

**Evidence**

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## FINAL EXAMINATION

Instructions

1. You will have **three hours and thirty minutes** to complete the examination. *The examination is designed as a three hour exam, with thirty minutes of “buffer” time.*
2. The examination consists of **two (2) questions**, worth 70 and 30 points respectively. You may want to allocate your time accordingly. Please note that the first question has multiple sub-parts.
3. There are **five (5) pages** to this examination, including this instruction sheet. Please be sure that you have all of the pages.
4. You may consult your casebook as well as personally prepared notes and outlines (including materials prepared by classmates with whom you have collaborated/shared materials). You may not consult any commercial outlines, commercial study aids or hornbooks.
5. I am not looking for a “treatise” on Evidence, but rather a thoughtful “treatment” of the issues presented by the questions. With respect to each question, I strongly recommend that you organize and outline your thoughts before you begin to write your answer.
6. Please pay careful attention to what each question is asking you to do.
7. If, in the course of answering a question, you believe that more information is required, describe that information and explain why it is relevant. Likewise, if you deem it necessary to make an assumption not otherwise provided in the question, please state your assumption.
8. Good luck on this examination and in all future endeavors! Please keep in touch!

## **I. Rabid Response to Rankings (70 Points/Approx. 2 Hours, 5 Minutes)**

**Arnold** and **Beth** were third-year law students at a prestigious school located in Sweet River Town, Youta. When they entered law school, their institution was solidly ranked within the first tier in the country but, in the spring of their third year, the school fell into the second tier. Arnold and Beth, who happened to be married and were both thirty-five years old, feared that this development could adversely affect their career prospects. Accordingly, they decided to take matters into their own hands and set their sights on the publisher of the rankings, American Reader & Global Headlines (“ARGH”).

Beth, a former biochemist, had ample experience in working with biohazardous materials and, in fact, on two previous occasions had developed chemical concoctions that could be pumped into buildings through the air ventilation systems and inflict damage. One time she had done this as a prank on a rival sorority in college and piped in fumes that simulated those of a skunk, causing no harm to the occupants beyond soaking their clothing with the odor. The second time she had utilized a more dangerous compound to exact revenge on the Hanley Caplan Educational Testing Service, which she believed had failed to adequately prepare her for the Law School Admissions Test and, therefore, had hindered her professional future. This chemical resulted in numerous respiratory injuries to employees and visitors to the testing company. Beth was never charged or convicted with a crime relating to these incidents; in fact, Beth had no criminal record whatsoever. Arnold, though, had been convicted of three crimes: first-degree assault, a felony, when he was a juvenile; a misdemeanor forgery charge from ten years ago; and a misdemeanor driving while intoxicated charge last year.

Arnold and Beth crafted a plan to harm ARGH, which was headquartered in the neighboring state of Whyomy. Beth was in charge of designing a chemical compound to use against ARGH, and Arnold focused on studying ARGH’s air ventilation structure and figuring out a game plan for entering and exiting the company’s offices so as to effectuate their scheme. During the planning stage, Beth confided in her friend, **Charissa**, that Arnold was the “mastermind of the operation to destroy ARGH” and “absolutely livid about the rankings issue – to the point that he thinks heads should roll to make up for the pain he has suffered.” When Charissa asked Beth whether she was significantly involved in the operation, Beth simply smiled and winked.

Arnold himself was tight-lipped about the operation, talking only with Beth about it. A few days into their planning, he told Beth, while they were alone in their apartment, “I can’t wait to crush ARGH.” The next day they were having dinner with Charissa at a restaurant, and Arnold leaned over to Beth and said to her, that “I’ll be satisfied only when I get to attend an ARGH executive’s funeral.” Even though this comment was made within earshot of Charissa, she happened to be preoccupied at that moment and did not hear it.

A few days after their dinner with Charissa, Beth instructed Arnold to purchase an assortment of materials, including six different chemicals from Science Stuff, a laboratory supply company. At Science Stuff, Arnold paid for the supplies in cash, but signed a series of forms indicating that the chemicals (which were each listed on the form) were to be used for a lawful academic purpose related to his study of science and the law. Those documents were filed in Science Stuff’s accounting department office.

Arnold then brought the supplies home and Beth went about creating her chemical concoction. Beth did her work in a small workroom in the basement of their apartment building; their elderly landlord **Dennis** had given Arnold and Beth the key to this workroom.

