

EXAM

*Instructions*

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

THIS EXAM WILL LAST THREE HOURS. It is a modified OPEN BOOK exam. You may use any notes you have made yourself, your textbook, any outlines that I have distributed, and up to 50 pages photocopied from other sources. You MAY NOT use any other materials, including commercially prepared outlines, hornbooks, treatises, articles, etc.

While waiting for the exam to begin, write your EXAM NUMBER on at least three bluebooks and on the MULTIPLE CHOICE ANSWER SHEET. Read these instructions carefully and be sure that you are otherwise ready to begin. Start a NEW BLUEBOOK for each question.

THE MODEL PENAL CODE APPLIES TO ALL QUESTIONS, except for Essay Question 2½. When the question asks whether a person could be convicted of a crime, you should answer based upon whether a jury's verdict in favor of conviction would be sustained on appeal.

(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 two essay questions that ask for an analysis of the situation under the Model Penal Code. You will then have one question (2½) that asks about the differences that would obtain if the Model Penal Code were not used in this jurisdiction.

POINTS are assigned as follows:

Multiple Choice:	60 points
Question 1:	30
Question 2:	45
Question 2½	10

If you encounter ambiguity in the statement of facts in the essay questions, please consider the alternatives that could reasonably be construed from the facts or the statute, and advise accordingly.

GOOD LUCK!

MERRY CHRISTMAS!

MULTIPLE CHOICE  
(Total: 60 points)

[FACT PATTERN for QUESTIONS 1 through 5:] Bill and Jack sat around one day and complained that they needed money. Bill suggested that they walk through the parking lot at the mall to find unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then headed toward his car.

QUESTION 1

At this stage, has Bill committed a crime?

- (a) Yes, because he has solicited Jack to engage in conduct that would constitute the crime of theft.
- (b) Yes, because he and Jack have made an agreement that one of them will engage in conduct constituting the crime of theft, and an overt act in furtherance of that agreement has been committed.
- (c) Both (a) and (b) are correct.
- (d) No, because Bill hasn't yet taken a substantial step in a course of conduct planned to culminate in the commission of the crime.

QUESTION 2

At this stage, has Jack committed a crime?

- (a) Yes; his conduct constitutes a substantial step, strongly corroborative of criminal intent, planned to culminate in the commission of a crime.
- (b) Yes, because he has engaged in a conspiracy to commit a crime, and Bill has committed an overt act.
- (c) Yes, if the prosecutor can prove that the crime was inherently likely to be committed.
- (d) No, because at this stage Jack hasn't done anything criminal.

QUESTION 3

Bill and Jack drive to the mall. Jack opens the doors of three different cars and finds a purse in one of them. He takes it and places it in his car. At this stage, which of the following is true?

- (a) Jack has committed theft, assuming he had the purpose of depriving the owner of the purse.
- (b) Bill has also committed theft because he was an accomplice to Jack.
- (c) Both (a) and (b) are correct.
- (d) Jack has not yet committed theft, because he has not yet converted the purse to his own use.

QUESTION 4

While Jack was taking the purse, the car's owner ("O") saw him. O said "Stop, thief!" and Jack got into his own car to make a getaway. O ran toward Jack's car and as Jack was making his getaway he ran over O, causing him serious bodily injury. Which of the following is true?

- (a) Jack could be convicted of robbery, assuming he acted recklessly in running over O.
- (b) Bill could be convicted as an accomplice to robbery, assuming the prosecutor could

- prove Bill was reckless with respect to the injury caused to O.
- (c) Both (a) and (b) are correct.
  - (d) Neither (a) nor (b) is correct.

## QUESTION 5

Suppose Bill was a regular marijuana user and had smoked marijuana on the day of the crime. This evidence would be relevant:

- (a) To establish that Bill was unaware of the risk that injury might result from their activities.
- (b) To establish that Bill was unable to form the purpose of assisting Jack in committing the crime.
- (c) Both (a) and (b) are correct.
- (d) Neither (a) nor (b) is correct.

## QUESTION 6

Identify the author of the following quotation:

"No matter what can be said for abolition of the death penalty, it will be perceived symbolically as a loss of nerve: social authority no longer is willing to pass an irrevocable judgment on anyone."

