

Student # _____

General Instructions:

1. Do not write your name anywhere on this exam or on the Electronic Bluebook. Write only the number provided to you by the Registrar's Office.
2. You have 3 hours to complete this exam.
3. This is closed book exam. While taking this exam, you are not allowed to access any other materials.
4. The exam consists of 10 multiple choice questions and 4 essay questions.
5. There is no penalty for wrong answers on the multiple choice portion, so you should not leave any of them blank. You should circle your selected response on the exam itself, or enter your response on your Electronic Bluebook. Do not write anything other than the letter matching your selected response.
6. On the essay portion, you should use Electronic Bluebook. On this portion, there is no space restriction or word limit on how much you are permitted to write in response to each question, but the exam has not been designed to provide sufficient time for writing very lengthy responses. Also, the conciseness and clarity of your responses will be considered in grading your responses. It is very important to include in your responses the legal propositions on which you have relied. It is much less important to include the name of any particular case.
7. This exam constitutes 40% of your grade and will be graded out of 40 points. Each multiple choice question is worth one point. On the essay portion, the number of points out of which each question will be graded is specified next to the question.

Good luck!

Part I – Multiple Choice Questions

1. In drafting the Fourth Amendment to the Constitution of the United States, the Framers intended to protect Americans against which of the following practices?
 - A. General warrants, prior restraint, and writs of assistance
 - B. General warrants and prior restraint
 - C. General warrants and writs of assistance
 - D. Prior restraint and writs of assistance

2. While driving his car, Carl, who is speeding, is stopped for speeding by Officer Patrick who, unbeknownst to Carl, intends to arrest Carl for speeding, rather than give him a citation, because Patrick suspects Carl is a drug courier. Which of the following is a violation of Carl's constitutional rights?
 - A. Patrick approaches the car and, without advising Carl of his Miranda rights, states, "Do you know why I stopped you?"
 - B. After asking the above question, Patrick arrests Carl for speeding.
 - C. After arresting Carl, Patrick places him in his cruiser, and returns to search the car based on a reasonable suspicion that the car contains drugs.
 - D. Patrick never advises Carl of his Miranda rights after the arrest. On the way to the police station, without prompting by Patrick, Carl says, "Any cocaine you might find in my car belongs to my girlfriend." That statement is used at Carl's trial by the prosecution.

3. After Don's arrest for sexual assault, police administered Miranda warnings to him. He waived his rights and agreed to answer their questions. During the subsequent interrogation about the sexual assault, Don said, "I've changed my mind. I want a lawyer." Don was returned to his cell. A few hours later, a different police officer, wanting to question Don about an unrelated crime, robbery committed on a different date from the sexual assault, approached Don and administered Miranda warnings. Don understood his rights and agreed to answer questions. In response to a question about the gun used in the robbery, said, "The gun is at my mother's house." The police went to the mother's house, obtained her voluntary consent to enter the house, and seized the gun.

Which of the following is correct about the admissibility of evidence during the presentation of evidence by the prosecution at the robbery trial:

- A. Both the statement "The gun is at my mother's house" and the gun itself are admissible.
- B. The statement "The gun is at my mother's house" is admissible, but the gun is inadmissible.
- C. The statement "The gun is at my mother's house" is inadmissible, but the gun is admissible.
- D. Both the statement "The gun is at my mother's house" and the gun are inadmissible.

4. John is arrested outside his apartment for selling drugs. The police then go to John's apartment, where they are met at the door by Joe, who they learn had entered the apartment minutes earlier only to help John package drugs and has no other connection to the apartment. They ask for permission to enter, but Joe refuses to let them in. At this point, the police order Joe to step aside, enter the house, and find drugs.

Which of the following is correct about the admissibility of the drugs found in the apartment at John's trial for possession of drugs with intent to distribute, and at Joe's trial for possession of drugs with intent to distribute.

