

Part

2

Write your exam
number here:

Crimmigration: Spring 2019
The University of Oklahoma College of Law
Kit Johnson, Associate Professor of Law
FINAL EXAMINATION: PART TWO

General Notes and Instructions:

1. Do not turn the page until instructed.
2. Failure to follow these instructions, including without limitation instructions 3 through 7 and 12 through 14, are academic misconduct issues, and violations will be treated as such even if inadvertent.
3. All exam materials (including this booklet) must be turned in at the conclusion of the exam period, with your exam ID number written in the upper right box on this page. **You will not receive any credit unless you return this booklet with your exam number written above.**
4. Do not disassemble this booklet, remove the staple, or tear pages.
5. You may not waive anonymity. Use only your exam ID number on your response.
6. During the exam: You may not consult with anyone – necessary communications with the administrators/proctors being the exception. You may not view or attempt to view materials other than your own. Do nothing that would distract other students.
7. After the exam: Communicate nothing about the exam, including even vague impressions or characterizations, to any member of the class who has not yet taken it.
8. Food and drink are permitted during final exams, but only on the following conditions: (a) Drinks must be open and drinkable before the exam starts. No popping cans or opening soda bottles during the examination period; (b) Food cannot smell. No sandwiches, condiments, or odors stronger than a cup of unflavored coffee permitted; (c) Food cannot be noisy. No chips, carrots, or hard granola bars are permitted. In addition, food in wrappers must be unwrapped before the exam begins. For example, if you bring a package of M&Ms into the examination, the candy should be removed from the wrapper and poured onto a paper towel for eating during the examination. Please chew with your mouth closed.
9. Minimize your own noise (toe tapping, pen clicking, etc.).
10. Minimize your smells (no perfume, cologne, perfumed lotions, etc.).

Do not turn any page until instructed.

**When instructed, flip this exam booklet over
To look at the back page of this examination
booklet for additional instructions.**

Poppy Phillips is a citizen of the United Kingdom. She has been a lawful permanent resident for 30 years, having come to the United States as a toddler. She lives outside of San Diego, California, where she works as a newborn intensive care unit (NICU) nurse at a children’s hospital. Phillips is divorced with no children. She lives with her sister, Eugenia Evans, a U.S. citizen. Evans suffers from severe agoraphobia, an anxiety disorder. Evans does not work, never leaves the home she shares with Phillips, and relies on her sister for care and support.

Phillips habitually works long hours to provide for herself and her sister. She can regularly be counted on to work overtime when the hospital is experiencing a nursing shortage, which is almost always.

About a year ago, Phillips realized that she was struggling to stay awake during her long shifts. She was worried about making a mistake and hurting one of the children in her care. As a nurse, she knew there was a drug that would safely keep her alert to avoid any errors: mephedrone. There was just one problem. Mephedrone is a prescription drug, listed as a Schedule IV drug¹ under the federal Controlled Substances Act, and Phillips was too embarrassed to ask her doctor for a prescription. But she knew that she could obtain the drug without a prescription in Mexico, and she soon began making monthly trips to Tijuana, in Mexico, to obtain a supply of mephedrone.

After one of her trips to Tijuana, Phillips took California Highway 94 back to her home. On her prior trips, the U.S. Border Patrol’s permanent checkpoint on Highway 94 had not been manned. This time, it was.

Phillips pulled into the checkpoint and was questioned by Border Patrol Agent Axel Armstrong. Armstrong asked Phillips if she was a citizen of the United States. Phillips said she was not, that she was a lawful permanent resident, and she produced her green card. Armstrong would have let Phillips on her way, but he sent her to secondary screening



FIG. 1: The permanent checkpoint where Phillips was arrested is marked in red.

¹ According to the U.S. Drug Enforcement Administration, “Drugs, substances, and certain chemicals used to make drugs are classified into five (5) distinct categories or schedules depending upon the drug’s acceptable medical use and the drug’s abuse or dependency potential. The abuse rate is a determinate factor in the scheduling of the drug; for example, Schedule I drugs have a high potential for abuse and the potential to create severe psychological and/or physical dependence. As the drug schedule changes-- Schedule II, Schedule III, etc., so does the abuse potential-- Schedule V drugs represents the least potential for abuse.”

following the instructions of a randomized sequencer on his terminal, pursuant to which a small percentage of travelers are selected for secondary screening during each shift. In secondary, Phillips' vehicle and personal belongings were searched. Border Patrol Agent Quinn Quaternal found an unmarked bottle of pills in Phillips' purse. Using a handheld electronic drug detector, Quaternal determined that the pills were mephate modafinil. When Phillips was unable to produce a prescription for the medicine, she was arrested and transferred to San Diego's county jail.

Agent Quaternal sent the Phillips file to the San Diego County District Attorney's Office. Assistant District Attorney Lincoln Lenore decided to file charges against Phillips under California Health and Safety Code § 11350(a)(2), which provides: "Except as otherwise provided in this division, every person who possesses... (2) any controlled substance classified in Schedule III, IV, or V... unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year[.]" Lenore also charged Phillips under California Health and Safety Code § 11351, which provides that "every person who possesses for sale or purchases for purposes of sale ... any controlled substance classified in Schedule III, IV, or V... shall be punished by imprisonment... for two, three, or four years." The state defines scheduled drugs largely in reference to the federal Controlled Substances Act, and while mephate modafinil is on the state schedule, other federally defined drugs, such as marijuana, are not.

