

Exam # _____

Professor DeWolf
Fall 2015

Criminal Law
December 16, 2015

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 2½ :	15 points
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	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. George thought about robbing a convenience store. He went on line to find the location of the nearest convenience store and discovered there was a convenience store a mile away from his apartment, the Circle R Quikstop. He then typed in the search question, "What kind of security system does Circle R have?" When George went to the kitchen to make himself a sandwich, his roommate saw what was on George's computer screen and he called the police. The police then arrested George for attempted robbery. Can George be convicted?

- (a) Yes, if he intended to rob the convenience store;
- (b) Yes, but only if his internet search was a "reconnoitering of the place contemplated for the commission of the crime" and it was strongly corroborative of his criminal purpose;
- (c) No, because he didn't actually intend to rob the convenience store;
- (d) No, because his conduct merely constitutes an "overt act."

2. Mike was a security guard at Betty's department store. One of his assigned jobs was to help close the store, which included walking through the different sections of the store to make sure no one was still in the building when it was locked up. On Tuesday Steve was shopping at Betty's when he felt tired and short of breath and decided to sit in one of the recliners that was in the furniture section. Steve was actually suffering from a heart condition (of which he was unaware), and when he sat down he became unconscious. Mike was anxious to get to an office holiday party and didn't walk through the store at closing time. He locked it up and turned out the lights. Thirty minutes after everyone had gone, Steve woke up with chest pain and realized he was alone and in the dark. He struggled to find an exit but collapsed. The next morning he was found dead. Can Mike be convicted of negligent homicide?

- (a) Yes, if his failure to comply with his employer's policies constitutes negligence;
- (b) Yes, because his failure to perform his duties was both a but-for and a proximate cause of the death;
- (c) No, because he owed no duty to Steve;
- (d) No, because the death was too remote and accidental to have a just bearing on Mike's culpability.

3. Linda lived in a state that was considering legalizing medical and recreational use of marijuana. Linda joined a “cannabis club” that advocated the legalization of marijuana for medical and recreational use. The monthly club meetings consisted of the discussion of articles about how to draft citizen initiatives and tips on indoor gardening. Linda suspected that many of the members of the club were themselves marijuana users, although it was rare for someone actually to admit personal use. After attending meetings for a year Linda was approached by Melvin, one of the club members and told that it was time for her to begin “helping the cause” – which Melvin explained meant that Linda should help bring back from Canada packages of marijuana. Linda was afraid that if she refused, bad things would happen to her. Two months later Melvin arranged for her to pick up a suitcase at a motel in Nelson, British Columbia and later deliver it to Melvin in the U.S. Linda did so, but after crossing the border she was arrested for possession of marijuana with intent to distribute. If Linda asserts the defense of duress, what is the likely result?

- (a) Conviction, because Linda was negligent in putting herself in a position where she would be subjected to duress;
- (b) Conviction, if Melvin didn’t threaten Linda with unlawful force;
- (c) Acquittal, if a person of reasonable firmness would have been unable to resist Melvin’s demand;
- (d) Acquittal, unless Linda was reckless in putting herself in a position where she would be subject to duress.

4. Peter and Stephanie were college students who got drunk at a fraternity party. Peter asked Stephanie if she would like to come to his room to watch a movie. Stephanie was woozy and really wanted to find a place to lie down, so she agreed. Peter helped Stephanie climb the stairs up to his room and turned on the television. After he found a channel with a movie he sat down on the couch next to Stephanie and put his arm around her. Stephanie had her eyes closed and did not resist. Peter began fondling Stephanie but she pushed his hand away. Peter waited a while and then began to fondle her again. Stephanie said, “No, not now.” Peter waited a while longer and Stephanie began snoring softly. Peter then slid his hand under her skirt and underpants, touching her genital area. He waited for a reaction but there was none. Peter then moved and slid Stephanie down so that she was lying down on the couch. Peter carefully removed her skirt and underpants, took off his pants, and proceeded to penetrate her. Stephanie immediately woke up and slapped him, put her clothes back on and ran out of the room crying. Peter claims he thought Stephanie was consenting to sex once he put his hand on her genitals. If Peter is charged with rape, what result?

