

Exam # _____

Professor DeWolf
Fall 2011

Criminal Law
December 12, 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. 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 or the student tutor have distributed to you. **YOU MAY NOT** use any commercially printed outlines, hornbooks, treatises, articles, etc., except that you may use the textbook, the recommended hornbook, your notes, 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
	Question 1:	<u>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 (the hypothetical state of Evergreen) had rejected one or more features of the Model Penal Code.

GOOD LUCK! MERRY CHRISTMAS! HAPPY HOLIDAYS!

MULTIPLE CHOICE (60 points)

FACTS FOR QUESTIONS 1-4

Melanie was a 15-year-old who was attracted to Doug, an 18-year-old who attended the same school. Doug befriended Melanie, but was not interested in an exclusive relationship. Melanie told Doug that Melanie's stepfather, Joe, had emotionally and sexually abused her. Moreover, Melanie told Doug that Joe had repeatedly told Melanie that if she told anyone about the abuse, he would kill Melanie and her mother. In the course of her friendship with Doug, Melanie learned that Doug was an excellent marksman and that his uncle had been a sniper in the Marine Corps. Doug had told Melanie that he aspired to follow in his uncle's footsteps, and showed her a hunting rifle which he said could deliver a fatal "head shot" from a distance of 300 yards.

1. Assume (for purposes of this question only) that Doug proposed to Melanie that he use his skills as a sniper to kill Joe. Could Doug be convicted of solicitation to commit murder (murder being defined as committing criminal homicide purposely or knowingly)?

- (a) Yes, but only if Doug's proposal was made with the purpose of getting Melanie to agree with him that he should commit murder;
- (b) Yes, but only if Melanie agreed with Doug that he should commit the murder;
- (c) No, if Doug thought that killing Joe was necessary to prevent further abuse of Melanie;
- (d) No.

2. Assume (for purposes of this question only) that Doug told Melanie, "If you really think that Joe might kill you if he found out you told me about the abuse, I'd be willing to use my skills as a sniper to kill Joe." Melanie responded, "Wow. I can't believe you would do that for me." Could Melanie be convicted of solicitation to commit murder?

- (a) Yes, unless it was inherently unlikely that Doug would actually shoot Joe;
- (b) Yes, if Melanie's purpose was to encourage Doug to shoot Joe;
- (c) No, if Doug wasn't serious, but was just testing her;
- (d) No, unless Melanie's story about Joe's abuse was a lie.

3. Assume (for purposes of this question only) that Doug and Melanie were in the woods overlooking the place where Joe worked, and Melanie asked Doug to shoot Joe, because Melanie genuinely believed that if Doug didn't kill Joe, Joe was going to kill her. Would Melanie be guilty of soliciting murder?

- (a) Yes, if the threat to her life was not imminent;
- (b) Yes, if she had the purpose of having Doug kill Joe;
- (c) No, even if her belief, although genuine, was unreasonable;
- (d) No, but only if her belief was reasonable.

4. Assume (for purposes of this question only) that Doug had initially proposed confronting Joe with Doug's hunting rifle and telling him that he (Doug) would "take care of" Joe if anything happened to Melanie. Suppose (for purposes of this question only) that Doug and Melanie surprised Joe while Joe was fishing, and instead of just threatening Joe, Doug ordered Melanie to tie heavy weights to Joe's feet in preparation for throwing him in the lake where he would drown. If Melanie did as Doug asked her to do, because she was afraid of what Doug would do if she disobeyed, and Doug then threw Joe in the lake where he drowned, would she be guilty of murder?

- (a) No, if a person of reasonable firmness in her situation would have obeyed his order;
- (b) No, if Doug would have killed Joe regardless of what Melanie did;
- (c) Yes, if Melanie was negligent in putting herself in a situation where she would be subjected to duress;
- (d) Yes, because duress is not a defense to murder.

5. Betsy had an old beater of a car and couldn't afford to buy a new one. When the brakes began to show signs of wear, she asked her Uncle Fred to fix them. Uncle Fred at one time had been a professional mechanic, but he was getting on in years and hadn't worked on cars in a while. Uncle Fred told Betsy that if she got him the parts, he would do the labor for free. After the work was done, Betsy thanked Uncle Fred and drove off. A week later the brakes failed and the car struck another vehicle, causing serious bodily injury to one of the passengers. Can Betsy be convicted of vehicular assault, which is defined as "negligently causing serious bodily injury in the operation of a motor vehicle"?

- (a) No, because the failure of the car to stop was not the result of any voluntary action on her part;
- (b) No, unless she knew that the car had been negligently repaired;
- (c) Yes, if she was aware of a risk that the car would not stop, and her choice of Uncle Fred to perform the repairs was a gross deviation from the standard of a law-abiding person.
- (d) None of the above.

