

GWid: _____

**EXAMINATION
FEDERAL COURTS – LAW 232
Siegel
Spring, 2008**

INSTRUCTIONS

1. This is an open book examination. You may use any written materials that you have brought with you (including typewritten, printed, or published materials). Computer use is permitted.
2. You have THREE HOURS to complete the exam.
3. The exam consists of this cover page, a special instruction page, and 11 exam pages numbered 1 through 11.
4. There are three essay questions and 10 multiple choice questions. All students must answer all questions.
5. The recommended time allocations are:

Essay Questions: 1 — 40 minutes 2 — 60 minutes 3 — 40 minutes

Multiple Choice Questions: 40 minutes

The weights of the questions are roughly proportional to the time allocations. The multiple choice questions will be slightly de-weighted.

6. Do not put your name anywhere on your answers. Do not indicate whether you are taking the class pass/fail. Do not write “Thank you for a great class” or anything similar on your exam.
7. If you are writing your answers by hand, remember to *write legibly*.
8. If, with regard to any essay question, you think additional facts are needed to answer the question, state clearly what facts you think are missing. Then make a reasonable assumption about the missing facts and answer the question based on your assumption. Do not change the given facts.
9. Using good judgment, address all the issues presented and assigned by the essay questions, even if your answers to some issues would, in real life, eliminate the need to address other issues.
10. Good luck.

SPECIAL INSTRUCTION

For students taking the exam on April 21, 2008 (the regular day):

One or more students will be taking the exam one day late for religious reasons. Therefore, to avoid accidents, and because you never know who might be listening, do not discuss this exam with anyone (even a student who you know has already taken the exam) until April 23.

For students taking the exam on other than April 21, 2008:

Please sign the certification below *with your Gwid* (not your name). If you are unable to sign the certification, do not take the exam. Don't worry, we'll figure out some appropriate alternative.

I certify that I have not, intentionally or unintentionally, learned any information about this examination other than information that was available to students prior to April 21, 2008.

ESSAY QUESTION ONE
(40 minutes)

On February 1, 2009, immediately following the inauguration of the new President, Congress passes the Torture Prohibition Act of 2009 (“TPA” or “Act”), which provides:

- § 1. No person in the custody of the United States anywhere in the world shall be subjected to torture.
- § 2. The torture of any person in the custody of the United States injures every American citizen by increasing the risk that American citizens will be subject to resentment and bad treatment when they travel outside the United States.
- § 3. Every citizen of the United States has a right to have the United States government obey this Act.

On February 2, 2009, Elizabeth Goodheart, a U.S. citizen, brings suit against the Secretary of Defense and the Director of the Central Intelligence Agency under the TPA in federal district court. She seeks an order that the defendants direct all government officers and employees acting under them to cease and desist from engaging in any form of torture. Goodheart does not allege that she herself has ever been or will ever be tortured or that she has ever been or will ever be held in United States custody. She does allege that she is hoping to travel abroad in the future.

On March 1, 2009, the new President announces, “I am disappointed to discover that the United States has been engaging in torture of some detainees, including following the enactment of the TPA. However, I have unequivocally ordered the Secretary of Defense, the Director of the Central Intelligence Agency, and all other government officers and employees to permanently cease and desist from engaging in any form of torture.”

The defendants then move to dismiss Goodheart’s lawsuit on the grounds of mootness and lack of standing. The plaintiff makes all appropriate arguments in response.

You are the law clerk to the district judge considering the case. The judge asks you to write a memorandum discussing the issues raised and making a recommendation as to how to rule on each issue and on the overall case. The judge says, “Wow, this is a very visible case and will likely go to the Supreme Court. I don’t want to be reversed, so give some thought to what the Justices will actually do with this case and try to recommend the ruling that you think they will ultimately make.”

Write the requested memorandum. (In case you missed them, be sure to read instructions 6-9 on the cover page.)

ESSAY QUESTION TWO
(60 minutes)

The United States Supreme Court's 1966 decision in *Miranda v. Arizona* holds that if police take a suspect into custody and question him without giving the "Miranda warnings" ("you have the right to remain silent," etc.), the suspect's statements may not be admitted in evidence. However, in the 1984 case of *New York v. Quarles*, the United States Supreme Court held that police may question an arrested suspect without giving the suspect the *Miranda* warnings if the police reasonably believe that the questioning is necessary to protect public safety.

