

FINAL EXAM

Instructions

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

THIS EXAM WILL LAST 3 HOURS. It is a modified OPEN BOOK exam. You may use any notes you have made yourself, your textbook, photocopied or self-annotated copies of the Model Penal Code, copies of any prior exams, and any outlines that I have distributed to you. You may also use up to 50 pages of photocopied materials from any source. YOU MAY NOT use any commercially printed outlines, hornbooks, treatises, articles, etc., except as part of your 50-page photocopy limit.

While waiting for the exam to begin, be sure that you have written your EXAM NUMBER on each bluebook AND ON THE MULTIPLE CHOICE ANSWER SHEET, that you have read these instructions, and that you are otherwise ready to begin. For each of the questions, START A NEW BLUEBOOK.

THE MODEL PENAL CODE APPLIES TO ALL QUESTIONS, except Question 2½. You are only responsible for those portions of the Code that were previously identified. When the question asks whether a person could be convicted of a crime, answer based on an evaluation of whether, on the facts given, a judge would grant a motion to dismiss the charge; if not, your answer should be yes.

(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. Only one question (Q 2½) asks what difference it would make to *one* of your answers if the Model Penal Code were not adopted in your jurisdiction.

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

Multiple Choice:	50 points;
Question 1:	35 points
Question 2:	50 points
Question 2½:	<u>10 points</u>
TOTAL	145 points

In the case of ambiguity, please consider the alternatives that could be reasonably construed from the facts or the statute, and advise accordingly.

GOOD LUCK!

MERRY CHRISTMAS!

**MULTIPLE CHOICE**  
(Total: 50 points)

**FACT PATTERN for Question 1-3**

Circle M is a convenience store. Dawn and Rusty, who live together, often shop there. One night, after reviewing the desperate state of their finances, they discussed the fact that lots of money is taken in every weekend at Circle M through lottery ticket sales. They also discussed the fact that security is pretty loose; on Sunday nights only one person works at the store, and few people are around. Dawn then said, "You know, I have a gun that I bought a year ago for self-protection; I think it would be pretty easy to go in and use the gun to persuade the clerk to give us a lot of money. It's a job worth doing."

1. Which of the following findings would be enough to convict Dawn of a crime?
  - a. Rusty nodded his head.
  - b. Dawn walked toward the closet to get the gun.
  - c. Dawn asked Rusty to drive her to the convenience store.
  - d. All of the above.
  
2. Assume (for purposes of this question only) that at the time of the initial conversation Rusty said that too many people came in on Sunday night and thus the job would be too dangerous and he didn't want to participate. Dawn then went to the store by herself and, using the gun to hold up the clerk, took \$500 from the cash register. Which of the following is correct?
  - a. Dawn can be convicted of robbery or of solicitation to commit robbery, but not both.
  - b. Rusty could be convicted of attempt to commit robbery, because he decided to postpone his criminal activity until more favorable circumstances existed.
  - c. Dawn could be convicted of conspiracy to commit robbery because no overt act is required.
  - d. All of the above.
  
3. Assume (for purposes of this question only) that Rusty agreed with her that it would be a good idea for her to go to the convenience store, but it would be a bad idea for him to go with her since it would arouse suspicion and because his criminal record would make him easier to identify from store surveillance photos. He suggested that she stay out of range of the security cameras. Dawn went to the convenience store, pointed the gun at the clerk and demanded money. However, a customer came up behind Dawn and knocked the gun out of her hand. In a panic Dawn reached up, found a coffee can on the shelf, and hit the customer over the head with it, causing only minor injury, but allowing her to escape (with no money). Which of the following is correct:
  - a. Dawn could be convicted of robbery.
  - b. Rusty could be convicted of conspiracy to commit assault.
  - c. Rusty could be convicted of being an accomplice to assault.
  - d. All of the above.

