

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**. After 90 minutes I will collect all of the exams. 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 50 pages photocopied from such materials.

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.

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: 65 points
	<u>Question 1: 15 points</u>
Part II (OPEN BOOK)	Question 2: 65 points
	Question 3: 15 points
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	TOTAL 160 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. TEAR OFF THE ANSWER SHEET AND SUBMIT IT AT THE END OF 90 MINUTES!

(2) ESSAYS. You will have three essay questions. Question 1 asks for your reflection on a question involving some policy aspect of criminal law. Question 2 will ask you to assess criminal liability under the Model Penal Code given a hypothetical set of facts. Question 3 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! HAPPY HOLIDAYS!

MULTIPLE CHOICE

(Total: 65 points)

QUESTION 1.

John Jackson is an accountant working for a multinational corporation. Billy Breaker, his boss, insisted that John "sweeten" the financial reports by omitting some information that would otherwise be included. When John demurred, Billy told him that "he'd go along if he knew what was good for him." If John is later charged with violating a statute stating, "It is a third degree felony to issue deceptive financial reports," which of the following is true:

- (A) John would have a defense if his boss told him that it was standard accounting practice to do so, and John reasonably relied upon that advice;
- (B) John would have a defense if he honestly believed that Billy was threatening him, but only if he made reasonable efforts to contact law enforcement;
- (C) John would have a defense if he reasonably believed that, since he didn't actually "issue" the information (his company did), the statute did not apply to him.
- (D) John could be convicted even if Billy were acquitted of the same charge.

QUESTION 2.

Ward and June Cleaver are parents of a 3-month-old, Arnold. Arnold fell and broke his arm. Ward and June were told that Arnold's arm was broken, but they wanted to see if vitamin therapy would cure his condition. After two months they finally took Arnold in to see a doctor, and by that time the bones had begun to fuse in such a way that it was impossible to set the bone properly and Arnold had a permanent injury. If Ward and June were prosecuted for aggravated assault on their child ("A person is guilty of aggravated assault if he: attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life"), which of the following is correct:

- (A) Both could be convicted, since they knowingly failed to obtain treatment that would have prevented serious bodily injury;
- (B) Neither could be convicted, because they committed no voluntary act;
- (C) Neither could be convicted, because their conduct did not cause Arnold's injury;
- (D) Ward could be convicted, or June could be convicted, but not both;

BACKGROUND FACTS for QUESTIONS 3 to 5

Morris's 9-year-old daughter Amy has a passion for Sponge Bob Squarepants, a cartoon character. The Burger King in Morris's town has been running an advertising campaign incorporating a large inflated balloon of Sponge Bob. Morris tells his friend Ron that Amy would think she'd died and gone to heaven if the giant Sponge Bob balloon appeared in his backyard at Amy's birthday party. "Do you mean, like, steal it?" asked Ron. Prior to that point Morris hadn't thought of stealing it, but when Ron mentioned it, he began to take the idea seriously. Still thinking, Morris said, "Well, I'd give it back."

QUESTION 3.

As of this point, which of the following is correct:

- (A) Morris has solicited Ron to commit theft.
- (B) Morris has attempted to commit theft.
- (C) Both (A) and (B) are correct.
- (D) Neither (A) nor (B) is correct.

QUESTION 4.

(For purposes of this question only), suppose Ron said, "Okay, I think that would be a great idea." If Ron is charged with conspiracy to commit third degree felony theft, which of the following is correct:

- (A) Ron would NOT be guilty if Morris was only joking (even if Ron thought he really meant to steal Sponge Bob)
- (B) Ron would NOT be guilty if Ron was only joking (even if Morris thought he was serious).
- (C) Both (A) and (B) are correct.
- (D) Neither (A) nor (B) is correct.

QUESTION 5.

(For purposes of this question only), assume that Ron and Morris were both serious and intended to form an agreement to steal Sponge Bob. If Ron were charged with conspiracy to commit third degree felony theft, which of the following is correct:

- (A) Ron could NOT be convicted unless Ron committed an overt act in furtherance of the conspiracy;
- (B) No overt act is required, since it is a felony
- (C) Both (A) and (B) are correct;
- (D) Neither (A) nor (B) is correct.

