

Exam # _____

Professor DeWolf
Summer 2010

Criminal Law
August 2, 2010

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**. After 90 minutes the proctor will collect the answer to Essay Question #1, and the multiple choice answer sheet. You will then receive Part 2 of the exam.

Part II is a modified OPEN BOOK exam. It will last **90 minutes**. You may use any notes you have made yourself, your textbook(s), 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 the recommended text and up to 100 pages photocopied from other commercial materials.

While waiting for the exam to begin, please read these instructions carefully and be sure that you are otherwise ready to begin.

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
	<u>Question 1: _____ 15 points</u>
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. Tear off the answer sheet on the last page and use it to record your answers. 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. Marvin shot at Quincy, intending to kill him. Instead, the bullet missed Quincy and struck Russell, causing him serious bodily injury. Which of the following is true?
 - (a) If Marvin is charged with attempted murder of Quincy, he would be entitled to acquittal if he genuinely believed that his use of deadly force was immediately necessary to prevent serious bodily injury to himself;
 - (b) Marvin could be convicted of attempted murder of Quincy, or of assault of Russell, but not both;
 - (c) Marvin would not be entitled to an acquittal of attempted murder based upon self-defense if his belief in the need for the use of deadly force was not reasonable under the circumstances;
 - (d) If Marvin honestly believed in the need for the use of deadly force against Quincy, he would be entitled to be acquitted of a charge of assault on Russell.

2. Sam was charged with violating a statute that states, "It is unlawful to pollute any navigable waterway." Which of the following is true?
 - (a) Sam could be convicted without any proof of mens rea;
 - (b) Sam would be entitled to an acquittal if he could show that he reasonably believed that his conduct was lawful;
 - (c) Sam could be held strictly liable if the offense was classified as a violation;
 - (d) Sam would be guilty if one of his employees intentionally polluted a navigable waterway, even if Sam was unaware of his actions.

3. Daniel's girlfriend Nancy had an epileptic seizure while she was in Daniel's dorm room at college. Daniel thought Nancy was just acting crazy and did nothing to help her or call for medical assistance. Nancy suffered serious bodily injury as a result. Could Daniel be convicted of a crime for his failure to summon medical assistance?
 - (a) No, because "girlfriend" is not a legal status
 - (b) No, if he reasonably believed that she was not in any real danger;
 - (c) Yes, if a reasonable person in his position would have summoned medical help;
 - (d) Yes, because of the seriousness of the injury.

FACT PATTERN FOR QUESTIONS 4 to 7

Burglary is defined as follows:

(1) *Burglary Defined.* A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to prosecution for burglary that the building or structure was abandoned.

(2) *Grading*. Burglary is a felony of the second degree if it is perpetrated in the dwelling of another at night, or if, in the course of committing the offense, the actor:

(a) purposely, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone;
or

(b) is armed with explosives or a deadly weapon.

Otherwise, burglary is a felony of the third degree.

Frank entered a warehouse for the purpose of stealing merchandise from the warehouse. He was surprised to find that someone was working late in the warehouse. He decided it was too dangerous and turned to run away. As he did so he discovered to his surprise that the coat he was wearing had a gun in an inside pocket. When he got to his car he was arrested.

4. Which of the following is true?

- (a) Frank could be convicted of burglary, but not second degree burglary, unless he knowingly or purposely carried a gun
- (b) Frank could be convicted of second degree burglary if he actually had a deadly weapon, regardless of his mens rea when he entered the building;
- (c) Frank could be convicted of second degree burglary if he was at least reckless with respect to the fact that he was carrying a gun;
- (d) Frank could not be convicted of second degree burglary if he neither inflicted bodily harm nor took anything of value.

5. Suppose for purposes of this question only that George had told Frank about the warehouse and how it could be entered without detection. Which of the following is true?

- (a) George could be convicted as an accomplice to third degree burglary, but not second degree burglary;
- (b) George could be convicted as an accomplice to burglary but only if he had the purpose of encouraging Frank to commit burglary;
- (c) George could be convicted of conspiracy to commit burglary, but not burglary;
- (d) George could be convicted of attempted burglary, but not burglary.

6. Suppose for purposes of this question only that Peter, the night watchman, heard Frank and started running after him, but slipped and hit his head causing serious bodily injury. If Frank were charged with second degree burglary based upon inflicting serious bodily injury, which of the following is true?

- (a) Frank could not be convicted because he did not inflict such injury or attempt to do so.
- (b) Frank could be convicted because he was in the course of committing a felony.
- (c) Frank could be convicted if the jury found that the result was not too remote or accidental to have a just bearing on the gravity of the offense.
- (d) None of the above.

FACTS FOR QUESTION 7 through 9

Maxine, aged 14, met Tom, aged 20, a college football star, at a fraternity party. Maxine suggested to Tom that they go to an unoccupied room and "fool around."

7. Suppose the two had sexual intercourse. If Tom is charged with "Corruption of Minors / Seduction" (a third degree felony), which of the following is true:

- (a) Tom would be guilty unless Maxine initiated the acts culminating in sexual intercourse;
- (b) Tom would be entitled to an acquittal if he could show that he asked her how old she was and she said she was 17;
- (c) Tom would be guilty if he was aware of the risk that she might be below the age of 16 and if his conduct was a gross deviation from the standard of a law-abiding person;
- (d) Maxine could be convicted as an accomplice if she knew that Tom was 20 years old and had the purpose of encouraging him to violate the law.

