

Exam # _____

Professor DeWolf
Spring 2011

Criminal Law
May 6, 2011

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.

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 2½ : 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!

MULTIPLE CHOICE (60 points)

1. Maxwell threw a silver hammer at his teacher. He missed, but he has been charged with aggravated assault, MPC § 211.1(B), which applies when one "attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon." Maxwell would be entitled to an acquittal if:

- (A) He did not know that his silver hammer was a deadly weapon
- (B) He reasonably believed his hammer was not a deadly weapon
- (C) Because of involuntary intoxication he was unable to control his conduct
- (D) All of the above
- (E) None of the above

2. Rose was charged with violating the following statute: "It is a misdemeanor to transport a child under the age of five unless such child is restrained in a child restraint system." Rose had taken Sarah, her neighbor's daughter, aged 4, to get ice cream. Sarah put on a seat belt in the back seat. A traffic officer pulled her over and determined that Sarah was only four. Which of the following would constitute a valid defense to the charge?

- (A) Rose honestly believed that a seat belt constituted a "child restraint system."
- (B) Rose honestly and reasonably believed that a seat belt constituted a "child restraint system."
- (C) When Rose asked how old Sarah was, her mother said "Five," and Rose reasonably believed her.
- (D) All of the above.
- (E) None of the above.

3. Barry borrowed Charley's car to go to the convenience store. When a police officer pulled him over, he opened the car trunk and a short-barreled shotgun was visible. Barry was charged with violating Penal Code § 123, which states, "No person shall possess a machine gun or short-barreled shotgun." Which of the following would be the defense?

- (A) Barry was not the legal owner of the car;
- (B) Barry had seen the shotgun in the trunk before, and knew that Charley kept it there, but was oblivious when he asked to borrow the car;
- (C) Barry knew that Charley owned a short-barreled shotgun, and that he kept it in the trunk, but was afraid that he would be seen by the neighbors if he removed it from the trunk.
- (D) Barry knew there was a shotgun in the trunk but believed that it had a normal barrel length.

4. Mike proposed to Bill that they purchase heroin (a controlled substance) and inject it. Bill responded that he didn't want to use the heroin, but he agreed to drive Mike to a dealer. If Bill were charged with attempting to purchase a controlled substance, and of conspiring to purchase a controlled substance, each of which is a third degree felony, which of the following is true?

- (A) Bill couldn't be convicted of attempting to purchase heroin unless Bill took a substantial step intended to culminate in the commission of the crime, even if Mike took such a step;
- (B) Bill couldn't be convicted of attempting to purchase heroin unless he actually aided Mike in attempting to obtain heroin;
- (C) Bill couldn't be convicted both of conspiring to purchase heroin and attempting to purchase heroin;
- (D) Bill couldn't be convicted of conspiring to purchase if Mike was only joking when he proposed purchasing heroin.

5. Linda was opposed to the use of animals in the testing of cosmetics. She lobbied her state and federal legislators to ban what she thought was the cruel treatment of animals. She joined an organization that issued a proclamation declaring the "civil rights of all sentient beings." Acme Cosmetics was known to be a company that used animals for testing its products. When Linda saw a vehicle that she knew from her research was used to deliver rabbits to the research facility, she impulsively slashed its tires. If Linda were charged with malicious destruction of property, her best defense would be:

- (A) Her passion for animals put her under duress;
- (B) She was temporarily insane because of her beliefs;
- (C) Her conduct was the lesser of evils;
- (D) Mistake of fact;
- (E) Mistake of law.

6. Becky went to a party at a fraternity house at Linden State College. While there Becky consumed several alcoholic drinks. Nelson noticed that she was tipsy and began making advances. After talking with her for a few minutes Nelson asked her if she had ever seen the view from the roof of the fraternity house. Becky said "No," and Nelson said, "C'mon, let's go!" He grabbed her by the hand and began pulling her upstairs. Becky didn't particularly want to go, but she went anyway. She was giggling and they had to squeeze past several other people. When they reached the roof of the fraternity house Nelson became more aggressive. Becky was afraid that Nelson would throw her off the roof if she didn't submit. Nelson proceeded to have intercourse with her. If Nelson is prosecuted for rape, which of the following is correct?