- A. The drugs are admissible at both trials.
 - B. The drugs are inadmissible at both trial.
 - C. The drugs are admissible at John's trial, but inadmissible at Joe's trial.
 - D. The drugs are admissible at Joe's trial, but inadmissible at John's trial.
5. Officer Friendly observes Sam receive what appears to Officer Friendly to be a bag of drugs from another person at a street corner in a high-crime neighborhood. As Officer Friendly approaches Sam to question him, Officer Friendly observes a protruding object inside Sam's closed fist that reasonably appears to Officer Friendly to be a small pocket knife. Officer Friendly demands that Sam open his closed fist. Sam does so, revealing a plastic bag that contains a white powder. Officer Friendly calls for a transport vehicle on his radio and says to Sam, "That's heroin you just bought, right?" Sam nods in agreement. Officer Friendly seizes the bag.

Which of the following is most likely gives rise to a viable motion to suppress?

- A. Officer Friendly stopping Sam in order to question him about the exchange.
 - B. Officer Friendly demanding that Sam open his fist.
 - C. Officer Friendly saying, "That's heroin you just bought, isn't it?"
 - D. Officer Friendly seizing the bag.
6. Pamela, a private high school principal, learns that 15-year-old Wendy has brought a firearm to school and placed it in her locker. Pamela calls the local police and, after they arrive, Pamela summons Wendy to her office. When Wendy enters, he is met by three uniformed and armed police officers. Pamela tells Wendy that she has to remain in her office until the officers are finished questioning her. Officer Olson asks Wendy, "Did you bring a gun to school today?" Pamela breaks down crying and admits she brought the gun.

Which of the following is correct?

- A. The police were not required to advise Wendy of her Miranda rights before questioning her in Pamela's office because Miranda warning are not required in a school setting.
- B. The police were not required to advise Wendy of her Miranda rights because there was no state action as the school is private.

- C. The police were not required to advise Wendy of her Miranda rights because of the public safety exception to Miranda.
 - D. Wendy's response to Officer Olson's question would not be admissible at Wendy's gun possession trial.
7. Police have probable cause to believe Dorothy has committed a crime. As the police know that Dorothy is present at Henry's house, they obtain a search warrant authorizing them to enter Henry's house and arrest Dorothy. When they enter the house unannounced, they immediately observe Henry and Dorothy in a ground floor bedroom visible from the entrance. One officer quickly looks through the rest of the house, opening closet doors in each room. When he opens the door to an upstairs bedroom, he observes a distinctive looking clock that he recognizes as the one recently reported stolen from a neighbor's house. He seizes the clock.

Which of the following is correct?

- A. The police violated the Fourth Amendment because they needed an arrest warrant to enter Henry's house in order to arrest Dorothy, not a search warrant.
 - B. Evidence obtained as a result of the police's unannounced entry must be suppressed because the police violated the knock and announce rule.
 - C. The police violated the Fourth Amendment by entering the upstairs bedroom.
 - D. The clock is admissible at Henry's trial for stealing it.
8. After Dan has appeared in court, been arraigned on a burglary charge, and a public defender has been appointed to represent him, he is held at the local jail because he is unable to post bail. Matt is Dan's cellmate. With Matt's consent, the police place a recording device underneath Matt's shirt and instruct him not to ask Dan any questions about the burglary. Shortly after Matt is returned to the cell after the device has been installed, Dan tells him, "I'm here because I was stupid enough to break into some old lady's house and steal all her pain meds. What about you?" Matt responds that he is in jail serving a sentence for a domestic assault. Later, a corrections officer takes Dan from the jail cell to the inmate visiting room, where a police officer meets with him and question him about the burglary. Dan confesses.

Which of the following is correct?

- A. Recording Dan without his consent violated his Fourth Amendment rights.
- B. Dan's statement to Matt was obtained in violation of Dan's Sixth Amendment rights
- C. Introducing Dan's statement to the police officer at Dan's burglary trial would violate Dan's Miranda rights.
- D. The police questioning of Dan in the visit room violated the Sixth Amendment.