- (a) Jacques Barzun
- (b) Jeremy Bentham
- (c) Charles Black
- (d) Oliver Wendell Holmes
- (e) Ernest Van Den Haag

## QUESTION 7

Identify the author of the following quotation:

"The classic instance of the use of the criminal law purely to enforce a moral code is the laws prohibiting extra-marital and abnormal sexual intercourse between a man and a woman. [It is not] disputed that there is no effort to enforce these laws. The traditional function of the criminal law, therefore—to curtail socially threatening behavior through the threat of punishment and the incapacitation and rehabilitation of offenders—is quite beside the point. Thurman Arnold surely had it right when he observed that these laws `are unenforced because we want to continue our conduct, and unrepealed because we want to preserve our morals.'"

- (a) Susan Estrich
- (b) George Fletcher
- (c) Oliver Wendell Holmes
- (d) Sanford Kadish
- (e) Sir James Fitzjames Stephen

[FACT PATTERN for Questions 8 through 10:] Ron owns a local trucking company. On one trip an employee named Harry picked up a barrel of VIOL, a hazardous chemical, when the barrel ruptured, spilling its contents into the town's source of drinking water. A statute provides, "Any person who negligently causes a hazardous chemical to be released in or near a source of drinking water shall be guilty of a misdemeanor." Which of the following would be true:

## QUESTION 8

- (a) Ron could not be convicted of violating the statute unless he himself was aware of

- the fact that Harry was transporting VIOL.
- (b) Harry could not be convicted of violating the statute if he reasonably believed that the barrel was empty.
  - (c) Since this would be described as a "regulatory" offense, there is no mens rea requirement for conviction of either person.
  - (d) Either Ron or Harry could be convicted of violating the statute, but not both.

#### QUESTION 9

Assume the same facts as in the previous question. Suppose further that there is another providing as follows: "Any person who knowingly transports any hazardous chemical without first obtaining a Class H license shall be guilty of a misdemeanor." If Ron is prosecuted for violating this statute, which of the following would be true:

- (a) Ron could NOT be convicted if he honestly believed that VIOL was not a hazardous chemical.
- (b) Ron could NOT be convicted if he did not know that Harry was transporting VIOL, even if Harry knew.
- (c) Ron could be convicted if he knew he didn't have a license, and was reckless with respect to whether his employees were transporting hazardous chemicals.
- (d) Ron could NOT be convicted if he reasonably believed that he was exempt from the coverage of this statute.

#### QUESTION 10

Suppose that Harry regularly transported and dumped hazardous chemicals illegally, but did so because one of his customers had threatened one of his family members if he didn't cooperate. If Harry is prosecuted for violating either of the above statutes, which of the following is correct:

- (a) The threats made by the customer would not affect Harry's guilt or innocence, but could be used to mitigate Harry's punishment.
- (b) Harry would be entitled to a defense only if he could identify the person who threatened him.
- (c) Harry could claim that a person of reasonable firmness in his situation would not have been able to resist, but only if his own safety was also jeopardized.
- (d) None of the above.

[FACT PATTERN FOR QUESTIONS 11 and 12:] Susan Ostrich went to a drinking establishment where she met William Kennedy Jones. He invited her to accompany him to his house to go swimming. Before reaching the house Jones pulled the car into an isolated area, ripped off all his clothing in a seemingly uncontrolled fashion and said "This is the way I like it!" and lunged for her. Ostrich did not resist him because she was afraid that if she resisted he might kill her.

#### QUESTION 11

Suppose the two had intercourse. Afterward he drove her home. The next day Ostrich charges him with rape. He admits having intercourse but claims it was consensual.

Which of the following is correct:

- (a) Jones is not guilty of rape if at the time he was unaware of the risk that she did not consent to intercourse.
- (b) Jones would be guilty of rape if, at the time he invited her to his house he had no intention of going there, but instead planned to stop in a deserted place.
- (c) Jones would be guilty of rape if Ostrich honestly believed that she was going to be killed if she did not submit, even if her belief was unreasonable.
- (d) Jones would be guilty of rape so long as his conduct would lead a reasonable

woman to believe that her life was in danger.

