

SPRING 2011

FACTUAL INVESTIGATION FINAL EXAM

YOUR ENTIRE STUDENT ID NUMBER: _____

DURING THIS EXAM, YOU ARE NOT TO HAVE A CELL PHONE OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF A CELL PHONE OR SUCH OTHER DEVICE SHALL BE DEALT WITH AS CHEATING.

INSTRUCTIONS:

Please read the instructions on this page. Do not look beyond this page until you are instructed to begin the exam.

Do not use your own scrap paper. Instead, please take one (1) blue book, mark it as "Scrap." and use the blue book labeled "Scrap" as scrap paper. Please *do not* turn in your scrap blue book; I only want this exam packet.

All of your answers to the short answer questions must be written directly in the exam packet, which you will turn in at the end of the exam.

Please do not identify yourself in the exam packet in any way other than by student ID. Please do not write any information that might reveal who you are.

This is a closed-book examination; other than writing implements, you are not to have any materials on your table or at your feet. Place all books, knapsacks, briefcases, etc. at the side or front of the room.

This exam consists of ten short answer questions. Please **DO NOT** write beyond the space provided.

The total time for the exam is two (3) hours.

I will give a 15 minutes warning, at which point *no one* may leave the room until the exam ends. I will also warn you when there are 5 minutes left and 1 minute left. When I call time, you are to bring stop writing *immediately*.

GOOD LUCK!

SPRING 2011

FACTUAL INVESTIGATION MID-TERM

Question # 1 is based on the following:

Assume that Honey Dew seeing her boyfriend, Honey Don't, watching TV on the couch comes up from behind him and begins tickling him. He grabs his sides and says, "Stop It, I'm trying to watch Bobby Flay on the Food Channel." Honey Dew doesn't stop tickling him, and he slaps her hands away. As a result, they wind up angry at each other.

Assume further that Honey Dew and Honey Don't not only argue, they break up and Honey Don't sues Honey Dew for the tort of battery. Honey Dew comes to your office and meets with you in a small conference room where she sits immediately across the table from you. While you ask Honey Dew questions designed to obtain biographical and background information on herself, she seems relaxed and friendly. She sits forward in her chair with her hands clasped comfortably on the table in front of her. She smiles, laughs easily, and looks directly at you. She speaks at a normal pace, without any hesitation, and seems to express herself well.

However, as you begin asking her questions about the day of the alleged battery. You notice a frown appear on her forehead and she sits back in her chair. She folds her arms across her chest. You ask her directly if she, in fact, tickled Honey Don't without warning or consent as he has alleged. Her eyes look away from yours and begin to scan the ceiling, and you hear her clear her throat. Finally she speaks, but slowly, softly, and hesitantly. She stumbles over her words. What she says is, "Well . . . not . . . I mean . . . no . . . I just . . . He . . . No, I didn't. He only . . . It's . . ." She pauses for a few seconds, and continues, "It's . . . He's making this up just to . . . Because he wanted to . . . watch Bobby Flay file a fish."

QUESTION # 1 What does the nonverbal communication or body language of Honey Dew tell you? (Please answer using only the space provided)

Question # 2 is based on the following:

Assume that you work in a law office specializing in personal injury. A potential new client Road Rage, meets with you and tells you he was involved in a car accident when another driver, Lead Foot, ran a red light at an intersection and collided with his car.

Road Rage says that not only did Lead Foot run the red light, but the brakes on Road Rage's car failed to work when he braked. Road Rage also tells you that there were two other witnesses to the accident whose names are on the accident report and who should be able to confirm his version of the incident. The supervising partner determines that this information is worth investigating and instructs you to put together a plan of investigation.

QUESTION # 2 (Please answer the following question in the space provided):

2.1 What is the importance of having a plan of investigation?

2.2 What are the steps involved in formulating a plan of investigation? Explain each briefly.

2.3 What are the limitations in formulating a plan of investigation? (Hint there are only 6)

QUESTION # 3 Please answer the following question in the space provided:

The ability to arrange, plan and conduct an effective interview is a basic skill of the legal profession and an essential component of investigating. Persons that are routinely interviewed by lawyers, and those assisting lawyers, fall into three general categories.

List the three categories, and briefly define each.

Question # 4 is based on the following:

Assume that Clum Zee works as a clerk in a discount retail store. One busy Saturday, while stocking shampoo on the shelves of the store, Clum Zee drops a bottle on the floor and sees it burst, spreading a slick, white puddle across the white tiled floor in the aisle. Clum Zee goes off to get a mop to clean up the spill intending to come right back and clean the spill. When he gets to the back of the store, however, he finds some of his friends on break, watching the New England Patriots clobber the New York Jets on TV. Being a die hard Patriots fan, he decides to join them and cheer on his team.

