

Student Exam Number: \_\_\_\_\_

**Final Exam**

**STATUTORY INTERPRETATION AND REGULATORY PRACTICE (COURSE #5397)**

**Prof. Hester – Spring 2013**

---

**EXAM INSTRUCTIONS**

**YOU MUST RETURN THESE QUESTIONS AT THE END OF THE EXAM.**

This exam has five short answer questions, and two separate essay questions.

Please write your *exam number* in the blank on the top of this page.

If you are *handwriting* your exam, write your exam number on the cover of *each* of your bluebooks. Also number the bluebooks to indicate how many in total you turn in and the correct order. For example, if you use four bluebooks, they should be labeled “1 of 4”, “2 of 4”, “3 of 4”, and “4 of 4”. Use **ONE SIDE** of a page only and endeavor to write legibly. Also, remember to leave yourself some space in between answers so that you can come back to an answer if you desire.

If you are using a *computer* to take the exam, you must use the Law Center’s exam software. Treat each *question* in Part II of the exam as one question.

This exam is open-book and you may use any written materials assigned for this class or prepared by you (either individually or with others). You may not use any materials stored on computer or disk or any electronic materials. You are bound by the Law Center’s Honor Code and must sign the Pledge with your exam number at the end of these instructions. We also will ask you to affirm your attendance at the end of these instructions.

Below is the percentage each section will count towards your final exam grade and the time we estimate you should allow to answer each section. You will have **three hours** to complete the examination.

Section Number	Question Type	Number of Questions	Estimated Points Value	Estimated Minutes to Spend on Section
I	Short Answer	5	30	60
II	Essay Questions	2	60 (30 points per essay question)	120 (60 minutes per essay question)
Total			90	3 hours

For the short answer questions in Part I, provide or choose the best answer to the questions presented.

For Part II, the issue-spotting essays, your job is to analyze the facts in each question. Do not make up facts or law or fight the facts given. If you need more information to resolve a difficult question, state what information you would need and how it would affect your answer. Read carefully. Think before you write. Good organization, clear statement, and avoidance of irrelevancies are all appreciated. A longer test answer will not necessarily translate to a better score. In fact, sometimes the opposite is the case.

**Please take time to answer all sections of the test.** You are much better off answering all sections of the test with less attention than you might desire instead of failing to answer all the questions asked. Note that I tend to give some points just for effort, so don't leave a blank section.

At the end of the exam, you **MUST** turn in the exam questions, your answer sheet, any scrap paper, and your flash drive or bluebooks.

**HONOR CODE.** It is a violation of the Honor Code to use any **UNAUTHORIZED** aid in connection with this exam; to fail to report any such conduct on the part of any other student that you observe; to retain, copy, or otherwise memorialize any portion of the exam; or to discuss its contents with any student in this class who has not yet taken it. ***Do not discuss this exam with anyone that is not a member of this class. Do not discuss this exam with any student in the class without first asking such student whether he or she has taken the exam.***

**Part I: Short Answer Questions**

**60 minutes**

**33% of exam grade**

Please provide a short answer to each question below or select the correct response for each multiple choice question.

*(30 points total for all questions collectively)*

1. On March 31, 2013, the State of Texiana's Legislature enacted the following statute:

The following actions shall constitute a Class 1 felony:

- (a) the sale, purchase or distribution without a prescription of drugs for the treatment of attention deficit hyperactivity disorder (ADHD).
- ...
- (f) Liability for violations of subsection (a) shall attach without regard to whether the violator sold, purchased or distributed the drugs with the intent for profit or solely for the violator's personal use.
- (g) Liability for violations of subsection (a) are in addition to, and cumulative of, any penalties or sentence assessed under federal drug control laws or regulations.

The state police have arrested your client because she amassed a large stockpile of Adderall by taking only half of her prescribed dosage and saving the remainder for nearly two years. She has admitted that she intended to use the stockpiled drugs during her final exams this year, but the police suspect that she also planned to give or sell (for a nominal amount) some of her stockpile to friends and classmates.

Provide a short argument for why the new state statute should not be construed to impose criminal liability on your client's actions.

2. The State of Oklatopia has a Code Construction Statute identical in all relevant respects to the Texas Code Construction Act. Oklatopia is a state within the United States and is fully subject to federal constitutional and statutory laws.

The Oklatopia Legislature passed the following law in 2013:

Section 1. Recognition of Same-Sex Marriages

Marriages between partners of the same sex shall enjoy the same privileges and protections to the full extent that state and federal laws accord to marriages between partners of the opposite sex.

Section 2. Conflicts with Other Law.

If provisions of this law conflict with federal law or laws of other jurisdictions, the courts shall interpret this law to preserve the protection of same sex marriages to the fullest extent possible allowed by Oklatopia law.

Section 3. Effective Date.

This Act is effective on September 1, 2013.

A civil rights advocacy group in the State of Oklatopia has now asked a Oklatopia state court to issue a declaratory judgment that the new Oklatopia law also gives plural marriages the same protections that it grants to marriages between single partners. A plural marriage is a marriage among three or more partners (regardless of sex).

Will the new Oklatopia statute protect existing and future plural marriages in the state? Explain briefly. Focus solely on statutory construction and interpretation arguments; you need not provide a constitutional legal analysis.

3. In the seminal case of *Chevron U.S.A. v. Natural Resources Defense Council*, the U.S. Supreme Court held that:
  - a. federal courts should defer to EPA's interpretation of the Clean Air Act to allow regulation of the discharge of greenhouse gases into the atmosphere from major sources;
  - b. unless Congress has directly spoken to the precise question at issue, federal courts should defer to an agency's reasonable regulatory interpretation as a permissible construction of a statute;
  - c. EPA's interpretation of the term "stationary source" in the Clean Air Act to include bubbling was acceptable;
  - d. b and c;
  - e. all of the above.

## ESSAY QUESTIONS

(2 hours)

(66% of grade)

Answer **ALL** of the following questions. Please provide concise legal opinions supported by relevant case law, statutes, regulations, and examples discussed in class or in the readings.

### **Question 1 (30 points):**

In response to the growing urban agriculture movement, the State of Urbania passed the following statute:

Section 1001. Title.

This Act shall be titled “The Safe Urban Agriculture Act.”

Section 1002. Purpose.

This purpose of this Act is to promote the practice of growing, cultivating and collecting crops and animal products in an urban environment while minimizing the risks and impediments of animal and crop husbandry near human habitations.

Section 1003. Prohibition of Unsafe Urban Agricultural Practices.

No person shall engage in the practice of urban agriculture in a fashion that unreasonably endangers or damages other persons or property in close proximity to those activities.

Section 1004. Regulatory Authority.

The Urbania Department of Agriculture (“Department”) shall establish regulatory standards to determine when, or if, urban agricultural activities pose an unreasonable risk of danger or damage to other persons or property in close proximity to those activities.

Section 1005. Penalties.

Any person who violates regulations promulgated by the Department under Section 1004 shall pay a fine of up to \$25,000 per day per violation.

Your client wants to make a strong positive statement about sustainable business practices, and as a result she wishes to install a large “green roof” on her factory. This roof will be covered by rows of plants that will include grass, flowers and small shrubs. These plants will help insulate the factory from outside temperatures and will use locally available natural building materials. Some of the rooftop plants will be edible and bear fruit. To minimize greenhouse gas emissions, your client may also control growth by keeping two goats on the roof to graze the plants.

Your client is concerned that Urbania’s new state law may expose her to fines and penalties if she puts a green roof on her building. What legal opinion can you give her at

this point? What advice can you offer on strategies to help minimize her future liability if she proceeds with her green roof plan?