

Exam # _____

Professor DeWolf
Summer 2008

Criminal Law
August 1, 2008

FINAL EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL YOU ARE TOLD TO BEGIN.

THIS EXAM WILL LAST 3 HOURS. Part I is a CLOSED BOOK EXAM. It will last **90 minutes**. You must use BLUEBOOK(s). Please DOUBLE SPACE your answer. After 90 minutes the proctor will collect all of the exam answers and your Multiple Choice Answer Sheet. If you finish ahead of time you may read Part II (Questions 2 and 3) and make notes but you may not begin writing your answer to it.

Part II is a modified OPEN BOOK exam. It will last **90 minutes**. You may use any notes you have made yourself, your textbook, and any materials that I have distributed to you. YOU MAY NOT use any commercially printed outlines, hornbooks, treatises, articles, etc., except that you may use up to 100 pages photocopied from such materials or any other source.

While waiting for the exam to begin, write your EXAM NUMBER on at least one bluebook (more if you are not using Examsoft) and on the MULTIPLE CHOICE ANSWER SHEET. Read these instructions carefully and be sure that you are otherwise ready to begin. If you are using bluebooks, start a NEW BLUEBOOK for each question.

POINTS are assigned based upon the rough number of minutes it should take to complete each section. The division is as follows:

Part I (CLOSED BOOK)	MULTIPLE CHOICE:	60 points
	Question 1:	15 points
Part II (OPEN BOOK)	Question 2:	60 points
	Question 3:	15 points
	TOTAL	150 points

The MODEL PENAL CODE applies to all multiple choice questions and Question 2.

(1) MULTIPLE CHOICE. Please select the *best* answer. Some answers may give a wrong reason for an otherwise correct result. Make sure that you read *all* the answers thoroughly and select the one that comes closest to a correct statement of the law.

(2) ESSAYS. You will have three essay questions. Question 1 (closed book) asks for your reflection on a question involving some policy aspect of criminal law. Question 2 (open book) will ask you to assess criminal liability under the Model Penal Code given a hypothetical set of facts. Question 2½ (open book) asks you to describe how your analysis of criminal liability would change if the jurisdiction in which the hypothetical arose had rejected one or more features of the Model Penal Code

GOOD LUCK! ENJOY YOUR BREAK!

MULTIPLE CHOICE (60 points)

1. George left work at 6 pm and began driving to visit his mother who was in a hospital on the other side of the state. At 4 am he fell asleep at the wheel and his car started to drift off the pavement. When the sound of his tires leaving the roadway woke him up, he turned the wheel sharply and wound up crossing onto the other side of the road, where he struck another car. If George were charged with negligent driving, which of the following would be a plausible defense?

- (A) Falling asleep was an involuntary act;
- (B) He was unaware of the risk that he was so sleepy
- (C) He chose the lesser of evils
- (D) He was under duress
- (E) None of the above

2. Bob asked Susan to help him rob a bank. She agreed. Bob later robbed the bank. Bob could be convicted of:

- (A) robbery or conspiracy to commit robbery, but not both.
- (B) conspiracy to commit robbery or solicitation of robbery, but not both.
- (C) Both (A) and (B) are correct
- (D) None of the above

3. Bob asked Susan to help him rob a bank. She agreed to do so. Bob later robbed the bank. Susan could be convicted of:

- (A) conspiracy to commit robbery, but not robbery.
- (B) attempted bank robbery, but not robbery.
- (C) any crime committed by Bob that was reasonably foreseeable as a result of her agreement;
- (D) None of the above.

4. Andy became intoxicated at a college fraternity party. Jane, a 17-year-old high school student, snuck into the fraternity party and began dancing with Andy. Andy pulled her into a side room at the fraternity house and had sexual intercourse with her. Jane didn't have anything to drink, but she didn't resist because she was afraid of Andy. Jane later filed a complaint with the police and Andy has been charged with rape. Could Andy be convicted of rape (MPC § 213.1)?

- (A) No, if, because of his intoxication, he lacked the purpose of engaging in sex with an underage woman;
- (B) No, if he did not use force, threats of force, or intoxicants to have sex;
- (C) Yes, if Jane never gave her consent to sexual intercourse;
- (D) Yes, if, because of his intoxication, he did not realize that Jane was not consenting.