6. Mike liked vinyl records (LPs). He thought the sound was superior to digital recordings. He had a very extensive collection that included many albums not available on CD. Mike's friends asked if they could borrow some LPs, and after being assured that his friends would take proper care of his precious vinyl LPs, Mike agreed. Mike later learned that his friends used the vinyl LPs to create digital files and then sold them online. Mike asked a friend who worked in a law library about whether he could get into any trouble if he continued to loan records knowing the use to which they were being put. The law librarian found Penal Code § 9876, stating "It is a third degree felony to make copies of copyrighted material without the express permission of the copyright holder." However, the law librarian also told Mike that if he didn't personally profit from the copying, he wouldn't be guilty. Mike continued to loan his LPs, and was later charged with crimes based on § 9876. Which of the following is correct?

- (a) Mike could not be found guilty of conspiring to violate § 9876 if he reasonably believed that his conduct was legal;
- (b) Mike could not be found guilty of violating § 9876 unless he made copies of copyrighted material;
- (c) Mike could be found guilty of violating § 9876 if there was a high probability that loaning his LPs would result in a violation of §9876;
- (d) Mike could be found guilty of violating §9876 if he agreed with his friends that they should borrow his LPs, and the copying was a natural and probable consequence of that agreement.
- (e) None of the above.

7. Ann was fixing breakfast for her disabled sister, Caroline. Caroline has mental abilities similar to that of an 8-year-old, but her physical capacities are quite limited. She is confined to a wheelchair. Caroline can often be sweet, but she can also be quite willful. Ann prepared breakfast cereal for Caroline, but Caroline declared that it wasn't sweet enough and demanded the bowl of sugar. Ann told Caroline that she had to eat her breakfast. Crying, Caroline began to eat. Caroline wound up aspirating a bite of cereal and began to choke. Ann thought Caroline was pretending to be hurt and told her to behave. When Caroline continued to sputter, Ann realized that the problem was serious and called 911. The 911 operator gave Ann instructions as to what to do, but by the time help arrived Caroline had suffered bodily injury. Suppose Ann were charged with assault ("A person is guilty of assault if he attempts to cause or purposely, knowingly or recklessly causes bodily injury to another"). Could her failure to call 911 sooner be the basis for a conviction for assault?

- (a) Yes, if she was aware of a risk that her failure to help would result in bodily injury, and her failure to help was a gross deviation from the standard of a law-abiding person;
- (b) Yes, if a reasonable person in Ann's position would have called 911 sooner;
- (c) No, if calling 911 sooner would not have prevented the bodily injury;
- (d) No, because Ann did not owe a legal duty to take care of her sister.

8. Sam went to his favorite tavern and consumed enough alcohol to be legally intoxicated. When he went to the restroom at the tavern he saw Charlie, who had an affair with Delilah while Delilah was still married to Sam. Sam called Charlie several obscene names, and Charlie took a swing at Sam. Sam pulled out a knife and stabbed Charlie fatally. If Sam were charged with homicide, which of the following is correct?

- (a) If Sam is charged with murder, he could use evidence of his intoxication to show that he did not purposely or knowingly kill Charlie;
- (b) If Sam is charged with manslaughter, his intoxication would not be admissible to show his lack of awareness of the risk of killing Charlie;
- (c) If Sam was charged with murder, he could use evidence of Charlie's affair with Delilah to show that he suffered from extreme emotional disturbance;
- (d) All of the above;
- (e) None of the above.

9. Terry hired Wendy to help load a truck for interstate shipment. The cargo consisted of ten pallets (wooden platforms that can be picked up with a forklift). All ten pallets contained roofing shingles, but one of the pallets had 200 pounds of marijuana secreted inside it. Wendy knew that Terry often carried marijuana with him and knew that he supplemented his income as a trucker by selling small quantities of marijuana to his fellow truckers. After Wendy loaded the truck, Terry drove off. Terry was stopped by police officers, who discovered the 200 pounds of marijuana. Later Wendy was charged with violating Penal Code § 8765, which states, "It is a third degree felony to transport marijuana across state lines. It is a second degree felony to transport more than 100 pounds of marijuana across state lines." Wendy admitted that she believed that Terry was carrying marijuana in the cab of the truck, but vehemently denied any knowledge of the concealed 200-pound shipment. Which of the following is correct?

- (a) Wendy would not be guilty of the second degree felony unless she was at least reckless with respect to the amount of marijuana actually being transported;
- (b) Wendy would not be guilty of the second degree felony unless she thought there was a high probability that Terry was transporting more than 100 pounds of marijuana;
- (c) Wendy would not be guilty of the second degree felony unless she had the purpose of helping Terry transport more than 100 pounds of marijuana;
- (d) None of the above.

FACTS for QUESTIONS 10-12

Penal Code § 3456 provides, "It is a third degree felony to obstruct a law enforcement officer while such officer is engaged in investigating criminal activity." Horace's wife Grace grew marijuana in the basement because she found that smoking marijuana relieved the symptoms of her multiple sclerosis ("MS"). Penal Code § 6543 states, "It is a misdemeanor to grow or possess marijuana." A statewide initiative to permit use of marijuana for medical purposes had narrowly failed in the previous election. Jack, who lived next door, observed that the basement windows to Horace and Grace's house had been covered with opaque plastic and it appeared that some kind of "grow" operation was taking place. Horace knew that Jack was suspicious of what was taking place in Horace's basement, but he didn't know that Jack was an undercover law enforcement officer.