9. Admission of evidence under which of the following circumstances would find the least support in the U.S. Supreme Court's Exclusionary Rule cases?
- A. Evidence obtained pursuant to a warrant issued based on evidence that does not quite meet the requirement of probable cause.
 - B. Evidence obtained as a result of a search incident to arrest pursuant to an outstanding warrant discovered after a suspect was stopped based on the officer's suspicions that did not quite meet the requirement of reasonable suspicion.
 - C. Evidence obtained as a result of search incident to an arrest pursuant to a warrant for an unpaid fine that was no longer in effect but the officer believed was still valid as a result of a failure on the part of the court to update its records.
 - D. Evidence obtained as a result of a pat frisk conducted on a suspect who was stopped by an officer believing, mistakenly but sincerely, that, given the suspect's actions, there were sufficient grounds for a lawful *Terry* stop.
10. Walking to her office's parking lot one night, Valerie is attacked and sexually assaulted by a masked man. Valerie calls the police and reports the assault. Based on evidence collected at the hospital that night, a DNA profile of the perpetrator of the assault is developed and, days later, using a database, the profile is matched to a DNA sample lawfully collected from Daniel years earlier. Based on this evidence, Officer Lawrence obtains a warrant for Daniel's arrest. Meanwhile, Officer Olson interviews Valerie and based on her account, suspects Daniel of committing the assault only because Daniel committed a somewhat similar assault several years ago. Before Officer Lawrence has arrived at Daniel's house with the arrest warrant, Officer Olson goes there and demands that Daniel open the door. Officer Olson then arrests Daniel and brings him to the station. He asks Valerie to return to the station and view Daniel through a one-way mirror. Valerie identifies Daniel as her assailant. Relying on this identification, Olson obtains a warrant to search Daniel's house. Meanwhile, unaware that Olson has arrested Daniel, Officer Lawrence goes to Daniel's house with the arrest warrant, knocks, announces, and waits. When no one opens the door, he forces his way in and starts searching for Daniel. As Lawrence is searching for Daniel, Olson arrives with the search warrant and explains that Daniel has already been arrested. Lawrence then enters a bathroom inside the house, where he finds a mask matching the one described by Valerie when she first reported that she was assaulted. Lawrence seizes the mask.

Which of the following is correct?

- A. The mask is inadmissible because Officer Lawrence violated Daniel's constitutional rights.
- B. The mask is inadmissible because Officer Olson violated Daniel's constitutional rights.
- C. The mask is admissible under the independent source doctrine.
- D. The mask is admissible under the inevitable discovery doctrine.

II. Essay Questions

1. (9 points) Suspecting Cathy of being a heroin and Fentanyl dealer, agents of the Drug Enforcement Agency (DEA) spoke about her to an informant who had recently provided the DEA with reliable evidence that resulted in the arrest and conviction of two drug dealers. The informant told them, "I haven't been in her house for the past several months, but the last time I was there, she had multiple ounces of heroin that she kept in a safe in her bedroom. When she opened the safe to give me some, she also took out a ledger. It looked like she had a few years' worth of transactions recorded in there." A few days later, a DEA agent sought a warrant to search Cathy's house for "heroin, Fentanyl, drug ledgers, drug paraphernalia, digital scales, drug cutting materials, and proceeds of drug trafficking." The agent's affidavit filed in support of the warrant provided the above information about the informant's background and his statements concerning Cathy's safe. A judge issued the warrant as requested. The agents executed the warrant, found drugs inside the safe described by the informant, and arrested Cathy, whom they found in the house while executing the search warrant. The agents advised her of her Miranda rights, and asked whether she wanted to talk to them to "try to help [herself] out." The agents said they could make no promises but would put in a good word for her with the federal prosecutor. Cathy agreed to talk to them and told them about a storage unit she owned, where more drugs might be found. The DEA obtained a warrant for searching the storage unit using an affidavit that described the whole course of the investigation, as set out above. When they executed the warrant, they found a large quantity of heroin laced with Fentanyl.

List all plausible arguments that Cathy's lawyer should consider in seeking to suppress the drugs found in the house, the drugs in the storage unit, and Cathy's statements to the agents after she was advised of her Miranda rights. Assess the merits of each argument.