On May 1, 2008, local police in Duluth, Minnesota, arrest Peter Green, a troubled teenager, whom they suspect of planning a mass shooting at his school. The police take Peter to the police station and, without giving him the *Miranda* warnings, ask him whether he has any accomplices who are still at large. Peter says yes and names two friends of his.

Minnesota has a rule of state law that requires all interrogations that take place at police stations to be videotaped. Because the recording equipment at the police station is temporarily broken on the date of Peter's arrest, his interrogation is not videotaped.

Peter's trial for conspiracy to commit murder begins in state court on August 1, 2008. Peter's statement that he had accomplices is crucial to the prosecution's case. Peter objects to the admission of this statement on the basis of *Miranda*. He does not question the validity of the *Quarles* exception to *Miranda*, but he argues that the case is not covered by the exception because the police questioning was not necessary to protect public safety (according to Peter, the alleged murder plot was so vague and theoretical that there was never any real threat to public safety). Peter also argues that his statement cannot be admitted because his interrogation was not videotaped as required by state law. The trial judge holds that the case falls within the *Quarles* exception to *Miranda* and that state law allows an exception to the videotaping rule when police station recording equipment is temporarily broken. Peter's statement is admitted in evidence.

Peter is convicted. In February 2009, Peter's conviction is affirmed by an intermediate-level Minnesota state appellate court. Peter appeals to the Supreme Court of Minnesota.

On May 1, 2009, the U.S. Supreme Court, in the case of *Sanchez v. New Mexico*, overrules *Quarles* and holds that there is no exception to *Miranda* for cases involving threats to public safety.

In September 2009, the Supreme Court of Minnesota rules that Peter cannot rely on the U.S. Supreme Court's decision in *Sanchez*, because state law does not allow a defendant to raise an argument on appeal that was not raised at trial. The court also rejects the arguments Peter did make at trial. Peter's conviction is affirmed. The U.S. Supreme Court denies certiorari.

Thereafter, Peter petitions a United States District Court for a writ of habeas corpus. Peter presses both his *Miranda* claim and his claim based on the lack of videotaping. Both Peter and

Minnesota state officials raise all arguments that might reasonably be expected given the above facts.

You are a law clerk to the federal district judge considering the case. Your judge says to you, “it seems to me that the question of whether the initial police questioning was necessary to protect public safety is a pretty close call, although my best judgment is that Peter was right – the case was not within the *Quarles* exception to *Miranda*.”

Write a memorandum to the judge in which you discuss the arguments raised by the parties and make a recommendation as to how to rule on each argument and also make a recommendation on the ultimate question of whether the court should grant habeas relief.

ESSAY QUESTION THREE
(40 minutes)

You are the Legislative Director for United States Senator Valerie Virtue. Another Senator introduces a bill called the “Federal Common Law Abolition Act of 2009,” which provides:

- § 1. Federal common law is abolished.**
- § 2. In all cases, the law applied by any court shall be state law, unless a different law is established by a federal statute or by the federal Constitution.**

Senator Virtue asks you to write her a memorandum evaluating this bill. Your memorandum should explain what the likely effects of adopting the bill would be, discuss how courts might respond to it, and evaluate whether the bill is a good or a bad idea. If you think the bill could be improved by any relevant amendments that Senator Virtue could offer to it, you should mention those, or you may recommend that she support it as is or that she just oppose the whole thing. The Senator is not an expert on federal common law so some basic explanation of what the bill is all about would be useful, but the main focus of your memorandum should be your evaluation of the bill from a policy perspective.

Write the requested memorandum.

MULTIPLE CHOICE QUESTIONS
(40 minutes)

Instructions:

- 1. For all multiple choice questions, choose the best answer from the answers provided.**
- 2. Mark your answers on the bubble sheet using a #2 pencil. Do NOT simply mark your answers on the exam itself; that will NOT count.**
- 3. There is no penalty for wrong answers, so answer every question.**

QUESTIONS

[REDACTED]

END OF EXAM

