

Exam # \_\_\_\_\_

Professor DeWolf  
Fall 2013

Criminal Law  
December 14, 2013

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 you will be instructed to upload your answers to the Multiple Choice questions and Essay #1.

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. At the end of Part II you will upload your answers to Examssoft.

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:</u> | <u>15 points</u> |
| Part II (OPEN BOOK)  | Question 2:        | 60 points        |
|                      | Question 3:        | 15 points        |
|                      | <hr/> <hr/>        |                  |
|                      | TOTAL              | 150 points       |

The MODEL PENAL CODE applies to all multiple choice questions and Question 2.

(1) MULTIPLE CHOICE. Enter your answers to the multiple choice questions in Examssoft. 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 Linden) had rejected one or more features of the Model Penal Code.

GOOD LUCK! MERRY CHRISTMAS! HAPPY HOLIDAYS!

## MULTIPLE CHOICE (60 points)

1. Maxwell dropped off his six-year-old stepdaughter Tracie at school most days of the week. One day he was awakened by a plumbing problem in the basement and went down to investigate. After several hours of trying to solve the problem he had lost track of the time and didn't realize it was time to take Tracie to school. Tracie didn't realize that Maxwell was still home, and so in her panic she decided she would simply walk to school. Unfortunately she had to cross a very busy street, and while trying to do so she was struck by a passing truck and seriously injured. If Maxwell were charged with assault in the fourth degree, defined as "negligently causing bodily injury to a child or other dependent person," the most likely result would be:

- (a) Conviction, if he was negligent in failing to recognize that Tracie was in danger;
- (b) Conviction, because he had a duty to his stepdaughter to protect her from harm;
- (c) Acquittal, unless he was consciously aware of the risk of injury;
- (d) Acquittal, because he didn't cause the injury.

2. John took a trip to the local solid waste disposal site, which included a series of recycling bins. He had to pay for every pound that he put in the dump, so he wanted to get rid of as much as he could by using the recycling bins prior to entering the portion of the facility where he would be charged for disposal. John had a large black plastic bag that he could barely lift, and he threw it into the bin marked "cardboard." An attendant at the facility looked inside the bag and noticed that it contained mostly magazines and hollered at John, "This isn't cardboard!" Suppose John were charged with a violation of Penal Code § 1234, which states "It is a 3<sup>rd</sup> degree felony to place non-recyclable material into a recycling bin." Which of the following is true?

- (a) John could be convicted of attempting to violate § 1234 if he was aware of the risk that the material he placed in the container was non-recyclable;
- (b) John could be convicted of violating § 1234 unless he removed the bag from the bin;
- (c) John could not be convicted of an attempt to violate § 1234 if he did not have the purpose of placing non-recyclable material in a recycling bin;
- (d) John could not be convicted of attempting to violate § 1234 if he didn't know that the material inside was not cardboard.

3. Sally worked at a casino as a dealer. She heard rumors that one of her coworkers, Tom, sold methamphetamine. He invited her to dinner one evening and Sally accepted. After Tom picked her up from her apartment, he told her he needed to make a stop at a friend's house. When they pulled up to the house, Tom simply waited in his car while Bill came out from the house and approached the driver's window. Tom rolled down his window and he and Bill greeted each other. Tom then handed Bill a small plastic bag and Bill handed him folded bills with a \$20 bill on the outside. Sally was nervous but said nothing. On their way home from dinner, Tom again stopped in front of a nightclub. There was no parking at the curb, so Tom stopped in the right hand lane and put the transmission in Park. He said, "Sally, could you slip into the driver's seat, in case you have to move the car? I'll be back in just a minute." Sally nodded her head and slid over into the driver's seat. An undercover officer was waiting in the nightclub and after observing Tom sell 20 grams of methamphetamine, arrested him for violating Penal Code § 6464, which provides "It is a second degree felony to sell more than 10 grams of methamphetamine. Sally was also charged for violating Penal Code § 6464. Which of the following is true?"

- (a) Sally could be convicted if Sally was aware of a high probability that Tom was selling methamphetamine;
- (b) Sally could be convicted if it was her purpose to aid Tom in selling methamphetamine, even if she reasonably believed that Tom was selling less than 10 grams;
- (c) Sally could not be convicted if she thought Tom was selling methamphetamine but the substance turned out to be baking soda;
- (d) Sally could not be convicted if Tom was acquitted of violating § 6464.