4. Ben and Carlos became interested in the same woman while they were drinking in a bar. Words were exchanged and some pushing and shoving developed. The owner of the bar threw them out into the alley. Once in the alley, Carlos punched Ben. Ben pulled a hunting knife from his jacket pocket and said, "If you mess with me I'm going to stick you." Carlos responded with this comment: "If you move one step closer I will kill you." Ben then started walking toward his car, knife in hand, which happened to be in Carlos' direction. Carlos stood where he was, and when Ben got five feet away Carlos kicked him in the lower jaw, snapping Ben's head back, killing him instantly. Carlos had a black-belt in karate. If Carlos is charged with murder, which of the following is true?
- Carlos could be convicted of manslaughter if his assessment of the need for the use of force was reckless.
  - Carlos had a duty to retreat if he *would* have known that he could retreat with complete safety, but was unaware of that because of his intoxication.
  - Carlos lost the right to use self-defense because he punched Ben in the first place.
  - None of the above.
5. While in a bar, Mike got into a fight with Jerry, a person he didn't even know. Mike tried to stab him with his knife but missed. Jerry then pinned him to the floor and arrested him. Jerry then identified himself as an employee of the state drug enforcement agency, working undercover; he was getting ready to meet a drug dealer in order to make a "buy." Part of your state's criminal code provides as follows: "It is a first degree felony for any person to cause serious bodily injury to a state law enforcement officer, where such officer is performing official police duties. It is a second degree felony to attempt to cause such injury." Can Mike be convicted of a second degree felony under this statute?
- Yes, because strict liability applies to circumstance elements.
  - Yes, because Mike was at least reckless with respect to Jerry's identity.
  - No, unless Mike was aware of the risk that Jerry might be a law enforcement agent.
  - No, unless Mike was actually aware that Jerry was a state law enforcement officer.
6. Identify the author of the following quotation: "Though law and morality are not the same, and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be of fatal consequence; . . . To preserve one's life is generally speaking a duty, but it may be the plainest and highest duty to sacrifice it. War is full of instances in which it is a man's duty not to live, but to die."
- Oliver Wendell Holmes
  - Ernest Van den Haag
  - Sir James Fitzjames Stephen
  - Lord Coleridge
7. Identify the author of the following quotation: "Passion and reason interact in the law, then, by generating conflicting theories that nag at our loyalties . . . Passions impel us to think of defensive force as punitive and vengeful, inflicting deserved harm on wrongdoers. Reason invites us to think of it as the means of maintaining order and

harmony among independent, autonomous persons. The historic struggle of the law has been from passion to reason, from inflicting just deserts to the vindication of the defender's autonomy."

- a. Charles Black
  - b. George Fletcher
  - c. H.L.A. Hart
  - d. Glanville Williams
8. Larry and Moe were two sailors who met Francine at a dance hall. Larry and Moe began dancing with her and plying her with liquor. While dancing with Larry, Francine collapsed in his arms. Larry dragged her outside and put her in his car. Moe accompanied them. Larry suggested that Moe take advantage of her while she was still unconscious, and so Moe had sexual intercourse with her. She did not revive, and so they took her to the hospital. Medical examination revealed (to Larry and Moe's great surprise) that she was dead; in fact, she had died of a brain aneurysm (unrelated to drinking) on the dance floor. What can Larry be convicted of?
- a. Rape or attempted rape, but not both.
  - b. Rape or conspiracy to commit rape, but not both.
  - c. Attempted rape.
  - d. Each answer (a, b, & c) is correct.
  - e. None of the above is correct.
9. [See the facts of the previous question]. What can Moe be convicted of?
- a. Rape or attempted rape, but not both.
  - b. Rape or conspiracy to commit rape, but not both.
  - c. Attempted rape.
  - d. Each answer (a, b, & c) is correct.
  - e. None of the above is correct.
10. Mike was ticketed for driving 55 mph in a 45 mph zone, and charged with speeding, classified in this jurisdiction as a "violation." Which of the following, if believed, would allow him to avoid conviction for speeding?
- a. He didn't see the sign with the posted speed and was unaware that the speed limit in that location was 45 mph.
  - b. His speedometer showed that he was going 45 mph when in fact he was going 55 mph.
  - c. He was relying on a statement by a lawyer friend of his that, after seeing a speed limit sign, it was sufficient to take his foot off the accelerator and coast until he achieved the proper speed.
  - d. None of the above.