- (a) Conviction, if Stephanie was unconscious when the sexual act took place;
- (b) Conviction, but only if Peter knew that Stephanie was unconscious when the sexual act took place;
- (c) Acquittal, unless Peter ignored a conscious risk that Stephanie was unconscious;
- (d) Acquittal, because Peter did not use force or coercion to engage in sex.

5. Brian lived in a housing development that was very close to a high-voltage electrical transmission line. Brian had been reading articles about the dangers from such lines. He actually took a fluorescent bulb and stood underneath the lines and saw a faint glow in the bulb. That really scared him. Brian began a campaign to force the electric company to move the lines, lower the voltage in the lines, or pay for the residents of his housing development to move away from the lines. Brian became increasingly frustrated when his efforts were rejected by the electric company and no legislator or attorney was willing to take up his cause. Brian decided he would lie down in the parking spot reserved for the CEO of the electric company. After trying to persuade him to move, the electric company finally had him arrested for trespassing. If Brian asserted the defense of necessity, what result?

- (a) Conviction, unless Brian was in fact facing a harm that was greater than the harm created by his trespass;
- (b) Conviction, because Brian had other avenues to advocate his position;
- (c) Acquittal, if Brian genuinely believed the harm he was seeking to avoid was greater than the one caused by his trespass;
- (d) Acquittal, but only if the CEO had actual authority to enact the remedies that Brian was seeking.

6. Stanley Stone was obsessed with Ruth Ripley, a high school classmate who had become a successful actress. Ruth tried to be nice to Stanley, but at a certain point she became scared of him. She had her lawyer draw up a protective order and the lawyer convinced the judge to sign it. The protective order was served on Stanley. The protective order said, "Stanley Stone is hereby prohibited from approaching within 100 feet of Ruth Ripley's residence or place of work." Stanley read the protective order and realized he didn't even know where Ruth lived. He remembered seeing a profile of her in a magazine showing her standing on her front lawn with her home in the background. Stanley began driving around looking for Ruth's house. He drove at about 10 mph through a number of residential neighborhoods looking for her. Ruth recognized his car and called the police. When the police arrested him, Stanley claimed he didn't even know he was passing by her house, but he was prosecuted for violating Penal Code § 5432, which provides, "One commits a felony if he or she intentionally or knowingly disobeys a valid court order." Stanley would likely be:

- (a) Convicted, because Stanley was making a mistake of law;
- (b) Convicted, if a reasonable person would have known that he was in violation of the protective order;
- (c) Acquitted, unless he was negligent in failing to recognize that he was violating the court order;
- (d) Acquitted, if the jury believed he actually didn't know he was near her residence.

7. Mabel had been a lifelong alcoholic. By the time she was in her sixties she had suffered significant brain damage because of her heavy drinking. She lived alone in a trailer in the countryside. In her earlier years she would drink from the time she got up until she fell into a drunken stupor at night. However, more recently she drank coffee in the morning and didn't start drinking alcohol until the afternoon. One morning a group of missionaries came to call on her when she was washing dishes. Hardly anyone ever came to see her, so she assumed that if someone was at her door they posed a threat to her safety. The missionaries knocked on the trailer door and Mabel came out swinging with a knife. She cut one of the missionaries and was subsequently charged with aggravated assault (recklessly causing serious bodily injury). Her prosecution would likely result in

- (a) Conviction, unless as a result of mental disease or defect, she was unable to appreciate the wrongfulness of her conduct;
- (b) Conviction, unless she genuinely believed that her use of deadly force was immediately necessary to prevent death, serious bodily harm, rape or kidnapping;
- (c) Acquittal, if she reasonably believed that deadly force was immediately necessary to prevent death, serious bodily harm, rape or kidnapping;
- (d) Acquittal, if as a result of her blood alcohol content she lacked substantial capacity to conform her behavior to the requirements of law.