5. Michael was arrested for possession of methamphetamine. He claims that he became addicted when his friend let him smoke something that his friend said was marijuana, but was really methamphetamine. Michael's best defense would be:

- (A) His use of methamphetamine was an involuntary act;
- (B) It is unconstitutional to punish someone for a status rather than an act;
- (C) As a result of his addiction, he lacked substantial capacity to control his behavior;
- (D) His first use of methamphetamine was a case of involuntary intoxication.

6. Penal Code § 1234 states as follows: "Any person, other than an employee of a law enforcement agency, who acquires more than four pounds of C-4 [a type of plastic explosive] commits a second degree felony." John had been employed at a law enforcement agency but the company sent him a letter notifying him that he was being laid off. John didn't read his mail because he was testing a new design of body armor. John called the warehouse to order explosives to continue his testing at his home laboratory. A package containing five pounds of C-4 was delivered to John and he was arrested for violating § 1234. Which of the following would constitute a plausible defense?

- (A) John's order was for three pounds of C-4 and the warehouse mistakenly delivered five pounds.
- (B) John actually believed (albeit negligently) that he was still an employee of a law enforcement agency.
- (C) John ordered five pounds of "the usual" (intending to order nitroglycerine) and the warehouse thought he meant C-4.
- (D) All of the above.

7. Ellen tried to kill her husband with poison. He got into his car and tried to drive himself to the hospital. He had a bad reaction to the poison while he was driving and ran off the road, killing a pedestrian. Could Ellen be convicted of murdering the pedestrian?

- (A) Yes, if the pedestrian would not have died but for the attempt to poison her husband;
- (B) Yes, assuming that she intended to kill her husband and the pedestrian would not have died but for her attempt to commit murder;
- (C) No, because she didn't intend to kill the pedestrian;
- (D) No, because the result is not the same type of harm as that which she intended.

8. Charlotte's boyfriend Daniel was physically abusive to Charlotte's 4-year-old son Peter. If Daniel killed Peter, could Charlotte be convicted of murder?

- (A) Yes, if Charlotte knew that Daniel planned to kill Peter, and she did nothing.
- (B) Yes, but only if Charlotte wanted Daniel to kill Peter and Charlotte had an opportunity to prevent Daniel from killing Peter and failed to stop him.
- (C) No, unless Charlotte agreed to help Daniel, or aided him or attempted to aid him in killing Peter.
- (D) No, if Daniel was not himself guilty of murder.

9. Penal Code § 321 makes it a felony to distribute (sell) heroin. Mark was known in the neighborhood to be a heroin dealer. When an undercover agent tried to buy heroin from him, Mark suspected he was an undercover agent. Which of the following is correct?

- (A) If Mark sold him milk sugar instead of heroin, Mark could be convicted of an attempt to violate § 321 so long as the agent thought it was heroin.
- (B) If Mark was prepared to sell him heroin, but waited until the agent asked for heroin, but the agent never did, Mark couldn't be convicted of an attempt to violate § 321.
- (C) Mark couldn't be convicted of conspiracy to violate § 321 because he and the agent never had a meeting of the minds.
- (D) None of the above.

10. Edward's route to work and back home included walking through a dangerous part of town. One night Edward was approached by James, a ten-year-old boy, who asked him to give him \$10. James had his hand in his pocket when he made the request. Edward was afraid that James was going to shoot him with a gun or stab him with a knife, so Edward pretended to reach into his pocket, but instead knocked James down and then ran in the other direction. James suffered a serious head injury. Could Edward be charged with aggravated assault?

- (A) Yes, but only if Edward was at least reckless in assessing the need for force and manifested extreme indifference to the value of human life;
- (B) Yes, if James in fact was unarmed and didn't pose a real threat to Edward;
- (C) No, so long as Edward didn't intend to hurt him;
- (D) No, so long as Edward didn't use deadly force.

11. Linda had a supply of NoPaine, a prescription drug she took for her chronic pain condition. She noticed that she was running out of NoPaine pills before her prescription was due for renewal, and she suspected that her 13-year-old daughter Renee was taking them from her medicine cabinet. Penal Code § 555 provides: "It is a 3rd degree felony to supply any prescription drug to any person to whom such drugs have not been prescribed." Could Linda be convicted of violating § 555?