One day, Dennis went down to the basement to find some tools and heard loud music coming from the workroom. He knocked on the door several times and, having received no answer, he opened the door, which was unlocked. There, to his surprise, he saw Beth – with her back to him – hunched over what appeared to be a homemade workstation, with test tubes and books scattered everywhere. He noticed the title of one of those books, “Chemical Weapons for Dummies,” then quietly closed the door and left. Dennis sprinted to the local police precinct where a detective, **Emily**, ushered him into an interrogation room. In response to questioning, Dennis explained what he had seen and then left the precinct, his heart still pounding from the exhilarating encounter with Beth. On his way home from the police station, Dennis dropped dead of a heart attack.

Later that day, Emily procured a search warrant for the workroom, where she discovered (1) a copy of “Chemical Weapons for Dummies” and (2) an assortment of six different chemicals. The chief chemist of the police laboratory, **Frank**, tested these items and concluded that, in his opinion and based on his twenty years’ experience in the

field, they could produce a potentially fatal form of gas. After Emily continued her investigation, she arrested Arnold and Beth. Eventually, the U.S. Attorney's Office for the District of Youta obtained a federal court indictment against **Arnold** and **Beth** for conspiracy to commit murder relating to their plot to harm ARGH.

**I.A.** To bolster its case against Arnold, the prosecution approaches Beth and suggests that they will provide her with favorable treatment in exchange for her testimony and that the specific nature of this leniency will be determined after she testifies. Beth decides to testify against Arnold. Please discuss the evidence issues raised in the **case against Arnold** and, specifically, whether and to what extent the trial court is likely to deem the evidence admissible, and what the evidence will be admissible to prove. You should focus on the evidentiary issues; you need not and should not address any possible criminal procedure issues (such as search and seizure issues and so forth) unless we covered them in class.

**I.B.** After Beth testifies against Arnold, the U.S. Attorney's Office makes good on its promise and offers Beth a plea bargain to a reduced charge with a light sentence. Beth initially agrees to the deal, enters her guilty plea but then has a change of heart and withdraws her guilty plea, vowing to go to trial. The prosecution proceeds to trial against Beth on the conspiracy charge. Arnold refuses to testify against Beth. As part of the defense case, Beth would like to call her college roommate, **Zoe**, to the stand to testify about Beth's truthful, law-abiding character. Please discuss the evidence issues raised in the **case against Beth** and, specifically, whether and to what extent the trial court is likely to deem the evidence admissible, and what the evidence will be admissible to prove. You should focus on the evidentiary issues; you need not and should not address any possible criminal procedure issues (such as search and seizure issues and so forth) unless we covered them in class.

## II. Professors Care Too (30 Points/Approx. 55 Minutes):

**Greg**, a law professor in Bostonia, a state in the eastern United States, groaned when American Reader & Global Headlines (ARGH) released its annual law school rankings: his school had slipped, again, the culmination of a five-year slide that, for the first time this year, placed the institution in the Fourth Tier of accredited schools – a decline of 125 places. Greg began work on a complex model to show the probabilities of such a rapid fall. Greg ultimately determined that, assuming a legitimate ranking process, the likelihood of such a plunge over a five-year period was less than 1%. Thus, according to Greg, ARGH’s methodology for computing the rankings must be flawed. In addition, Greg has heard that ARGH recently purchased a liability insurance policy to cover rankings-related lawsuits, and that a 2004 state government audit of ARGH revealed major accounting errors, including the underreporting of income.

Greg started experiencing heart palpitations and insomnia in the aftermath of the rankings’ release. He decided to sue ARGH for torts relating to his emotional distress, and opted to file a civil lawsuit in federal district court in Bostonia against ARGH, a Whyomy corporation, citing diversity of citizenship as the basis for jurisdiction. After the filing of the action, Greg’s attorneys deposed **Hannah**, a fellow law professor in Bostonia. During the deposition, Hannah stated that she had recently had a conversation with an employee of ARGH, **Ivan**, who told Hannah that “ARGH is a corrupt organization. I know I could be fired for telling you this, but the law school rankings lack credibility; the manner in which we obtain information from schools is haphazard and we rarely try to confirm the data.” By the time of trial, however, Hannah had been in a car accident, resulting in severe amnesia, and Ivan was nowhere to be found.

As part of its defense, ARGH wants to introduce the following material into evidence. First, it would like to call Greg’s psychotherapist, **Jane**, to the stand. ARGH suspects that Greg’s distress preceded the issuance of the rankings and wants to explore that issue. Second, ARGH hopes to admit evidence related to the fact that Greg only engages in sexual relations with another person if a copy of Jack Weinstein’s Evidence treatise is in the room. Please discuss the evidence issues raised in **Greg’s case** and, specifically, whether and to what extent the trial court is likely to deem the evidence admissible, and what the evidence will be admissible to prove.