8. Chelsea and Bob made a trip to the local waste disposal site with a truck full of construction debris. As she approached the site Chelsea saw the newly posted fees for dumping garbage and realized that she didn't have enough money to pay for what she had to dump. She then saw a nearby recycling center and thought she might be able to get rid of some of the heavier items and still be able to afford to dump the rest as garbage. She drove up to several recycling bins. One was marked "Aluminum" and another was marked "ferrous metal" (iron). Chelsea asked Bob to help her remove a garbage can full of debris. She told Bob to help her dump it in the "ferrous metal" container. Bob asked her, "Isn't this full of roofing shingles?" Chelsea told Bob, "Shut up and help me." Bob helped her lift the garbage can and throw it and its contents into the ferrous metal container. An employee of the recycling center saw this on a video monitor and summoned the police. If Chelsea and Bob were charged with violating Penal Code § 1234, which states "It is a gross misdemeanor to deposit non-recyclable material into a recycling container," the likely result will be:

- (a) Chelsea will be convicted, but only if she was aware of a risk that she was depositing non-recyclable material into a recycling container;
- (b) Bob will be convicted, if his purpose was to help Chelsea, even if he was unaware of a risk that roofing shingles were not recyclable material;
- (c) Bob will be acquitted if there was no meeting of the minds between Chelsea and Bob;
- (d) Chelsea will be acquitted if a reasonable person would have believed that roofing shingles were recyclable material.

9. Adam worked in a high-end electronics store. He sold television sets and expensive audio equipment. In anticipation of the holiday season, the store had a special promotion through December 15 that offered TV sets for a 50% discount. Adam ordinarily would be entitled to an employee discount of 30%, but he really wanted a new big-screen TV. Unfortunately, he didn't have enough credit left on his credit card to buy the TV that he wanted. On December 17 he got a letter from his credit card company informing him that as a result of reviewing his credit history they were increasing his credit limit by \$1,000. Adam then decided he would ring up the sale under the expired 50% discount. The sale went through and Adam took home his TV. After auditing the account, his employer discovered what he had done. However, unbeknownst to Adam, the employer had decided to extend the 50% off sale until December 20. If Adam were charged with attempting to defraud his employer, is it likely he would be convicted?

- (a) Yes, because if the circumstances were as he believed them to be, he would have been committing fraud;
- (b) Yes, because his conduct amounted to factual rather than legal impossibility;
- (c) No, because his conduct constituted legal impossibility;
- (d) No, because his conduct would be considered true legal impossibility.

10. Walter had been through a bitter divorce with his ex-wife, Jill. The marriage had resulted in the birth of a daughter, Amy. Amy is now 8 years old. Under their divorce decree, Walter was granted visitation rights to Amy every other Saturday. He could pick her up on Saturday morning but had to return her by Saturday at 5 pm. Walter planned to pick Amy up at Jill's house, pursuant to the divorce decree, but then drive to another state where Walter had access to a friend's lake cabin and could live "off the grid." Walter had enough food and other provisions at the cabin to stay for several months. Pursuant to his plan, Walter picked Amy up on Saturday morning and told her they were going to a lake cabin. Amy was delighted. Walter drove to the cabin and they spent the afternoon paddling a canoe. Walter told Amy that his car wouldn't start and they'd have to spend the night at the cabin, and Amy seemed happy. Just then Walter's cell phone went off and it was a text message from Jill reminding him he would have to be back at 5 pm. Walter realized that there would be data from the cell company that could track him to the Lake Cabin, and so he decided to abandon his plan. Walter returned Amy to Jill at 5 pm. If Walter were charged with attempted interference with custody ("A person commits an offense if he knowingly or recklessly takes or entices any child under the age of 18 from the custody of its parent, guardian or other lawful custodian, when he has no privilege to do so"), what is the likely result?

- (a) Conviction, since Walter had already committed a substantial step;
- (b) Conviction, but only if Walter was dangerously close to completing the crime;
- (c) Acquitted, because Walter abandoned his attempt to commit the crime;
- (d) Acquitted, because he did not actually interfere with Jill's custody.

11. Bill and Charles agreed to engage in a drag race. They drove their cars to what they thought was a deserted 2-lane highway and had their friend Tim flash his cell phone to signal the start of the race. Whoever got arrived first past the large billboard a mile and a half down the road would be declared the winner. Bill and Charles agreed that whoever won the race would have to pay the other one \$100. The cars were side by side when the race began. As the cars reached 80 mph an off-road vehicle approached the highway from a side road. Bill spotted the off-road vehicle and was afraid it might pull in front of him, resulting in a collision. He applied his brakes, causing the vehicle to lose control and he ran off the highway and struck a tree. Bill was seriously injured. Could Charles be convicted of aggravated assault (“recklessly causing serious bodily injury”)?

