

MASSACHUSETTS SCHOOL OF LAW
Massachusetts Trial Court Practice & Procedure - Criminal
Judge Robert A. Cornetta - Spring, 2009

FINAL EXAMINATION:

Instructions: This examination consists of three (3) questions of equal weight. You are to number your BLUE BOOKS as questions 1-3. This is a closed book examination.

Question One is a ten (10) part multiple choice question.

In answering question one, you are to number that questions 1-10 in your BLUE BOOK and then put your choice of answer BY LETTER next to each number.

On questions two (2) and three (3) you are to write out your answers. Please remember to be concise and to the point. Do not repeat the question in your answer. If you decide to cite a statute, regulation or case, be sure your cite is correct. Grammar, spelling and syntax all count as does legible handwriting. If your answers cannot be read, they cannot be graded.

No credit will be given for any answers not in your BLUE BOOKS. If you use more than one blue book, be sure to identify each. Finally, remember quality is just as important as quantity.

Good Luck !

QUESTION ONE:

1. Please identify the correct statement of law by selecting the appropriate letter:

A. Any appeal taken from a Judge's denial of an application for criminal complaint filed by person, must be taken to the Appeals Court only and not to the Supreme Judicial Court.

B. Misdemeanors and certain enumerated felonies may be commenced in the District or Boston Municipal Courts while major felonies including capital cases must be commenced in the Superior Court

C. Once a nolle prosequi is entered in a case by the District Attorney, a Judge must accept or deny the same within thirty (30) days.

D. Upon proper findings of lack of probable cause, a Judge can dismiss a criminal complaint over the objection of the District Attorney pursuant to the *DiBenedetto* case.

2. Which of the following is correct:

A. Pursuant to G.L. Ch. 123, mental health commitments can be approved by the court for up to one (1) year at a time.

B. Juvenile proceedings involving Youthful Offenders can only be open to the public upon motion agreed to by the Commonwealth and defendant.

C. In setting bail in the District/Municipal Courts, there is a presumption of personal recognizance.

D. Upon revocation of bail by the court, bail cannot be reargued by the defendant pursuant to the rules of criminal procedure.

3. Please determine which of the following is an INCORRECT statement:

A. Extradition proceedings between states are generally governed by state statutes.

B. The filing of a motion to suppress must be accompanied by an affidavit of facts.

C. As with all other warrants, *search warrants* have an officer's return procedure once the warrant has been executed by the police.

D. In an operating under the influence case, if there has been no breathalyzer test and the

prosecutor inadvertently raises the subject on direct or cross examination, the court MUST grant a mistrial upon motion made by the defense.

4. Which of the following is true regarding jury trials:

A. Both the Commonwealth and defendant are each afforded four (4) pre emptory challenges in the District or Boston Municipal Courts and eight (8) pre emptory challenges in the Superior Court.

B. In a criminal jury trial, while the crimes charged are tried to the jury, any civil motor vehicle infractions which make up part of the counts in the complaint shall be tried to the Judge.

C. In the event more than six (6) jurors are seated in a jury trial in the District or Boston Municipal Court, and the total number of jurors sits through the entire trial, the Judge then has discretion to have all of the jurors deliberate the case as opposed to having to go through the process of reducing the jury.

D. *Voir dire* questions presented to the jury must be by agreement of both the Commonwealth and the defense.

5. Please select the correct statement of law:

A. CHINS cases that are not jury waived must be tried to a jury of twelve.

B. Under the provisions of G.L. Ch. 90, s. 24, *field sobriety tests* must be afforded to an operator suspected of operating under the influence as part of a roadside stop.

C. A DYS commitment that is not suspended by the court must be ordered for not less than six (6) months by the Judge to permit proper treatment for the juvenile by DYS.

D. A Youthful Offender once convicted must be sentenced to the House of Correction or State Prison.

6. Which of the following is true regarding domestic abuse prevention orders under G.L. Ch. 209A:

A. Temporary child visitation orders can be issued by the District or Boston Municipal, Superior or Probate and Family Court Departments.

B. The Superior Court has limited jurisdiction to hear cases involving child visitation and dating relationship cases.

C. While an emergency response judge can issue a domestic abuse prevention order when court is closed, (s)he will generally NOT hear questions of bail at that time if one of the parties has also been arrested as a result of the domestic abuse incident.

D. A violation of a domestic abuse restraining order cannot be continued without a finding by the judge upon a tender of plea by the defendant.

7. Please select the correct statement regarding Probation in Massachusetts:

A. Both probation and parole are supervised by the court after a defendant has been sentenced.

B. Upon the entry of straight probation by the judge, (s)he can sentence the defendant to ANY term of incarceration as provided for by a criminal statute upon a finding of a probation violation.

C. Under existing case law, probationers are not considered in custody as compared to persons who are sentenced to jail or prison.

D. A defendant can be placed on pre trial probation over the objection of the Commonwealth as provided for by G.L. Ch. 276, s. 87.