## ESSAY QUESTIONS

Question 1 (35 points)

Kringle's, a photocopy business, had an employee named Fred. Fred worked the graveyard shift and got to know one of his customers, Julia, quite well. Julia had an investment business in which she handled lots of stock certificates. She brought her file one night to make copies of a client's files. While making copies, Fred had an idea. Although Julia had only wanted black-and-white copies, Fred knew that Kringle's had recently acquired a very sophisticated color copier that did a remarkable job of reproducing color documents. Fred made copies of each stock certificate on the color copier and then gave all the originals back to Julia. The next day Fred went to a local bank and asked whether or not he could get a loan based upon some stock that he owned. The bank manager gave him a loan application and said to fill it out and bring the stock certificates in to use as collateral.

When Fred got home he was met by State Investigative Agents who arrested him for violating the following sections of the Code (assume for purposes of this question that the United States follows the MPC):

Article 351. Forgery or Counterfeiting of Securities

(1) A person commits a third degree felony if, with purpose to defraud anyone, he makes a copy of any part of an issue of stock, bonds, or other instruments representing interests in or claims against any property or enterprise.

(2) A person commits a second degree felony if, with purpose to defraud anyone, he makes a copy of any part of an issue of stock, bonds, or other instruments representing interests in or claims against any property or enterprise with a value in excess of \$5,000.

You have been assigned as Fred's defense attorney. Fred was dumbfounded to learn that the stock he had copied was worth \$10,000; he had looked at the "par value" written on the certificates, and their value by his calculation was only \$1,000. (Not owning stock himself, Fred didn't know that they had a market value of \$10,000.) Please analyze the strength of the case against him and suggest possible approaches to the case.

Question 2 (50 points)

Harry (aged 17) and Jim (aged 18) were brothers. Their mother died when they were five and six respectively. Their father, Randy, retired from the military and moved the boys to live on a farm in a sparsely populated valley in Farmstate. Randy home-schooled the boys and survived financially from a military pension and sales of farm products. Harry and Jim worked on the farm from 6 a.m. until 2 p.m. After a meal of hearty stew and bread they baked themselves, the boys were required to study until 7 p.m., when they were allowed to play checkers or cards until 8 p.m. Then reading in bed until lights out at 9 p.m. The work on the farm was strenuous enough that they were usually asleep before 9 p.m. This routine continued Monday through Saturday; on Sunday they went to church and then for horseback rides in the nearby foothills. As the boys grew into adolescence they expressed interest in socializing with the other children that they met in church. Randy told them it was too early yet, and said they'd have plenty of time for that when they became adults. When Jim turned 16 he remarked how pretty one of the girls at church was. Randy told them this was sinful talk, originated by the Devil, and he should be ashamed. Randy then stopped taking them to church and began teaching them at home on Sunday mornings. Jim became increasingly angry at his father, and challenged his authority on the farm. Randy in turn grew increasingly accusatory. Though he had rarely disciplined them physically in their childhood, one day Randy responded to Jim's insubordination by taking him to the woodshed where Randy whipped him severely with his belt. Randy then went to the house and brought out an automatic pistol that he had used in his military service, and said he would begin carrying it, and had no hesitation about using it. "I'm going to make sure no son of mine ever goes bad. I'd rather see him dead first." Jim and Harry talked about it in bed that night. They worried that their father was unstable mentally. Harry said, "You shouldn't have to take this." Jim said, "But we have no choice. He'd come after us if we ever tried to escape." Harry said, "Well, maybe you should get to him first." The next day Jim got up early and took a knife from the kitchen. While his father was asleep Jim stabbed him in the neck, intending to kill him. Harry awoke from the commotion, came over and restrained Jim and called the ambulance. Randy survived the attack, but has permanent injuries.

You are the prosecutor assigned to this case. What charges could be brought? What defenses are available? Please prepare a memo in preparation for a plea negotiation with defense counsel.

Question 2½ (10 points)

Please state what difference, if any, it would make to your analysis of Question 2 if the Model Penal Code had not been adopted in your jurisdiction.

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

**MULTIPLE CHOICE ANSWER SHEET**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_
- 6. \_\_\_\_\_
- 7. \_\_\_\_\_
- 8. \_\_\_\_\_
- 9. \_\_\_\_\_
- 10. \_\_\_\_\_

**TEAR THIS OFF AND PUT IT IN YOUR BLUEBOOK!**