Duncan Dickers, a public defender in San Diego County, was assigned to represent Phillips. When he met with Phillips in jail on the afternoon of her arrest, Phillips was distraught. She begged Dickers to check on her sister and to do everything he could to get Phillips out of jail as soon as possible, make the criminal charges go away, preserve her job at the hospital, and keep her in the country with her sister. Dickers told her to hang tight, he'd return tomorrow to discuss next steps.

Dickers is an experienced public defender, having spent two decades working in Billings, Montana. But Montana has one of the lowest immigrant populations in the United States, and he's not very experienced representing noncitizen clients. You are interning for the public defender's office, and Dickers knows that you've taken Crimmigration. He comes to you for advice, saying, "Look, I'm pretty sure that I can get Phillips a deal. She's a first-time offender with a long history of lawful presence and a solid work history. At the very least, I can get her released on bail tomorrow, pending resolution of her criminal charges. I don't think that will cause any immigration problems since California law prohibits law enforcement agencies from detaining an individual on the basis of a 'hold request' from U.S. Immigration and Customs Enforcement. As for next steps? Maybe the DA will consider a drug diversion program, or, pretrial diversion. If not that, I'm confident that if we plead guilty, Phillips can get a suspended sentence of less than six months. But I've got a list of questions for you to consider. There isn't a lot of time. Get me what you can as soon as possible."

Tapping the screen on his phone, Dickers emails you the following questions:

QUESTIONS

Provide legal analysis for the following:

- Question 1: Do we have any basis for challenging the search that led to the discovery of the melliphate modafinil in Phillips' purse?
- Question 2: If Phillips is convicted under California Health and Safety Code § 11351, what are the immigration consequences in terms of removal?
- Question 3: If Phillips is convicted under California Health and Safety Code §§ 11350(a)(2), what are the immigration consequences in terms of removal?
- Question 4: If Phillips is convicted under California Health and Safety Code §§ 11350(a)(2) or 11351, what are the immigration consequences in terms of detention during removal proceedings? If she is detained by federal authorities on account immigration issues, could her immigration counsel get her out on bail to care for her sister?
- Question 5: What about the various options I've brainstormed for resolving Phillips' case without a trial? What benefits or risks are there to reaching a deal with the DA for drug diversion, pretrial diversion, or a suspended sentence?
- Question 6: Does Phillips have any good claim to relief from removal? Does it matter what she pleads to?

Keep in mind the questions will not be given equal weight. The questions are provided for organizational purposes only. It may be entirely appropriate for one question to be answered with considerable brevity, while other questions might require very detailed analysis. Pace yourself appropriately, and plan ahead to put information where it belongs.

Finally, avoid needless repetition. Do not repeat the exact same analysis with substituted parties. You may incorporate analysis by reference to another portion of your exam answer to the extent appropriate.

Some suggested abbreviations for your answer:

AA:	Axel Armstrong	MM:	Melliphate modafinil
DD:	Duncan Dickers	PP:	Poppy Phillips
EE:	Eugenia Evans	QQ:	Quinn Quaternal
LL:	Lincoln Lenore		

END OF EXAMINATION

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Specific Instructions for Part 2 (Essay):

11. The total duration of this portion of the exam is one-and-a-half hours (90 minutes).
12. The first 30 minutes of this portion of the exam is a reading period. **You may not begin typing or entering into bluebooks any response during this first half hour.** This is your time to carefully read the questions and organize your thoughts about how to respond. During the reading period you may: make notes on this exam sheet and/or scratch paper; reference notes and materials and make notes thereon; outline your response on scratch paper (which I encourage). Marks or notes made during the reading period will not be evaluated or counted for your grade.
13. At the end of the thirty-minute reading period, you may begin recording your exam response in your bluebook or ExamSoft.
14. This is an open-book exam. You may use any paper-based notes and books you like. No electronic or interactive resources may be used or referenced. You may use a computer (including a keyboard-configured tablet) to write your exam, provided it is running the required exam-taking software and is used pursuant to applicable policies. But you may not reference files stored thereon during the exam sessions. You may wear a regular watch. Otherwise, any touching, using, accessing, wearing, viewing, or listening to any electronic device is prohibited. No smart watches. No phones.
15. Note that only your response recorded in the proper place (ExamSoft or bluebooks) will be graded.
16. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems within the scope of the course's subject matter. It is upon these bases that you will be graded.
17. Base your answer on the general state of U.S. law, including statutes and cases discussed in class.
18. Organization counts.
19. Keep in mind: Not all questions will be given equal weight. It may be appropriate for one issue to be dispensed with brevity, while another might require detailed analysis. Divide your time according to those issues that require the most discussion and analysis.
20. **Bluebooks:** Make sure your handwriting is legible. Skip lines and write on only on one side of the page in blue or black ink. Please put answers to each question in a separate blue book.
21. **Computers:** Please clearly label your answers to each question.

Wait. Do not begin the exam until instructed.