

**UNIVERSITY OF UTAH
S.J. QUINNEY COLLEGE OF LAW**

**Crime Victims Rights
Professor Paul Cassell**

**Fall 2006
December 7, 2006**

FINAL EXAMINATION

Instructions

This examination begins at 1:00 p.m. It is designed to be a two-hour examination with two questions of one hour each. Each of the two questions will be given equal weight in determining the final grade. You are given an extra hour to allocate as you see fit. You must turn in your examination by 4:00 p.m.

This is essentially an open-book examination. You may have the following materials with you: your textbook, any supplemental materials distributed during the course, and any outline that you may have prepared by yourself or with other students. You may not have the following materials: any commercial publications, hornbooks, or the like, in either printed or electronic form.

In accordance with standard law school procedure, do not write your name (or any other information that could be used to identify you) anywhere on your exam. Write your exam number on your exam. This permits evaluation without knowledge of your identity. If possible, please do not write in pencil (it is difficult to read).

As discussed in class, there is no specific page limit or word count limit. Nonetheless, I would appreciate it if you could avoid “filibustering” me. As a rough guide, I would expect answers to fit within about two bluebooks (one side of each page, every other line) or about 8-and-a-half double-spaced typed pages.

QUESTION I (one hour)

On December 1, 2005, Van Victim (a male) is viciously physically and sexually assaulted by David Defendant inside Victim's house. Victim promptly reports the attack to the police.

The next day, police arrest Defendant and file a criminal complaint in open court that charges Defendant with a first degree felony for sexual assault. The warrant specifically lists Defendant as the perpetrator of the crime and Victim as the victim of the crime. The next day, KABC-TV runs a story on the 5:00 news specifically naming Victim as the victim of the crime, which Victim finds offensive.

The next day, Judge Judy Justice, who is presiding over the matter, hears arguments on whether Defendant should be released on bail. Victim wishes to tell Judge that he wants a protective order barring contact by Defendant with him. Judge Justice, however, refuses to hear him, tersely explaining that this is a matter for "the professionals – defense counsel and the prosecutor." She releases Defendant on bail without entering any kind of a protective order.

Defendant believes that Victim is making up these allegations because he (Defendant) is dating Victim's ex-wife. To support this position, Sherry Mason, counsel for Defendant, files an emergency motion on December 10, 2005, seeking that the court order a physical examination of Victim to see whether there are any bruises from the alleged assault and that photographs be made of the examination. The motion alleges that unless the examination is done immediately, the bruises (or non-bruises) will not be discernable and the exculpatory evidence will be lost forever. Mason also request an opportunity to examine the Victim's house to become familiar with the alleged crime scene. Judge Judy Justice denies all of these motions, citing the victim's state constitutional right to be treated "fairly" in the criminal justice process.

The rookie prosecutor for the case, Sue Shy, is concerned about tangling with the experienced Mason. Accordingly, Shy offers a plea bargain, under which she would allow Defendant to plead to a misdemeanor offense of "sexual misconduct." Mason and Defendant agree to the deal.

On February 1, 2006, Shy, Mason, and Defendant go before Judge Judy Justice to conclude the plea bargain. The judge asks whether the victim is present and wishes to be heard regarding the plea. When no one responds, the judge accepts the plea and sets sentencing for April 1, 2006.

On February 2, 2006, Victim hears about the plea bargain on KABC. Victim lives in a state that promises crime victims that prosecutors will provide notice of all hearings regarding pleas and an opportunity to be heard regarding those pleas. Sue Shy's office negligently failed to send the required notice to Victim.

On February 3, 2006, Victim files a motion for a "misplea" to set aside the plea bargain

and for an opportunity to object before any plea bargain is heard.

At the sentencing hearing on April 1, 2006, Judge Justice first refuses to hear any argument from Victim and his counsel regarding the motion for a misplea, telling Victim that “you can’t undo what has already been done.” Judge Justice, however, agrees to hear Victim speak later at the hearing about the appropriate sentence.

Later at the sentencing hearing, defense counsel and the prosecutor both argue in favor a six-month sentence. Victim then asks Judge Justice to sentence Defendant to “the max.” Judge Justice rules the statement out of order because it includes the victim’s “opinion” on the appropriate sentence. Judge Justice nonetheless imposes a one-year jail sentence, the maximum allowed for a misdemeanor offense. On June 1, 2006, Defendant’s name was entered in the state-wide “sex offender” database for the state, as provided by a new law passed in February during the 2006 legislative session.

Discuss the victim-related **legal** issues that arise under the legal principles discussed during the course.

QUESTION II (one hour)

As you know from the class, in many states and the federal system, crime victims have been given the right to speak at plea hearings and sentencing hearings. However, some have argued that such rights inject too much emotion into the process and have other disadvantages.

Is it time to abolish the crime victim’s right to speak at these two court hearings (plea and sentencing)?

From a **public policy** perspective, discuss the desirable and undesirable features of such a proposal to restrict the victim’s right to speak at these two hearings, including any ways in which the proposal could be expanded, limited, or modified to make it more desirable.