duty attorney, you have been assigned to interview Lucian in the cell block in preparation for his arraignment shortly upstairs in the court room.

While speaking to you in the cell block, Lucian has related to you that all he wants to do is leave so that he can take care of his elderly mother. He keeps repeating that she needs him. While his eyes are glassy and he appears disheveled, nevertheless, he tells you he has spoken to his mother

by phone from the police station and that she wants him to come home. He denies any knowledge of the incident. The arresting officer is in court and tells you that in fact Lucian's mother did call the station, telling the duty officer that she was treated and released from the hospital and that the entire matter was simply a misunderstanding and that the police over-reacted. She says she loves her son and needs him home to care for her.

A check of Lucian's CORI shows several charges of assaultive behavior, threats, breaking and entering and prior marijuana possession charges. Yet, surprisingly, not one conviction or one default. In fact, most charges over the last ten years have either been dismissed or continued without a finding. There is no record of any 209A restraining orders ever being issued against him as well.

Lucian is being charged with assault and battery by means of a dangerous weapon upon a person 60 years of age or older with serious injury, attempted breaking an entering, threats and possession of class B controlled substance, to wit: cocaine.

The Assistant District Attorney tells you that because of what the officers observed when they arrested Lucian, that she is going to move for a dangerousness hearing in this case. When you relate this to Lucian in his cell, he is stunned and tells you to do everything possible to get him released and that his mother will die if he is not there to care for her.

Please identify each issue surrounding this incident as you undertake the representation of Lucian and describe what actions you propose to take on his behalf and in his defense.

Question 4:

On March 30, 2003, Hobart Faxon tendered a plea in the Salem District Court to a charge of operating under the influence of alcohol, speeding and marked lanes violations. A guilty finding was entered by the court on the operating under count and he was found 'responsible' on the speeding and marked lanes violation. Because the case involved an accident with minor personal injuries, Judge Fairness sentenced Hobart to 18 months straight probation together with a \$750.00 fine and \$200.00 in civil assessments. Hobart's license was suspended for 60 days and he was required to attend the alcohol safety program with added fees and costs.

This was Hobart's first conviction of any kind. He is a 34 year old computer software marketing executive who lives in Georgetown and works in Salem. He is married and has two children whom he supports, ages 5 and 2 years. It is very hard for him to get to work without a ride since there is no direct public transportation between Georgetown and Salem.

On May 5th, Hobart was scheduled to give a very important computer demonstration to software executives from around the country. He had arranged for a cab to take him to work at 9:00 a.m.. By 8:45 a.m. the cab still had not arrived and because of the importance of his getting to work, Hobart took the family vehicle and started out onto route 97. Georgetown Police

Officer Joe Thursday, following Hobart in a marked cruiser, noticed a break light out on Hobart's minivan and pulled the vehicle over. Hobart produced a valid registration for the vehicle but, had no license to show the officer. He was immediately arrested and booked for operating after suspension for OUI. At his arraignment in Haverhill District Court, he was released on \$500.00 cash bail for an appearance back in court on June 11th. In the meantime, Hobart has received a violation of probation notice from Salem District Court Probation Officer I. Lockemup. A final surrender hearing has been scheduled in that matter at Salem District Court for June 5th and it appears likely that Hobart will have to appear before Judge Nathan Nosympathy on that date.

Hobart tells you as his lawyer that he realizes what he did was wrong but that his job really depended on his being in work on time on May 5th and that as a result of his arrest, he has been fired.

You have spoken to the probation officer who has said to you, "look, these cases are zero tolerance around here. You can take your chances with the judge if you want, but I'm recommending 18 months to the house of correction committed for this guy. He's a menace."

Hobart tells you that a commitment will devastate his family. His wife is currently undergoing treatment for severe anxiety and his youngest daughter will soon have to submit to surgery to correct a left lazy eye. The family has no other local support. Hobart's wife is an only child who lost her parents recently to SARS and he has one younger sister who lives in Detroit and cares for an elderly aunt who has Alzheimer's disease.

Are there any alternatives that you might present to the judge at the final surrender hearing that could avoid Hobart's incarceration while providing for the myriad of issues he presents with? And, what of the Haverhill District Court case? That case is coming up after the Salem VOP hearing. Is Hobart simply destined to go to jail?? Is there no hope? No justice?

Please discuss.