- (A) Nelson is guilty only if she submitted because he used force or the threat of force;
- (B) Nelson is guilty if her lack of resistance was a result of a level of intoxication of which he was aware;
- (C) Nelson is not guilty if he did not know that she was submitting because of her fear that he would ;
- (D) Nelson could introduce evidence of his own intoxication to negative the required mens rea for rape.

7. John was an amateur counterfeiter. He made forged driver's licenses for use by teenagers who wanted to obtain entrance to clubs that required patrons to be above the age of 21. John was approached by an undercover police informant, Cindy, who was 25, but appeared to be 16. She gave John a driver's license stating that she was 16, and asked him to make her a driver's license that would state that she was 21. John prepared one for her, and called her to schedule a delivery. Instead, he was arrested by two police officers. If John is charged with violating Penal Code § 789, which provides that it is a misdemeanor "to manufacture, sell, or deliver a forged, counterfeit, or fraudulently altered driver's license," which of the following is true?

- (A) John could use the defense of legal impossibility because Cindy was actually over the age of 21;
- (B) John could be convicted of attempting to violate Penal Code § 789, but not of actually violating it.
- (C) John could be convicted of attempting to violate Penal Code § 789, or of conspiring to violate Penal Code § 789, but not both.
- (D) John could not be convicted of conspiring to violate Penal Code § 789;

8. Harry ran a small donut shop. He was approached by Leonard, who claimed to be a "super-patriot" who wanted to use Harry's shop to store some materials for what Leonard described as "the coming Armageddon." Harry didn't know Leonard that well, but he knew that Leonard was armed and Harry was frightened. Harry consented and observed Leonard placing boxes in Harry's shop that Harry suspected were explosives. Leonard was later suspected of domestic terrorism, and surveillance led to the cache of explosives in Harry's shop. Harry was arrested and charged with Penal Code § 321, which makes it a third degree felony if the actor "knowingly possesses explosive materials." Which of the following is true?

- (A) Harry could be convicted of violating § 321 even if he did not actually observe explosives.
- (B) Harry could be convicted of violating § 321 if he had the purpose of helping Leonard store the boxes, even if he didn't know what was inside them.
- (C) Harry should be acquitted if Leonard lacked substantial capacity either to appreciate the wrongfulness of his conduct OR to conform his behavior to the requirements of law.
- (D) Harry could be acquitted only if Leonard lacked both the substantial capacity to appreciate the wrongfulness of his conduct AND to conform his behavior to the requirements of law.

9. Olivia was hiking in the woods when she was confronted by some bow hunters who had been drinking. They asked her to put on a "fashion show." Olivia refused. The hunters began to approach Olivia. Olivia had a .38 caliber revolver in her pocket, but she was also a very fast runner. The hunters did not have their bows ready and Olivia believed that if she took off running that they would be unable to catch her or shoot their bows at her. Olivia decided to stand her ground. When the hunters were within five feet she pulled out the gun and shot one of them, seriously wounding him. The others ran away. If Olivia was charged with assault and attempted murder, which of the following is true?

- (A) Olivia had a duty to retreat, if a reasonable person would believe that she could do so with complete safety;
- (B) Olivia had no duty to retreat if she genuinely and reasonably believed that she was being threatened with death, rape, or serious bodily harm;
- (C) Olivia would not be guilty of attempted murder if she genuinely believed that the use of deadly force was necessary, even if her belief was objectively unreasonable;
- (D) Olivia would not be guilty of attempted murder if at least one of the men approaching her actually had the purpose of committing rape.