8. For purposes of this question only, assume that Tom attempted to have sexual intercourse with her but was physically incapable because he was intoxicated. Could he be convicted of attempted Corruption of Minors / Seduction (a third degree felony)?

- (a) No, if because of his intoxication he lacked the ability to determine her age;
- (b) No, unless he knew of her age and had the purpose of engaging in sex with an underage victim;
- (c) Yes, unless he reasonably believed that she was at least 17;
- (d) Yes, but only if his failure to determine her age constituted a gross deviation from the standard of a law-abiding person.

9. For purposes of this question only, assume that Maxine only wanted to "fool around," but Tom thought that she wanted to have sex. When Tom tried to take off her clothes, Maxine resisted, and slapped his hand, but when he persisted in his efforts Maxine stopped resisting him and went limp. Tom then proceeded to have intercourse with her and afterwards she began to cry. Maxine later said she was too frightened and the music was so loud she thought that no one would hear her if she screamed. Could Tom be convicted of Rape, a second degree felony?

- (a) Yes, if she did not actually consent to intercourse;
- (b) Yes, if Tom was reckless in not recognizing that she did not want to have sex;
- (c) No, if Tom didn't intend to have sexual intercourse against her will;
- (d) No, unless Tom compelled her to submit by force or by threat of imminent death, serious bodily injury.

10. Rhonda was charged with manslaughter for killing her boyfriend. If she claimed that she was afraid for her life because he repeatedly beat her, which of the following would be true?

- (a) Rhonda could only benefit from the law of self-defense if she can show that the threat to her was imminent;
- (b) To benefit from the law of self-defense, Rhonda would have to show that a person of reasonable firmness would have used the same degree of force
- (c) Rhonda would be entitled to an acquittal unless she was negligent in choosing to use deadly force.
- (d) None of the above.

ESSAY QUESTION 1 (15 points)

You are legislative counsel to Senator Kraft, who was recently elected. She has received a long letter from a law professor who proposes that the state enact a law that would make it an offense punishable by a \$250 fine if a person observes another person in danger, and that observer then fails to make reasonable efforts to notify law enforcement or another appropriate public agency. The letter concludes as follows:

Criminal laws are meant in part to decrease would-be criminals' appetite for illegal behavior, either by deterrence or by influencing their rational choice. Criminal laws may have little or no influence, however, on anything except intentionally committed crimes. . . . Likewise, widespread adoption of rescue and reporting laws may not significantly change the behavior of bystanders when another person is in distress. Studies indicate, however, that a "legal requirement of rescue would, in moments of hesitation, tip the balance toward the desired action." More importantly, such laws would "affect the way people perceive the legitimacy of the behavior in question."

Senator Kraft would like your comments. Please illuminate the issue for her.

END OF THE CLOSED BOOK PORTION OF THE EXAM

MAKE SURE YOU TURN IN THE MULTIPLE CHOICE ANSWER SHEET

MULTIPLE CHOICE ANSWER SHEET

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

TURN THIS IN TO THE PROCTOR AT THE CONCLUSION OF THE
CLOSED BOOK PORTION OF THE EXAM

OPEN BOOK PORTION OF EXAM

ESSAY QUESTION 2 (60 points)

Keshia Dixon lived with her boyfriend, Thomas Wright, and her two daughters. Wright regularly beat her and threatened her children. Wright wanted to obtain firearms for himself and an associate, but was unable to do so lawfully because he was a convicted felon. He therefore asked Dixon to go to a gun show and purchase a pistol for him. Dixon knew that he was planning on using the guns for an illegal activity, and said that she didn't want to help him. Wright, however, insisted. He gave her \$115 and accompanied her to a gun show on January 21, 2010. On the way to the gun show Wright told Dixon that she should use a different address in the course of filling out the necessary forms, and that she should deny that she was under indictment for a felony. Dixon knew that she in fact was under indictment for the felony of participating in a fraudulent check cashing scheme. Wright approached a table that had a .38 caliber pistol for sale. He indicated that he wanted it. Dixon then told the seller she wanted to purchase the gun, and filled out a form on which she listed a false address and checked the box that affirmed that she was not under indictment. The seller then took her money and gave her the pistol. On January 24, 2010, Wright again asked Dixon to purchase a .45 caliber pistol at another gun show and gave her \$125. Dixon then went by herself to the show and followed the same procedure to obtain the second pistol.

In March 2010 Dixon was indicted on two counts of violating Evergreen Penal Code § 123.45, which provides as follows:

It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to receive any firearm.

She was also charged with two counts of violating Evergreen Penal Code § 123.67, which provides as follows:

It shall be unlawful for any person in connection with the acquisition of any firearm from a licensed dealer to make any false or fictitious oral or written statement intended or likely to deceive such dealer with respect to any fact material to the lawfulness of the sale of such firearm.

Both crimes are graded as third degree felonies. Please analyze Dixon's potential criminal liability and any defense she might raise.

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?