

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, and any outlines that I have distributed to you. YOU MAY NOT use any commercially printed outlines, hornbooks, treatises, articles, etc. You may also use up to 50 pages of photocopied materials from any source.

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. 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/TRUE-FALSE. *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.

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

Multiple Choice/True False:	50 points;
Question 1:	50 points
Question 2:	45 points

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!

ENJOY THE REST OF THE SUMMER!

MULTIPLE CHOICE/TRUE-FALSE
(Total: 50 points)

1. Motorist had an epileptic seizure and lost control of the car he was driving. The car crossed the center dividing line and struck a car occupied by a driver and two passengers. One of the passengers was killed. Would this evidence support a conviction for negligent homicide?
 - a. Yes, because epileptics are negligent if they drive a car.
 - b. Yes, but only if Motorist's behavior was a gross deviation from the behavior of a reasonable person.
 - c. No, because the seizure was not voluntary behavior on his part.
 - d. No, unless he was actually aware of the risk that his behavior would cause injury.

2. John and Mary were the parents of Dick, age 5. John beat Dick, causing him serious injury. Mary did nothing to stop the beatings. John was reported by neighbors and was arrested and convicted of simple assault. Which of the following is correct?
 - a. Mary could be an accomplice to simple assault if she was aware of the beating and failed to do anything to help Dick.
 - b. Mary would not be an accomplice if she did not have the purpose of encouraging John to engage in the conduct of beating Dick.
 - c. Mary could not plead the defense of duress even if John threatened to harm her if she reported him to the police.
 - d. Mary could be convicted of conspiracy to commit simple assault because agreement could be inferred from her silence.

3. One night Mike told his girlfriend Shara "I'm going out to earn some extra money." In the past Shara knew that he burglarized houses. Mike left the apartment at 8 p.m., intending to burglarize a house whose occupants were out of town. He put his toolchest, containing a pry bar and other specialized burglars' tools in the back of his car and got in the front seat to start the engine. He tried to start the engine but the car would not start. He then transferred the tools to a bicycle in the garage and set out toward the house. Halfway to the scene of the burglary it started to rain and Mike turned around and went home. When he got home he was met by the police, who were responding to a tip from Shara, who was hoping to get rid of Mike. Can Mike be convicted of attempted burglary?
 - a. Yes, because he had already committed a substantial step.
 - b. Yes, because his prior behavior established a clear purpose to commit the crime.
 - c. No, because he never came dangerously close to success.
 - d. No, because he abandoned the attempt.

4. Ben received a vision from God that he was appointed a defender of the unborn. Following this vision he went to an abortion clinic with the purpose of battering one of the doctors until she was unable to perform surgery. When he got to the clinic and asked for one of

the doctors the police were called and he was arrested. Which of the following is correct?

- a. Ben could be convicted of any crime for which recklessness was the required mens rea, since his behavior was reckless.
 - b. Ben could be convicted of attempted burglary, since he intended to enter a building where he was not lawfully permitted, with the intent of committing a crime therein.
 - c. Ben could *not* be convicted of attempted aggravated assault if he believed, however unreasonably, that his behavior was necessary to save another's life.
 - d. Ben could *not* be convicted of any crime if, because of his religious beliefs, he didn't believe that his conduct was wrong.
5. Prosser and Quigley agree that on Tuesday Quigley will go to the First State Bank and, using guns, instruct one of the tellers to give them all the money or they will shoot. Unbeknownst to Prosser, Quigley is an undercover agent and never intends to carry out the plans. Prosser is arrested. Which of the following is correct?
- a. Prosser can be convicted of conspiracy to commit robbery.
 - b. Prosser cannot be convicted if he never commits an overt act in furtherance of the conspiracy.
 - c. Prosser cannot be convicted of conspiracy because there was never a meeting of the minds.
 - d. Prosser could be convicted as an accomplice to bank robbery because he plans to use Quigley, an innocent agent, to perform the criminal work.
6. Identify the author of the following quotation: "[A]part from the common law as to the restraint of trade thus taken up by the statute, the law is full of instances where a man's fate depends upon his estimating rightly, as the jury subsequently estimates it, some matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here; he may incur the penalty of death."
- a. Sir James Fitzjames Stephen
 - b. Oliver Wendell Holmes
 - c. Charles Black
 - d. Justice Thurgood Marshall
7. Identify the author of the following quotation: "[A]s long as our brain is put together the way it is, no one should be too confident that he or she would remain completely reasonable under conditions where their life is perceived to be in danger. Moreover, this critical perception of threat isn't based on rationality. It's fueled by those limbic derived emotions that have promoted the survival of our species. Isn't it preferable therefore to face up courageously to these sometimes frightening and unpleasant realities instead of pretending that questions such as those being asked about Bernhard Goetz can be answered by courtroom speculations about how a reasonable person would have responded in his place?"

- a. R. Restak
- b. George Fletcher
- c. Sol Wachtler
- d. Joseph Berger

TRUE/FALSE

Paul carried a hunting knife into the Visitor's Room at a state correctional center. He was arrested and charged with violation of a statute that provides, "It is a misdemeanor for any person knowingly to carry a deadly weapon into a state correctional center." A large sign at the entrance of the center usually contained a warning to visitors about the law, but the sign had been temporarily removed during renovation of the facilities. Assume that the knife is determined to be a deadly weapon. Which of the following would be a defense to prosecution? (T = it *would* be a defense; F = no defense)

8. Paul meant to remove the knife before entering, but forgot he was carrying it.
9. Paul thought he was entering a county, not a state correctional center.
10. Paul reasonably believed that the knife was not a deadly weapon.
11. An intermediate appellate court opinion, unknown to Paul, found that hunting knives were not deadly weapons (a week after Paul's arrest the case was overruled by the state supreme court).

ESSAY QUESTIONS

Question 1 (50 points)

Sam and Joe drank two six-packs of beer and both became intoxicated. When the last beer was gone Joe said, "Let's go to the liquor store and get some more." Sam said, "I don't have any money. Do you?" Joe said, "No, but let's go anyway. Something'll turn up." They then walked two blocks to the liquor store. Joe went inside and waited until the clerk opened the cash register drawer, and then he reached over and took eight \$20 bills out of the till. He started to run out the door but the clerk yelled at him to stop. As the clerk got out from behind the counter to try to run after Joe, Sam pushed him down to the floor. The clerk was knocked out cold. Sam grabbed a couple of additional liquor bottles and headed out the door. Sam and Joe were arrested. Based on these facts, what could they be charged with? What defenses would be available?

Question 2 (45 points)

Bill was sitting on his porch late at night on a hot summer evening, sheltered from view by a large bush. He heard some noise and a group of youths in dark-colored clothing came through the front gate and walked up toward the front porch. They were whispering to one

another. As they mounted the steps one of them looked in Bill's direction and pointed at him. Bill grabbed a baseball bat and hit one of them over the head and started swinging at the others until they ran off. One other youth was hit in the arm and suffered a hairline fracture. The youths then ran off and Bill went inside and dialed 911. By the time the police and paramedics arrived, the victim had already died of massive internal bleeding.

It turned out that the youths were foreign exchange students in search of a costume party and got the wrong address.

Suppose you are a new assistant in the prosecutor's office. Analyze the crimes that Bill may be charged with, and the defenses that would be available.

EXAM NUMBER _____

MULTIPLE CHOICE ANSWER SHEET

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. T F

9. T F

10. T F

11. T F

TEAR THIS OFF AND PUT IT IN YOUR BLUEBOOK!