- (A) Yes, but only if she had the purpose of supplying them to Renee
- (B) Yes, but only if she knew that Renee was stealing them;
- (C) No, unless Linda was at least reckless in supplying them to Renee;
- (D) No, unless Linda was at least negligent in supplying them to Renee.

12. Assume the same facts as in the previous question, but for purposes of this question only, assume that Renee was stealing NoPaine pills, and gave one to Joe, who died of a reaction to the drug. Could Linda be convicted of negligent homicide?

- (A) Yes, but only if she had the purpose of supplying the NoPaine to Renee
- (B) Yes, but only if she knew that Renee was stealing her NoPaine pills;
- (C) No, unless Linda was at least reckless in allowing Renee to steal the drugs;
- (D) No, unless Linda was negligent with respect to the risk that Joe might die.

ESSAY QUESTION 1 (15 points)

You are a law clerk for Justice Hamburg, a state supreme court justice who must stand for a retention vote (no opponent, but if enough people vote against him he is out of office) every four years. One issue that has become heated is the question of whether to abolish the death penalty. Someone sent Justice Hamburg an article from the New York Times from 2000, containing the following paragraphs:

The dozen states that have chosen not to enact the death penalty since the Supreme Court ruled in 1976 that it was constitutionally permissible have not had higher homicide rates than states with the death penalty, government statistics and a new survey by The New York Times show.

Indeed, 10 of the 12 states without capital punishment have homicide rates below the national average, Federal Bureau of Investigation data shows, while half the states with the death penalty have homicide rates above the national average. In a state-by-state analysis, The Times found that during the last 20 years, the homicide rate in states with the death penalty has been 48 percent to 101 percent higher than in states without the death penalty.

The study by The Times also found that homicide rates had risen and fallen along roughly symmetrical paths in the states with and without the death penalty, suggesting to many experts that the threat of the death penalty rarely deters criminals.

Justice Hamburg would like you to provide a reflection on this article, explaining what you understand to be the current state of thinking on the death penalty. Please provide your analysis.

END OF THE CLOSED BOOK PORTION OF THE EXAM

ESSAY QUESTION 2 (60 points)

In November 2007, Monica Leinen, a girlfriend of Stephen Michael Farish, damaged his vehicle by scratching it with a key following a verbal argument. Farish believed Susan Metzger had damaged his vehicle. Metzger was a friend of Leinen who had allowed Leinen to stay with her after an incident of domestic abuse between Farish and Leinen.

In his anger at Metzger, Farish hired Che Romero to start a fire at the home Metzger rented at 117 Diamond Lake Road West in Metropolis, Modelstate, which was a duplex. Farish told Romero to start the fire on the evening of November 21, 2007. Farish promised Romero that in exchange for doing as he asked, Farish would provide him with a vehicle. Romero mistakenly targeted the wrong home and on November 21, 2007, set fire to two vehicles owned by Kirby and Shannon Bauer that were parked in front of their home at 5401 Wentworth Avenue South in Metropolis. On December 5, 2007, Romero, accompanied by his cousin Miguel Monette, returned to 5401 Wentworth Avenue South and threw two Molotov cocktails at the residence, again mistakenly targeting the Bauers' home. When Farish discovered Romero's mistake, he gave him Metzger's address. On December 18, 2007, Romero started a fire at Metzger's home at 117 Diamond Lake Road West, placing an incendiary device in the doorway of the residence. After the fire at the Diamond Lake Road West home, Farish arranged for Romero to steal a Dodge Caravan from Denny Hecker Rosedale Dodge ("Rosedale Dodge"), the dealership where Farish worked, by leaving the keys in the van. The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") investigated the fires, and during the investigation Farish made at least six false statements to ATF agents denying that he knew an individual named Che or Che Romero.

No one was home either at the Bauer residence or the Metzger residence when the fires were started, and the fires were extinguished before they spread to any neighboring property.

Please analyze Farish's criminal liability under Article 220 of the Model Penal Code.

ESSAY QUESTION 2½ (15 points)

What difference would it make to your analysis of Question 2 if the Model Penal Code were not followed in your jurisdiction?

MULTIPLE CHOICE ANSWER SHEET Exam # _____
(TEAR THIS OFF AND INCLUDE WITH ANSWER TO ESSAY 1)

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