4. Larry was appalled by the threat to the planet caused by global warming. Mega Industries was constructing a coal-fired power plant just outside the town where he was living. Larry decided that he should do something about the threat and when he saw a Mega Industries truck headed toward the construction site with materials loaded on it, he lay down on the road in front of the truck. The police were called and Larry was arrested for violating Penal Code § 1523, which provides, “A person is guilty of a misdemeanor if the person intentionally obstructs vehicular or pedestrian traffic without lawful authority.” If Larry asserted the defense of necessity, what result?

- (a) Larry would be convicted if the harm he caused was greater than the harm he sought to avoid ;
- (b) Larry would be convicted if he was negligent in bringing about the condition for which he claims the defense of necessity;
- (c) Larry would be acquitted unless he was reckless in bringing about the condition for which he claims the defense of necessity;
- (d) Larry would be acquitted if he sincerely believed that the harm he caused was less than the harm he sought to avoid, even if such belief was unreasonable.

5. Martha became infatuated with Paul, an unmarried politician whose views exactly coincided with her vision for a better world. She spent a lot of time thinking about how to introduce herself to Paul and convince him that they were soul-mates who were meant to be together. She knew that her obsession was not a particularly healthy one, but she couldn't shake the feeling that if he just heard her story he might give her a chance. Martha knew that Paul lived in a nice house in a local suburb, and that he usually dined alone. One night she made preparations to sneak into his house and surprise him with two glasses and a bottle of champagne, at which point she would make her pitch. She purchased the bottle of champagne, made sure it was properly chilled, brought two glasses, and drove to Paul's house. She snuck around the back, looked for Paul but didn't see him, found a sliding door but also found that it was locked. Martha decided she'd try some other time, and walked back to her car. In the meantime, a neighbor called 911 and the police showed up and arrested Martha for violating Penal Code § 9449, which provides, “A person is guilty of criminal trespass in the first degree, a misdemeanor, if he or she knowingly enters or remains unlawfully in a building.” Could Martha be convicted of attempting to violate Penal Code § 9449?

- (a) Yes, if her conduct was strongly corroborative of a purpose to enter Paul's house;
- (b) Yes, even if she actually believed that Paul would have been receptive to her if she had been given a chance to talk with him;
- (c) No, if she did not come within “dangerous proximity” of entering Paul's house;
- (d) No, because she had abandoned her attempt.

6. Roger had always been a difficult child. In adolescence he was diagnosed with bipolar disorder and was prescribed very strong psychoactive drugs. When Roger reached the age of 25, he stopped taking his medicine because he didn't like the way they made him feel. His mother finally reached a point of exasperation and told him to leave her house. He refused, so his mother called 911, but before the police arrived Roger fled. He stayed up for the next 72 hours. He became convinced that the local police department had been tapping his phone and that they were getting ready to arrest him. Roger didn't own a car so he rode his bicycle in the middle of the night over to his mother's house and snuck in. He found a spare set of keys to her car in a kitchen drawer, and drove off. He decided he should drive to the desert, 8 hours away, and hide. After an hour of driving he fell asleep and the car drifted off into oncoming traffic and crashed into another car, resulting in serious bodily injury to the occupants. If Roger were charged with aggravated assault ("recklessly causing serious bodily injury under circumstances manifesting extreme indifference to the value of human life"), he would most likely be:

- (a) Acquitted, if he suffered from a mental disease or defect;
- (b) Acquitted, if the act of falling asleep was not voluntary;
- (c) Convicted, if despite his mental illness he was able to control his behavior;
- (d) Convicted, if his conduct manifested extreme indifference to the value of human life.

7. Frederica wanted to get rid of her husband Steve. Her coworkers at the office have often talked about a bar in town that is frequented by members of organized crime. Her coworkers expressed surprise that police seemed to make no effort to interfere with their activities. Frederica decided to go to the bar to see if she can find someone to kill Steve. She sat down at a bar stool and ordered a beer. After 20 minutes she is approached by a middle-aged man who introduced himself as Harry and struck up a conversation with her. Frederica began to tell Harry about how unhappy she was in her marriage. Harry expressed sympathy and said that he would help her get rid of Steve. Harry was actually a lawyer who thought that Frederica was planning on divorcing Steve, and "getting rid of him" would be getting a favorable settlement in the divorce. Frederica thought that Harry was going to help her kill Steve. "So you'll help me do this, huh?" asked Frederica. "Yes," said Harry. "I will." If Frederica were charged with conspiracy to commit murder (a 1<sup>st</sup> degree felony), what result?