QUESTION 6.

Dan Defendant ("D") has been convicted of armed robbery of a state-chartered bank. It is now time for Judge Holmes to sentence D. Holmes receives a presentence report on D that includes multiple convictions, including assault, assault with a deadly weapon, grand theft auto, and robbery, for which D was incarcerated previously for a total of ten years. The prosecution has asked for a lengthy sentence in the state penitentiary. D has an 8th-grade education and had an abusive father. Which of the following would be the LEAST effective argument on behalf of the defendant for a more lenient sentence?

- (A) A lengthy sentence in D's case would serve no deterrent function.
- (B) D does not deserve to be incarcerated for a lengthy period.
- (C) Whatever benefit society might receive from incapacitating D would be offset by the cost of incarcerating D past the point where he is likely to reoffend
- (D) A long sentence would decrease the likelihood that D could be rehabilitated and returned to society.

QUESTION 7.

Frank runs at Pamela with an axe held in a threatening manner. Pamela pulls out a gun and shoots Frank dead. The prosecutor is contemplating criminal charges against Pamela. Which of the following is correct?

- (A) Pamela would be justified if she reasonably believed that Frank was about to cause her serious bodily harm.
- (B) Pamela could be convicted of manslaughter ("homicide committed recklessly") if Frank was intending only to scare her, and a reasonable person would have recognized that he was only joking.
- (C) Pamela would be excused if her past experience with an abusive husband caused her to believe that her life was being threatened.
- (D) Pamela would be excused unless she was able to retreat with complete safety.

QUESTION 8.

Bob Brown owns a U-Stor-It facility. One of his customers, Tom Trillen, is a "fence"—he receives and then sells stolen property. Trillen stores the stolen property at Brown's facility. If Bob is charged with receiving stolen property, which of the following is correct?

- (A) Bob could be convicted (as an accomplice) if he is actually aware of the purpose for which Trillen uses Bob's rental space.
- (B) Bob could be convicted (as an accomplice) so long as he is aware of the risk that his space would be used to receive stolen property, and his continuing provision of space was a gross deviation from the standard of a law-abiding person.
- (C) Both (A) and (B) are correct.
- (D) Neither (A) nor (B) is correct.

QUESTION 9.

Quentin wanted to murder his wife Maude. He prepared her favorite dessert, ice cream, but added a fatal dose of poison. Quentin brought it to Maude's bedroom while she is in the bathroom. He hollered to her, "I brought you some ice cream! Don't let it melt!" Maude hurried to finish drying her hair. In her excitement, she dropped the hair dryer in the bathtub and was fatally electrocuted. If Quentin is prosecuted for murder, which of the following is true:

- (A) Quentin is guilty of murder so long as he had the purpose of killing his wife and he believed that death would result without further conduct on his part.
- (B) Quentin is guilty of murder if his conduct was a cause without which Maude's death would not have occurred.
- (C) Quentin is NOT guilty of murder if Maude's death resulted in part from her own conduct.
- (D) None of the above.

QUESTION 10.

George has sexual intercourse with Martha, a woman not his wife. Which of the following is correct?

- (A) George would be guilty of rape if Martha did not expressly consent, but did not resist because she was afraid of George;
- (B) George would be guilty of rape if Martha had passed out from alcohol consumption, and George was aware of the risk that she had passed out, but thought it more likely that she was just really tired;
- (C) George would be guilty of rape if Martha was below the age of 14;
- (D) All of the above.
- (E) None of the above.

QUESTION 11.

Huey is angry about the destruction of the Amazon rain forest. Some friends of his decide they should commit acts of "eco-terrorism" by spiking trees in order to inhibit logging. When they ask him to join them, Huey tells them he is too old to climb trees, but he gives them \$100. When a logger tries to cut down a tree that has been spiked by a member of the group, the logger's saw hits the spike and the logger suffers fatal injuries. Which of the following is correct?

- (A) Huey could not be an accomplice to negligent homicide if he gave money with the purpose of aiding his friends in tree spiking, but he was unaware of the risk that spiking could cause death.
- (B) Huey could be charged with manslaughter (homicide committed recklessly) if the eco-terrorists who placed the spike actually wanted to kill loggers, and such a

- result was a natural and probable consequence of the conspiracy in which Huey participated.
- (C) Huey could be convicted of malicious destruction of property, or of conspiracy to destroy property, but not both;
 - (D) All of the above;
 - (E) None of the above.