10. Earnest ran a convenience store. Fred began purchasing large quantities of cold medicine that Earnest knew was a key ingredient in making methamphetamine. Earnest was later arrested for conspiring to manufacture and distribute methamphetamine. Records show that Fred had purchased \$2,000 worth of cold medicine in a three-month period. Which of the following is true?

- (A) Earnest could be convicted if a natural and probable consequence of his sale of cold medicine was the manufacture and distribution of methamphetamine;
- (B) Earnest could be convicted if he knew that the cold medicine was used to make methamphetamine;
- (C) Earnest could not be convicted if Fred turned out to be an undercover agent who never actually used the cold medicine to make methamphetamine;
- (D) None of the above.

11. Kenneth was a retired police officer. He was in a liquor store one day when two men in masks demanded that the clerk hand over all the cash in the cash register. One of the men had a knife and the other was unarmed. Kenneth recognized that he could with complete safety knock the knife out of the robber's hand and disarm him. Kenneth also was armed with a licensed concealed weapon. Kenneth was bitter about his experience in law enforcement and did nothing. After the clerk handed over the cash, the robber stabbed the clerk and ran out the door. Kenneth was later charged with violating newly enacted § 999 of the Penal Code that stated "A person who knows that another is exposed to grave physical harm shall, to the extent that the same care can be rendered without danger or peril to himself, or without interference with important duties owed to others, give reasonable assistance to the exposed person unless that assistance or care is being provided by others." If Kenneth were charged with violating § 999, which of the following is true?

- (A) Kenneth could not be convicted because he owed no legal duty to the victims;
- (B) Kenneth could not be convicted because he did not cause the harm to the victims;
- (C) Kenneth could be convicted if he was at least reckless in failing to help the victims;
- (D) Kenneth could be convicted but only if his purpose in failing to act was to inflict harm upon the victims.

12. Alice recently broke up with her boyfriend Quentin. Quentin was convinced that she was still in love with him and attempted to contact her. He parked his car outside Alice's workplace and on the street in front of her apartment building. Alice saw Quentin pacing in front of her workplace when she was there and in front of her residence when she went home. Alice was frightened. Quentin was charged with stalking, which is defined as when the stalker "intentionally or repeatedly harasses or repeatedly follows another person, and the person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances." Quentin's best defense would be:

- (A) The statute was so vague that a reasonable person would be unable to determine the boundary between lawful and unlawful conduct, even if Quentin actually knew that what he was doing was prohibited by the statute;
- (B) The statute was so vague that Quentin didn't know where the boundary was between lawful and unlawful conduct;
- (C) Quentin didn't have the purpose of causing fear;
- (D) Quentin didn't know that his behavior was causing fear.

ESSAY QUESTION 1 (15 points)

You are legislative counsel to Senator Silver, who was recently elected. He has been invited to appear at a group of physicians to address a bill in the legislature that would repeal the provision in the criminal code that makes it a crime to assist another in committing suicide. Apparently the physicians would like to know where he stands on the issue of "death with dignity." Please provide him with some background that will explain the issue to him.

END OF THE CLOSED BOOK PORTION OF THE EXAM

OPEN BOOK PORTION OF EXAM

ESSAY QUESTION 2 (60 points)

Angela Sprague was married to Duane Sprague for 23 years. At the beginning of their marriage they lived happily. Then Duane began encouraging Angela to seek employment at a massage parlor. When she refused, Duane yelled at her, threw items in the house, pushed Angela, and threw a chair at her back. On one occasion, he pushed her to the ground and put his knee on her throat until she passed out. When Angela came to, Duane took Angela to a massage parlor in an isolated area, dragged her out of the car, instructed her to get a job, and drove off. The marriage changed after this incident.

Duane was considerably larger than Angela. Over the next 23 years, Angela experienced physical, verbal, mental and sexual abuse by Duane. Duane eventually convinced Angela to work at a massage parlor. Later, Duane arranged for her to work as a topless dancer to "meet more clients," and then as a prostitute.