- (a) Acquitted, because there was never any meeting of the minds;
- (b) Acquitted, because Harry didn't think that he was agreeing to commit murder;
- (c) Convicted, because Frederica had the purpose of killing her husband;
- (d) Convicted, unless neither Frederica nor Harry committed an overt act in furtherance of the conspiracy.

8. Molly was a bus driver whose regular route took her through a pretty rough part of town. Many of the riders of her bus appeared to be intoxicated or displayed behavior that was offensive to other riders on the bus. One day Bob got onto the bus and took a seat a few rows up from the back of the bus. He was usually talkative, and Molly thought he was a sympathetic character because she thought Bob had a form of mental retardation that made him somewhat childlike. Unlike his usual talkative self, Bob didn't say anything. One of the passengers as she was getting off commented on Bob's atypical behavior. "I think there's something wrong with him," said the passenger. At first Molly didn't think anything of it, but soon thereafter she noticed that Bob didn't get off at his normal bus stop. At the end of the route he was the only one still on the bus, and Molly went to wake him up. She couldn't rouse him and called 911. By the time the paramedics reached him Bob had died of a stroke. A doctor later stated that if someone had called for help earlier they could have saved Bob's life. If Molly were charged with negligent homicide, what result?

- (a) Acquitted, because she did not do anything to cause his stroke;
- (b) Acquitted, because her behavior under the circumstances was reasonable;
- (c) Convicted, if she was aware of a substantial risk that Bob might need medical help and her failure to summon help was a gross deviation from the standard of a law-abiding person;
- (d) Convicted, because her conduct fell below that which a reasonably prudent person would have done in the same or similar circumstances.

9. Walter liked to drink at a local bar. He often drank more than was good for him, and occasionally the bartender had to call a cab to take Walter home. One evening Walter had had a lot to drink when the talk at the bar turned to politics. Walter expressed a rather critical view about Senator Smith who was up for re-election in their state. Leon, another customer who was a weightlifting champion, said, "Well, that's about the stupidest thing I've ever heard." Walter replied, "Oh, yeah? Senator Smith has said so many stupid things I've lost count." Leon made a fist, walked toward where Walter was sitting and said, "You yellow-bellied draft dodger, if you keep talking about Senator Smith that way I'll punch you in the mouth." Walter intended to continue his rambling political discussion, and in fear of a crippling blow from Leon, pulled out a gun and shot at Leon. Fortunately he missed, but Walter was arrested and charged with the attempted murder of Leon. What result?

- (a) Acquitted, if as a result of his intoxication he lost his temper;
- (b) Acquitted, if as a result of his intoxication he honestly (but unreasonably) believed that shooting Leon was necessary to avoid serious bodily injury;
- (c) Convicted, because Leon's threat could have been avoided by remaining silent;
- (d) Convicted, because intoxication is not a defense to general intent crimes.

10. For purposes of this question only, assume the same facts as in question #9, except that the bullet whizzed past Leon's ear and also narrowly missed Donna, who was sitting at a table thirty feet away. If Walter was charged with attempted murder of Donna, what result?

- (a) Acquitted, because Walter didn't intend to shoot Donna;
- (b) Acquitted, if an injury to Donna was not reasonably foreseeable;
- (c) Convicted, if Walter is guilty of attempted murder of Leon;
- (d) Convicted, but only if Walter is not convicted of attempting to murder Leon.

11. Penal Code § 8967 provides, “It is a third degree felony if a person, with the intent to deny access to the child by the child’s parent, the person takes, entices, retains, detains or conceals the child and in doing so causes the child to be removed from the state of usual residence.” Jason thought that his sister Barbara was a terrible parent and so he spent as much time with Barbara’s daughter Susan as he could. One day Jason showed up at Barbara’s house but Barbara was still asleep. Jason asked Susan if she wanted to go to McDonald’s for breakfast and Susan said “Sure!” The closest McDonald’s happened to be across the state line, but it was only 10 minutes from Barbara’s house. While at McDonald’s Jason’s phone rang and he could see it was Barbara calling. Jason ignored the phone. Then Barbara sent Jason a text message saying, “Do you have Susan? If you do, get her back here right now!” Jason read the text message but decided to ignore it. The police tracked down the cell phone signal and from Barbara’s description arrested Jason for violating Penal Code § 8967. Jason said he was unaware that he had traveled to a different state. What is the most likely result?