2. (8 points) Police receive a 911 call from a driver who says, "I am driving on I-93 behind a blue Honda Civic that's all over the road. The driver almost crossed over onto opposing traffic. A little later, the car almost fell into a ditch next to the breakdown lane. The guy must be drunk." The driver gave the Civic's license plate number to the 911 operator, but hung up when the operator asked for his name. The driver also explained that the Honda was headed north on Route 3, just past The Happy Diner. A police cruiser arrived within minutes and began to follow the Honda. After a few minutes, without having observed any traffic offenses or erratic operation, the officer turned on his blue lights. After a few seconds, the Honda pulled over. The officer approached on the driver's side and observed a half-empty bottle of vodka on the passenger seat. At the officer's request, the driver tried to get out of the car, but stumbled and fell to the ground. His breath and clothing had the strong odor of alcohol, and his speech was very slurred.

The officer asked if he was willing to perform some field sobriety tests, but the driver said, "Are you kidding? I am wasted." The officer arrested him for driving under the influence of alcohol (DUI) and secured him in his cruiser. He then returned to the car, opened the passenger side door, and retrieved the bottle of Vodka. On the way to the station, the Officer said, "Rough night, huh?" The man said, "It sure is. I killed my mother earlier tonight." The Officer immediately advised the man of his Miranda rights and then said, "What did you do earlier tonight?" The man said, "You deaf or something. I said I killed my mother earlier tonight." The officer said, "Where did you do that?" The man said, "In our house, using my father's shotgun." The officer said, "Where's the shotgun?" The man said, "In my trunk." The officer drove back to where the Honda was parked on the side of the road, opened the trunk, and removed the shotgun.

Analyze the admissibility at the man's consolidated trial for murder and DUI of his statements made in the cruiser. Also analyze the admissibility of the shotgun and the bottle of vodka. Limit your analysis to constitutional principles. Do NOT consider the rules of evidence.

3. (7 points) Sam and Scott are arrested for sexually assaulting Val and killing her. When interrogating Sam, police repeatedly threaten to arrest his wife and mother as accomplices and have his children taken away by Child Protection Services, unless he confesses. After a 10-hour long interrogation during which Sam is not offered any food or water, Sam confesses on video to assaulting Val, but claims that Scott killed her. Sam tells the police the location of the knife used to kill Val. Next, police return Sam to a police station cell and bring Scott into the same small interrogation room, advise him of his Miranda rights and tell him, "We are not going to ask you any questions yet. We want you to watch something first." They then play the recording of Sam's confession. Next, they tell Scott, "If you want to tell us your side of the story, sign this form saying you understand your rights and will answer questions." Scott signs the form and says, "I did have sex with her, but Sam was the one who killed her."

Explain whether Sam's statement is admissible at Sam's trial and whether Scott's statement is admissible at Scott's separate trial. Also explain whether Scott's statement is admissible at Sam's trial and whether Sam's statement is admissible at Scott's trial. Finally, explain whether the knife is admissible at each trial. Limit your analysis to constitutional principles. Do NOT consider the rules of evidence.

4. (6 points) Looking out his window one night, Victor notices someone moving in the bushes in his yard. Victor calls 911. Within minutes Officer Osgood arrives and, walking the perimeter of Victor's yard, finds Janet, Victor's neighbor Nancy's teenage daughter, smoking marijuana in the bushes separating the two homes. Osgood walks Janet to the door of her house, intending to tell her mother what Janet has been up to. The two walk up the stairs to the front door of Janet's house, past a sign on the walkway set up

by Nancy that reads, "Warning. Do not trespass." Standing at the front door, Osgood looks into the living room through a large window and notices a woman injecting herself, apparently with drugs. Osgood begins loudly pounding on the door, saying, "Police. Open up now or I will break down this door." The woman, who turns out to be Nancy, gathers up what appear to Osgood to be drugs and drug paraphernalia around her and runs towards a bathroom. Osgood forces the door open, chases after Nancy, and grabs the apparent drugs and paraphernalia from her before she has a chance to flush them down the toilet.

Discuss what arguments Nancy may raise in trying to suppress the drugs and explain how the judge will rule on them.