

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

**Final Exam**

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

**Prof. Hester – Spring 2014**

---

**EXAM INSTRUCTIONS**

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

This exam has 20 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 your textbook and 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, any electronic materials, or any third-party or commercial 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 Total Points Value	Estimated Minutes to Spend on Section
I	Short Answer	20	20 (1 point per short question)	60 (3 minutes per short question)
II	Essay Questions	2	40 (20 points per essay question)	60 (60 minutes per essay question)
Total			60	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. I can't help you if there's nothing for me to grade, 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.***

## 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 (20 points):**

Based on the strong popular approval of laws in other states that allow the continued civil confinement of dangerous sexual predators who had served their initial criminal sentences, the State of Texazona passed the following statute in 2013:

Section 1001: Short Title. This statute will be called the “Stop Criminal Predators and Protect Our Communities Act.”

Section 1002: Purpose. The Legislature finds that:

- (a) Individuals who commit aggravated crimes often will frequently repeat such crimes upon their release from imprisonment;
- (b) Such individuals can pose a clear, demonstrable and continuing risk to the community upon their release; and
- (c) Upon proof in a civil commitment proceeding that an incarcerated individual poses a continuing risk to the community, the state should continue incarceration of that individual until he or she no longer poses such a risk.

### Section 1003: Definitions

“Continuing risk” shall mean a present and substantial risk of further violent criminal conduct posed by a person that will persist for a material time after that person’s release into the community.

“Aggravated criminal offense” shall mean any criminal offense currently classified as a felony that requires physical violence against another person as an element of the offense, and includes aggravated assault, sexual assault, mayhem, aggravated robbery with a deadly weapon, or any other criminal offense that results in injury to another person.

“Department” shall mean the Texazona Department of Corrections.

Section 1004: Commitment Process and Enforcement.

- (a) The State may civilly incarcerate any individual currently serving a punitive sentence for an aggravated criminal offense if that person would pose a continuing risk to the community upon his or her release.
- (b) The State shall continue incarceration of such a person through showing by a preponderance of the evidence that the person poses a continuing risk upon release into the community. The State shall seek to continue incarceration of such individuals in an administrative commitment proceeding before the Department or before any entity within the Department designated by the Commissioners of the Department.
- (c) It shall constitute a Class 1 felony for any individual committed under Section 1004(b) to violate any term or condition established by the Department for that individual's civil incarceration. Upon their completion of a felony sentence or punishment under this subsection, the individual will remain incarcerated until a new hearing under Section 1003(b).

The Texazona Department of Corrections promulgated rules to establish a new administrative hearing office within the Department to hear the claims. The new hearings office uses administrative law judges to hold formal administrative proceedings for each civil commitment request. The Department will hire each judge and terminate them only for cause, and the Texazona Governor can fire them only with the consent of the Department's Commissioners. To speed the process, the Department also held notice-and-comment rulemaking to promulgate a list of certain offenses (e.g., premeditated murder) that create a rebuttable presumption that the violator will pose a continuing risk upon release unless the violator can prove otherwise.

A difficult case has now arisen. Tyler Durden Jr., a protestor targeting unfair practices by the "One Percenters", was arrested after he set a fire in a data processing center in a vain attempt to wipe out corporate electronic files on homeowner debts. Unfortunately, despite his best efforts – including setting the fire at night on a holiday weekend – the fire inadvertently injured a night watchman. After a highly publicized trial with political overtones, Durden was convicted of felony arson and simple assault and sentenced to two years in state prison.

Durden has completed his criminal sentence, but the State now seeks to continue his incarceration because Durden refuses to express remorse for his earlier actions. The State has interpreted his defiance as willingness to continue his violent political activity after his release. After an abbreviated civil hearing, the administrative law judge found that Durden posed a continuing risk and rendered him for civil confinement. The

administrative law judge found that Durden was a continuing risk on summary judgment because the Department included arsonists on its list of offenders who presumptively pose a continuing risk. Durden also faces multiple additional felony charges for failing to comply with the terms of his civil commitment because the terms of the civil confinement bar him from making “any disruptive or disrespectful statements or actions that undermine the effective administration of the program.” Durden has continued to persistently and publicly criticize the Department as “a tool of the One Percent.”

Durden’s long-suffering family has hired you to challenge his civil confinement and subsequent felony indictments as invalid under both the Stop Predators and Protect Our Communities Act as well as general principles of administrative law. Prepare an analysis for them on the likely arguments that you could raise on Durden’s behalf, and their prospects for success. The family has already hired another attorney to raise any constitutional challenges, so focus on arguments under doctrines of statutory interpretation and administrative law.