Thirty minutes later, a customer in the store, Born Toshop, whose hands are full of merchandise, walks down the aisle where Clum Zee spilled the shampoo. She would have used a shopping cart or a hand shopping basket but there were none in the front of the store. Born Toshop does not see the spill, steps in it and slips, falling on her backside and spilling the merchandise she was holding.

When she returns home, Born Toshop goes on-line to look for a personal injury attorney and comes across your law firm's advertisement and name. Born Toshop contacts your office to set up an appointment for the following week to come in for an initial client interview and to discuss her case.

QUESTION # 4 Please answer the following question in the space provided:

4.1 What are the goals to be accomplished in the initial client interview?

QUESTION # 5 Please answer the following question in the space provided:

5.1. In preparing for the initial client interview, what forms, documents or agreements should you prepare that the client may need to sign during the initial interview, in the event that the attorney agrees to take the case?

QUESTION # 6 Please answer the following question in the space provided:

6.1. In preparation for either an initial client interview or a fact witness interview different kinds of questions, effective for different purposes, can be asked. Please list each type of question and briefly describe their usefulness in interviewing.

Question # 7 is based on the following, continuation of Question # 4 above:

Born Toshiop arrives at your office anxious to meet with you, thinking she has hit the jackpot and can now open a restaurant named *Gino's Italian Restaurant*, named after her deceased father, Gino Maretti, who was killed when hit over the head with a cloth napkin filled with cold spaghetti and meatballs by an irate customer when Gino worked as a waiter in an Italian restaurant.

QUESTION # 7 Please answer the following question in the space provided:

7.1. When conducting either a client or fact witness interview, what are the ten things to remember throughout the interview? List them only.

Question # 8 is based on the following, continuation of Question # 4 above:

As you begin your interview with Born Toshop, she appears to be reluctant in opening up to you. Luckily, you remember the fabulous Factual Investigation course you took in law school in which you learned how to deal with special, problem clients. For each of the following types of problematic clients please briefly describe the best approach in dealing with them:

QUESTION # 8 Please answer the following question in the space provided below:

8.1. A simple case of nerves

8.2. Feelings of guilt, shame, or embarrassment

8.3. Fear of providing harmful information

8.4 The highly emotional client

8.5. The self-important or condescending client

Question # 9 is based on the following, continuation of Question # 4 above:

You learn from speaking with Born Toshop that there were several witnesses to her slip and fall. You know, from your excellent Factual Investigation class, that witnesses can be categorized in different ways depending on their personalities and their attitudes toward being interviewed. You also know that different kinds of witnesses call for different approaches and interviewing techniques.

QUESTION # 9 Please answer the following question in the space provided below:

9.1. You learn from the client that Count Choc-u-la was standing next to the deodorant section when Born Toshop slipped on the poo (shampoo that it is). Count Choc-u-la tells you that he will do whatever he can for Born Toshop and will rearrange his schedule to accommodate you as soon as possible. In which witness category(s) would you place Count Choc-u-la as you prepare for his interview?

9.2.. You also learn from your client that, when she fell, she saw Mrs. Butterworth, who was squeezing the melons over in the produce section located directly across from the cosmetic isle. You call Mrs. Butterworth and attempt to set up several meetings with her, but each time she later cancels and doesn't call you back to reschedule. In which witness category(s) would you place Mrs. Butterworth as you prepare for her interview?

9.3. Your client tells you that Dis Gruntled, a clerk at the discount store who wasn't working that day, but who she remembers from frequently shopping in the store, was also present and witnessed her fall. You call Dis Gruntled but he tells you that he doesn't have time and he's suspicious as to why you're contacting him. In which witness category(s) would you place Dis Gruntled as you prepare for his interview?

9.4.. You learn from a previous witness that you interviewed that Needa Floorit, a delivery driver for Funny Bread, a local business, was handling some buns just down the aisle when your client fell, and may have seen what happened. You contact Floorit, who, by the way, drives way too fast. She tries to impress you by dropping names of everyone in town that she knows, and also tells you that, for many years, she contemplated going to law school to be a lawyer, just like you, that she scored very high on her GRE's, she won every mock trial contest there ever was, and she was named Best Advocate three years in a row. In which witness category(s) would you place Needa Floorit as you prepare for her interview?

9.5. Your client also tells you that Mr. Boboli, a world renowned Artisan baker, was in the store at the time and came rushing over to her when she fell. You contact Mr. Boboli and he doesn't appear to have any strong feelings one way or another about coming to speak with you. In fact, from speaking with him you determine that he sounds like a reliable witness. In which witness category(s) would you place Mr. Boboli as you prepare for her interview?

QUESTION # 10 Please answer the following question in the space provided below:

After interviewing the witnesses you look over the new information you've collected from your investigation. You lean back in your nice new leather chair and, hearing the voice of your great, Factual Investigation instructor in your head (who's really a quite, shy, brown guy who keeps to himself) say:

10.1. The first and second commandments in interviewing and investigating work are:

10.1.a. _____

10.1.b. _____