Angela hid her employment in the sex industry from her family and friends. Duane used this information to manipulate and blackmail Angela. He referred to Angela as "the f***ing bitch" and would beat her when she threatened to stop prostituting. He began gambling and used her prostitution money to pay gambling debts.

In 1993, the couple's son, Christopher was born. The family moved to Linden City, Evergreen. The police responded to multiple calls from the Spragues' home due to domestic violence, but Duane was never convicted because Angela refused to testify against him. Angela's sister, Donna Haggerty, saw Duane hit Angela twice in the chest with his elbow and once noticed bruises on Angela's arms. After Christopher was born, Angela and her husband lost two second-trimester babies. Angela believed both babies died because of her husband's sexual abuse while she was pregnant.

Duane continued to gamble. In 2009, he faced severe financial problems and began using online sites to prostitute his wife. In September 2010, Angela stopped working as a prostitute. Christopher was now 17 years old. As a child, Christopher witnessed his parents' fights and tried to stay out of the "crossfire."

After discussing divorce, the Spragues agreed concerning finances and child custody in September 2010. In the agreement, Duane was to have primary physical custody of Christopher, with Angela receiving five days of visitation per month; full ownership of the home; and a Honda Accord. Angela agreed to pay \$750 per month in child support and \$750 per month in spousal support. Angela remained the beneficiary of Duane's \$400,000 life insurance policy. Angela felt the agreement was unfair but she was desperate to obtain a divorce. She then moved to California.

Eventually, Angela decided to find an attorney and revise the marital settlement and custody arrangement. Angela decided to tell her family about her sex industry background so Duane could no longer blackmail her.

Angela returned to Linden City and obtained a temporary restraining order on December 7, 2010. The order prevented Duane from contacting Angela and Christopher, and gave Angela the right to occupy the family home and use the Honda until the next hearing on December 20, 2010. Angela asked her other sister, Karen Jachetta, to come to Linden City from a neighboring state to help her serve the order. Duane was then out of town, but was expected to return the next morning. Ms. Jachetta's car struck a bull moose on her way to Linden City where she was hospitalized. Ms. Jachetta brought a handgun belonging to their mother, Denise Johnson, and a shotgun belonging to her son, Dale Johnson, for protection. Mr. Johnson picked up the guns on his way to the hospital where he gave them to Angela. Angela asked Mr. Johnson to serve Duane with the temporary restraining order.

Angela, Mr. Johnson and Christopher returned to the family home. At around 2:00 A.M., Duane unexpectedly returned home, entering the living room and greeting Mr. Johnson and Christopher. Angela retreated to the kitchen. Her purse, which contained the handgun, was on the kitchen counter. Mr. Johnson tried to get Duane to go back outside. When he refused, Mr. Johnson served Duane with the temporary restraining order. Duane became angry, and turned toward the kitchen, making eye contact with Angela. Angela then yelled at Mr. Johnson and Christopher to leave. As the young men ran out the front door, Duane was heading toward the kitchen. The young men heard gunshots shortly after exiting the home. After a few minutes Angela exited the home and called 911. When paramedics arrived they were able to resuscitate Duane, but he now is in a permanent vegetative state.

You work for the office of the county prosecutor. Detectives believe that Angela's boyfriend, Brian Moore, had suggested to Angela a week before the shooting that if she killed Duane Sprague it would be considered self-defense, and she could then collect the insurance proceeds. Following the shooting Angela told detectives who came to the scene to investigate that when he was served with the restraining order she saw Duane's face turn bright red and she claims that "he looked at me as if he was going to kill me." She stated that Duane charged directly at her, called her names, and threatened to kill her. The detectives do not believe her account. They hope to get incriminating testimony from Brian Moore, but so far he is not talking.

Please prepare a memo analyzing the requirements for convicting Angela Sprague of crimes based upon MPC § 210.2; include any defenses she would likely 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?

MULTIPLE CHOICE ANSWER SHEET

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

11. _____

12. _____