ESSAY QUESTION

QUESTION 1 (15 points)

Assume you are a clerk for a federal judge. She has spotted the following quotation in a law review and would like to know whether it reflects current thinking on the issue:

"[T]he battered woman syndrome defense ... institutionalizes within the criminal law negative stereotypes of women. . . . The battered woman syndrome defense rests on, and reaffirms this invidious understanding of women's incapacity for rational self-control."

Please describe the current state of the debate on this point.

=====END OF CLOSED BOOK SECTION=====

PART II: OPEN BOOK

QUESTION 2 (65 points)

On the night of Wednesday, March 28, 2004, Robert Bradley Joseph ("Joseph"), was socializing in his home with Jessica Martin ("Martin"), an eighteen year-old female, and Duane Lucas ("Lucas"). The three spent the evening drinking beer and listening to music until the early hours of the morning.¹ During the course of the evening, Martin rejected advances made by Joseph and she began flirting with Lucas. At approximately 4:00 a.m., Joseph became angry at the rejection and ordered Martin to leave the house. She left accompanied by Lucas. As the two departed, Joseph went out onto the porch of his home and fired two shots.² No one was injured by the shots.

Joseph became concerned about Martin and decided to look for her. He first drove to her grandmother's house where he encountered Martin's boyfriend, Richard Hackney ("Hackney"). The two men then drove to the home of the victim, Scott Light ("Light"). Light was not home, but his girlfriend explained that he had driven Martin and Lucas "down the road." Joseph then drove away from the house, but saw Light's vehicle approaching and turned around and followed Light into his driveway. Joseph and Hackney got out of their vehicle and Joseph questioned Light about Martin's whereabouts. Light first denied that he knew where Martin was, but then admitted that he had driven Martin and Lucas to the mouth of the hollow. Upon hearing this, Joseph returned to his truck and spun his tires in Light's driveway. Light yelled at him to stop the truck. Light then walked over to Joseph's truck, pulled the driver's door open, and the two men argued. During the argument, Light pointed his finger at Joseph and Joseph slapped his hand away. Light then struck or slapped him on the left side of the head. Joseph testified that, upon being slapped, he saw a "blue flash," and his hand landed on a .22 caliber pistol that was lying on the seat of his truck. Joseph grabbed the pistol and fired five shots into Light, mortally wounding him. Light fell to the ground. Then Joseph backed his vehicle over Light in his hasty attempt to leave the premises.

Joseph then drove to his parents' home where he called 911 and advised the operator that he had shot Light and requested assistance. He unloaded his pistol and waited at the kitchen table for the police to arrive.

Several years before the above described incident, in July 1992, Joseph was involved in a motorcycle accident.³ Among the serious injuries Joseph sustained in the accident was a crush injury to his left frontal skull.⁴

Your employer, the county prosecutor, is planning to charge Joseph with first degree

1. Joseph and Lucas had also shared a marijuana cigarette earlier in the evening. In addition, Joseph had been prescribed the drugs Paxil, Celexa, and Neurontin (a mood stabilizing medication).

2. Joseph claims the shots were fired from a "deer rifle," while Martin and Lucas described the weapon as a .22 caliber pistol.

3. Joseph was twenty-three years old at the time of the motorcycle accident.

4. Joseph also suffered a fractured spine, fractures of his left eye socket, nose and jaw, and injuries to his left shoulder and leg that resulted in atrophy and loss of use of his left arm and mild left leg impairment.

murder (MPC § 210.2(1)(a)). Please evaluate the likelihood that Joseph can be convicted of that charge.

QUESTION 3 (15 points)

How would your analysis of Question 2 have been different if the state in question had rejected pertinent provisions of the Model Penal Code?

EXAM NUMBER _____

MULTIPLE CHOICE ANSWER SHEET

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____

TEAR THIS OFF; PUT IT IN YOUR BLUEBOOK / SUBMIT IT WITH YOUR DISK!