10. Suppose (for purposes of this question only) that Grace was arrested and charged with violating Penal Code § 6543. If she argued the defense of necessity, what would be the likely outcome?

- (a) The defense of necessity would be excluded as "collateral" to her criminal activity;
- (b) Grace would be convicted if she failed to establish that the harm of unrelieved symptoms of MS was greater than the harm of growing or possessing marijuana;
- (c) Grace would not be convicted unless her belief in the necessity of using marijuana was unreasonable;
- (d) Grace would not be convicted unless her belief in the necessity of using marijuana was reckless.

11. Suppose (for purposes of this question only) that Horace was charged with conspiring to violate Penal Code § 6543, and with violating §6543. Which of the following is correct?

- (a) Horace would be guilty of conspiring to violate § 6543 only if he and Grace had previously agreed that Grace should grow marijuana.
- (b) Horace would be guilty of violating §6543 if he aided, attempted to aid, or agreed to aid Grace in growing marijuana.
- (c) Horace could be convicted of violating §6543 or of conspiring to violate § 6543, but not both.
- (d) All of the above;
- (e) None of the above.

12. Suppose (for purposes of this question only) that one day Jack came to the front door of Horace and Grace's house in order to follow up on his suspicions regarding the "grow" operation. Jack knocked on the door and when Horace answered it Jack asked if he could borrow a large pot for canning peaches. Horace was afraid that if he invited Jack into the house Jack would detect the smell of marijuana, so Horace told Jack that all of his pots had been stolen, shut the door while Jack was in midsentence, and locked the door. If Horace was charged with violating § 3456 (obstructing a law enforcement officer), which of the following is correct?

- (a) Horace would be guilty of violating § 3456 if Horace was at least negligent in failing to recognize Jack as a law enforcement officer;
- (b) Horace would be guilty of violating §3456 if Horace was at least reckless in failing to recognize Jack as a law enforcement officer;
- (c) Horace would not be guilty of violating §3456 unless he knew that Horace was a law enforcement officer;
- (d) Horace would not be guilty of violating §3456 unless it was his purpose to obstruct a law enforcement officer in the performance of his duties.

ESSAY QUESTION 1 (15 points)

You are legislative counsel to Senator Douglas. A bill pending in the Evergreen state legislature would authorize juries to impose the death penalty upon a defendant convicted of the rape of a child below the age of 10, where the defendant had previously been convicted of at least two prior sexual assaults of a child below the age of 10. Senator Douglas would like your assessment of the pros and cons of such a proposal. Senator Douglas asks you to ignore the political repercussions of your recommendation; you are being asked only to come up with the most thoughtful analysis of both the advantages and disadvantages (from a public policy perspective and from the perspective of the requirements of justice) of such a proposal. Please provide the requested analysis.

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. _____

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10. _____

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12. _____

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)

On October 30, 2011, Lawrence Cramer was an involuntarily-committed psychiatric patient at Greystone Park Psychiatric Hospital. At approximately 11:00 a.m., staff member Abiodon Fisowie began to administer medication to the patients in the day room, some of whom had fallen asleep. Cramer became agitated, stating “[w]e’re patients here. And you shouldn’t f--- with us.” When Fisowie picked up a patient’s chart, Cramer mistakenly concluded that Fisowie was going to “write him up” for becoming agitated and using foul language a few minutes earlier. Cramer started banging on the window of the nurses’ station, which prompted several staff members to converge on him in order to restrain him.

Cramer continued to struggle and kick, but eventually three staff members were able to force him to the floor. While Cramer was on his back, with staff member Gene Max August kneeling beside him, Cramer kicked August in the chest with such force that August immediately lost consciousness. As August lay on the floor unconscious, Cramer stated, “[t]hat will teach you to f---with me.” Within a few minutes, August died. An autopsy determined that the cause of death was cardiac arrest, resulting from being kicked in the chest by Cramer.

Later that morning a Greystone psychiatrist, Dr. Savithri Kamakshi, conducted a psychiatric evaluation of Cramer. His report noted that Cramer was hospitalized for treatment of paranoid schizophrenia and was continuing to suffer from that disorder on October 30, 2011, but was experiencing no hallucinations at the time he attacked August. Kamakshi found Cramer “competent to proceed with any criminal proceedings that might ensue because he had the capacity to understand what had happened and what the proceedings were.”

You are an assistant district attorney, assigned to the Cramer case. Please evaluate the prospects for convicting Cramer of homicide under any of the following: MPC §210.2(1)(a), MPC § 210.3(1)(a), or MPC § 210.4(1). Include in your analysis any defenses that Cramer 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?