QUESTION 12

Suppose Jones took off all of her clothes but was so drunk he was unable to maintain an erection. In disgust he threw her out of the car and drove home. Which of the following would be true:

- (a) Jones could not be convicted of attempted rape unless it was his purpose to have intercourse and he knew that she did not consent
- (b) Jones could be convicted of attempted rape even if he was only reckless with respect to her lack of consent.
- (c) Jones couldn't be convicted of attempted rape if his intoxication prevented him from completing the commission of the crime.
- (d) Jones would not be guilty of attempted rape because he voluntarily abandoned his effort to commit the crime.

## ESSAY QUESTIONS

QUESTION 1 (30 points)

You are counsel for the XYZ Manufacturing Company. Your company makes high-tech plastic products. A recent application of your company's technology was the radar-absorbing covering for the Stealth Bomber. Your marketing department and your engineering department have been working on a project to use the same material to make a covering for the front of sportscars—called "bras" in the auto industry. Tests have shown that when a "stealth bra" is placed across the front of, say a Porsche, the car reflects only one-fourth as much radar as without the product. Combined with a high-quality radar detector, the product can practically eliminate the risk of being caught in a radar trap. Production costs run about \$100 per unit. Marketing thinks that owners of expensive sports cars would pay \$500 or more for the extra protection from speeding tickets.

Assume that, in addition to the Model Penal Code provisions that are in force in your jurisdiction, there are also laws against speeding, making it a petty misdemeanor to travel above the posted speed limit; suppose further that a statute makes it a misdemeanor to travel more than twenty miles per hour above the posted speed limit. Before authorizing production and sales, XYZ's president has asked you for an opinion as to whether there would be any criminal liability if speeding, or for that matter, accidents result from people using this product. She wants a prompt answer, because marketing indicates that police departments are already experimenting with "instant-on" radar, more focused radar, and even infrared speed detection devices that can measure speed.

Please prepare a concise memo analyzing whether there is any risk of criminal liability for marketing this product, and if there is, what (if anything) would reduce the risk.

QUESTION 2 (40 points)

You are an assistant prosecutor for Queen County, Evergreen, a state that has adopted the Model Penal Code. Your superior has assigned you the case of State v. Marx. The police report contains the following facts:

Michael Marx, aged 32, lived by himself in a small house. He once had a job in a tire manufacturing plant, but was laid off. When unemployment compensation ran out, he began working as a day laborer for a temporary employment agency. He purchased a book called "The Coming Financial Wars," which predicted that the U. S. would soon descend into economic chaos

and armed bands of the hungry would turn on those who had food. Marx took the warnings seriously and began stocking up on food that didn't need refrigeration. His favorite was tortilla chips and salsa. He also purchased a gun and ammunition. He stopped appearing for work and rarely ventured out of his house.

Bob, his neighbor, had never gotten along with him but became alarmed when he saw no signs of life. One night about 8 p.m. Bob went to Marx's house and knocked on the door. Marx had just been rereading the section in his book describing bands of hungry people breaking into homes to look for food. When Marx heard the knock he picked up his gun and approached the door warily. Bob didn't see any lights come on, but heard footsteps so he hollered, "Hey, I'm just here to check things out. Is anybody there?" Marx hollered back, "You're not taking what's mine," and fired the gun toward the door. Bob was stunned at first, then turned and ran. Marx opened the door and kept firing. One bullet whizzed past Bob's ear, and another one struck him in the arm, shattering his elbow. Bob finally made it back into his house, and called the police, who arrived promptly. As the police were taking him into custody and a paramedic was tending to Bob, a policeman asked, "Why did you do this?" and Marx answered, "Well, it was either him or me. I had a right to protect myself."

Your superior would like you to prepare a memo in advance of a session with the defendant's lawyer to discuss possible plea negotiation. Please analyze the strengths and weaknesses of each side's case.

QUESTION 2½(10 points)

How would the analysis of Question 2 have been different if the relevant Model Penal Code provisions were not followed in your jurisdiction?

EXAM NUMBER \_\_\_\_\_

MULTIPLE CHOICE ANSWER SHEET

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TEAR THIS OFF AND PUT IT IN YOUR BLUEBOOK!