8. Please select the correct statement of law:

A. Upon a routine traffic stop, case law requires that the police "Mirandize" the vehicle's operator if they intend to inquire about whether or not the operator has been drinking before being stopped.

B. The horizontal gaze nystagmus test has been generally prohibited in Massachusetts pursuant to *Commonwealth v. Sands*.

C. Under the *per se* statute, the Commonwealth must elect if it will prosecute the defendant on the basis of a breath test OR based upon observations of operation and/or physical condition of the operator at the time of the traffic stop.

D. After an operating under the influence arrest, the police at the scene can search the motor vehicle before it is towed away under an "inventory search policy" WITHOUT a valid search warrant.

9. The following is a correct statement of law:

A. If the police intend to charge a defendant with a misdemeanor which has been committed outside of their presence, the suspect can request a hearing before a clerk prior to the police swearing out a complaint.

B. Bail can be posted by an attorney ONLY if the crime charged constitutes no more than a misdemeanor.

C. Cities and towns have the right to enact ordinances and by laws which provide for fines and incarceration ONLY to a jail or house of correction and not to state prison.

D. If a person cannot obtain employment because of a prior criminal record history, they can apply for and obtain a sealing of their record from the court pursuant to *Globe Newspaper Company vs. Pokaski*.

10. Regarding the following, which statement is correct:

A. Pursuant to applicable case law, jury instructions in criminal cases are required to be in standard form only.

B. Once a defendant is found not guilty by reason of mental illness, (s)he must be released from custody by the court.

C. In the District or Boston Municipal Court, any plea tendered by the defendant is a "defendant capped" plea.

D. Sentencing in the Superior Court is governed by the requirements of state sentencing guidelines as they have been adopted by the Legislature.

Question Two:

Your client, ^{OMAR} Jose' Guzman has been charged with two counts of indecent assault and battery upon a person over the age of fourteen years. The Commonwealth alleges that while at a performance of Blue Man Group at the Lowes theater, Sally Kia was assaulted twice by Omar as she made her way from the ladies room back to her seat. Omar and Sally had been in a dating relationship prior to the alleged incident. The relationship is alleged to have been broken off by Sally two weeks prior to their encounter at the theater.

Omar has elected a jury of six in the District Court for trial.

As defense counsel, you have requested a *voir dire* question to be posed to potential jurors regarding whether or not any of them has ever been a victim of a sexual assault. The judge has denied that request citing privacy concerns and the fact that the jury pool is too small.

During jury selection, the District Attorney exercised a pre emptory challenge to the seating of potential juror Luz Ruize. The potential juror has listed on her juror questionnaire that she was

formerly employed by the U.S. Attorney's office in Dallas Texas. She currently works for the Small Business Administration in Boston.

As the trial has progressed, the district attorney has presented the court with an oral motion in limine to permit the alleged victim to testify behind a small screen while the courtroom is closed to the public to protect the victim's identity. The judge has allowed that motion.

The juror in seat number four has begun taking notes during the testimony.

At the end of the trial evidence, you have requested special instructions regarding the offenses charged. The judge has indicated that she will not entertain such a request since the evidence presented during the trial was clear and the standard instruction parallels the statute obviating any need for further instructions.

At the conclusion of the trial, Omar was convicted on both counts. He has no prior record and is employed as a staff writer for the Boston Tribune newspaper. He has suffered from bi polar disorder and depression in the past.

As soon as the jury foreperson announced the verdict, the judge ordered Omar into custody and asked him if he wished to say anything. Omar, looking completely confused blurted out to the judge "I'm innocent !"

The judge thereupon sentenced Omar to 2 ½ years in the house of correction on count one and 1 year in the house of correction from and after the first sentence. Omar was immediately led out of the courtroom in handcuffs and leg irons to begin his sentence.

As defense counsel, please analyze the issues presented by Omar's trial.

Question Three:

Kristin Kellogg is a twenty-two year old single mother of three children ages six months, two years and three years. Kristin's live in boyfriend Herbie Andover is an unemployed landscaper. Kristin and Herbie have lived together for about a year. The police have often responded to their apartment for disturbances involving fighting between the two of them.

Last Saturday night, Herbie was high on alcohol and cocaine when he began to verbally abuse Kristin about the condition of the apartment. It was 1:30 a.m.. The children were up, they were clearly unattended to with dirty diapers on, walking about the apartment which was littered with clothing, food waste and at least six cats in various parts of the unit.

The fighting escalated to the point where Herbie (who has a history of bi polar illness) threatened to kill Kristin the children and himself.

The police arrived and quieted down the situation and then left.

Upon hearing of the incident that night, Kristin's mother Irene called the police and begged them to do something before a tragedy occurred.

Officer Dana Knowles, a one month veteran of the police department, informed Irene there was nothing that they could do since no crimes had been committed and no one could be arrested.

Not satisfied with that response, Irene has called you, her family lawyer, for advice.

What advice (if any) might you give to Irene at this time ?