- (a) Convicted, so long as Jason’s intent was to keep Susan away from Barbara;
- (b) Convicted, because if he made a mistake concerning what state he was in it was a mistake of law;
- (c) Acquitted, unless Jason intended to take her to another state;
- (d) Acquitted, if Jason’s motivation was to spend more time with Susan, and he reasonably believed it was in her best interests.

12. Penal Code § 6889 states, “It is a third degree felony to discharge pollutants into a navigable waterway of the state.” Ben invited some guests to join him on a cruise around Acorn Lake on his yacht “Sequoia.” While Ben was at the wheel of the Sequoia, one of his guests went to use the head, and then flushed the toilet. Ben hadn’t had his yacht serviced in a while, and the holding tank that normally contained sewage had reached capacity. Once that happened the yacht would automatically discharge sewage from a discharge pipe below the waterline. A shore patrol officer observed the yacht discharging sewage and arrested Ben for violating § 6889. Ben was surprised to learn that Acorn Lake was actually considered a navigable waterway of the state. The most likely result for Ben would be:

- (a) Acquittal, if Ben wasn’t aware of a risk that Acorn Lake was a navigable waterway;
- (b) Acquittal, since Ben committed no voluntary act to discharge the sewage;
- (c) Conviction, so long as Ben was aware of a risk that the holding tank had reached capacity and he knew that when that happened it would discharge sewage;
- (d) Conviction, even if Ben reasonably believed that Acorn Lake was not a navigable waterway.

#### ESSAY QUESTION 1 (15 points)

You are legislative counsel to Senator Stephens. After a notorious case in your state, there is a bill pending in the Linden state legislature that would revise the criminal code to modify the retreat rule in effect in Linden (now based upon the Model Penal Code). The bill is commonly known as a “stand your ground” law. Senator Stephens would like your reflection on whether he should support or oppose the law. Please explain the issue to him and advise him on the reasons why thoughtful people might support or oppose such a law.

END OF THE CLOSED BOOK PORTION OF THE EXAM

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OPEN BOOK PORTION OF EXAM

ESSAY QUESTION 2 (60 points)

Around midnight one Friday in September 2013, Jesus Almaguer and his friend Albert Cota attended a party at a Springfield apartment shared by Jolene L., her former boyfriend Abram, and their children. When Almaguer and Cota arrived, Abram's father (Antonio Sr.) and brother (Antonio Jr.) were drinking, smoking marijuana, and socializing with other guests. Almaguer and Cota joined in the drinking, smoking marijuana, and socializing.

Later in the evening, Antonio Sr. and his sons were smoking on the balcony when Almaguer and Cota came out of the apartment and Cota urinated off the balcony. Abram verbally confronted Cota and cursed at him, and Almaguer said, "I wouldn't let him be talking \$!\$! like that to me." Abram swore at Almaguer, and Almaguer started walking toward him. Almaguer then punched Abram, and the two began to fight. Antonio Sr. attempted to separate them, and Cota removed his shirt, preparing to join the fight. Antonio Sr. told Almaguer to leave, and Almaguer reached for a handgun secured in his belt. Antonio Sr. knocked him to the ground. As the two wrestled, Antonio Jr. and Abram joined the fray, and Almaguer's gun went off, shooting Antonio Jr. Almaguer stood up and pointed the gun at Antonio Sr. and Abram, and Cota yelled, "[S]hoot him, shoot him," and, "Did we get him? Did you get him? Shoot again." However, no further shots were fired. Both Cota and Almaguer then fled to Almaguer's vehicle. As they drove away, Cota telephoned Jolene to say he was sorry and "it was not supposed to happen that way." Antonio Jr. died from the gunshot wound.

Police located and pursued a vehicle matching the description of the car driven by Cota and Almaguer, but it evaded them. Cota was arrested the next day, and a warrant was issued for Almaguer, who eventually was arrested. Both Cota and Almaguer have been charged with manslaughter, MPC § 210.3. You are Cota's defense attorney. Please assess the case against your client and any defenses that might be available to him based upon the above facts.

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?