- (a) No, because Bill caused his own injury;
- (b) No, because Charles did not have the purpose of causing serious bodily injury;
- (c) Yes, if he was aware of a risk that someone might be seriously injured and his choice to engage in the drag race was a gross deviation from the standard of a law-abiding person;
- (d) Yes, because serious bodily injury was a natural and probable consequence of the drag race.

12. Assume the same facts as the previous question. Could Tim be convicted of aggravated assault?

- (a) Yes, if he intended to facilitate the drag race, even if he was only negligent with respect to the injury;
- (b) Yes, unless he was unaware of the risk that serious bodily injury might result;
- (c) No, if he reasonably believed that the highway was deserted;
- (d) No, if he was only a minor participant and did not directly cause serious bodily harm

ESSAY QUESTION 1 (15 points)

You are legislative counsel to Senator Brown. Senator Brown was surprised to learn that the criminal code in her state still included the provisions of the Model Penal Code test for the insanity defense. Senator Brown learned in law school that some scholars were critical of the Model Penal Code test. Please provide a description of the reasons for the way the MPC test is formulated and the arguments for applying a different standard.

END OF THE CLOSED BOOK PORTION OF THE EXAM

OPEN BOOK PORTION OF EXAM

ESSAY QUESTION 2 (60 points)

Louis Milton was released from prison after serving a 7-year sentence for armed robbery. After a long period of unemployment Milton was able to find employment as a custodian at a nearby office building. Milton did not have access to the offices themselves, but his job consisted of entering the building at night and cleaning the restrooms and common areas in the office building. Milton had been working there for six months when he was approached by one of the tenants, Earnest, who rented space on the top floor, the 4th floor. Earnest initially appeared simply to befriend Milton and their initial conversations centered around sports and automobiles. Two weeks later Milton received a phone call from Earnest on one of his days off. Earnest invited Milton to have coffee with him, and Milton accepted. Earnest told Milton that he was behind in his rent and was being pressured by the building owner to either get current on the rent or else he would be evicted. Milton wasn't exactly sure what Earnest did with the space he rented in the office building. Earnest told him that he had an "import-export" business that included expensive computer equipment. Earnest told him that he (Earnest) knew a lot about electrical power, and that the building wasn't up to code. Earnest told Milton, "It would be real easy for the electrical circuits to overload and start a fire." Earnest further told Milton that he (Earnest) had an insurance policy that would pay damages in the event that the contents of his rental space was damaged in a fire.

Earnest asked Milton if he could help him out. Milton said, "What do you mean?" Earnest then said, "Well, if I'm out of town when a fire broke out, it would be a lot easier for me to avoid suspicion by the police." Milton said, "So what do you want me to do?" Earnest said, "Well, actually, you don't have to *do* anything. I know you usually work nights. I'm going to arrange to be out of town, and I have my stuff on a timer. It's going to overload the circuits and cause a fire, but I want you to be someplace else so that by the time you get to the fire it's caused enough damage so that I can collect on the insurance proceeds." Milton said, "I don't know; I really have a good thing going and I don't want to go back to prison." Earnest replied, "Oh, don't worry. You won't be involved. I just don't want you to mess up my plans." Milton said, "So, what exactly do you want me to do – or not do?" Earnest said, "Okay, I've got it scheduled for July 13, at 2 a.m. You should be on the bottom floor working on vacuuming the floors. You won't smell smoke or anything as long as you stay down there. After 2:30 a.m. we're good. I don't care what happens after that. Oh, and when I get my money I'll be sure I remember you."

Milton wasn't sure what he should do. He thought about going to the police and telling them what Earnest had proposed, but he also wondered whether Earnest's "import-export" business included ties to people who would not take kindly to his assisting the police.

On July 13 at 2 a.m. Milton was vacuuming the first floor lobby. He didn't notice anything until 2:20 a.m. when there was the sound of fire trucks and the fire department arrived at the building and put the fire out. The police investigated the fire and arrested Earnest for arson. Earnest told the police about his conversations with Milton.

You work in the prosecutor's office. Please prepare a memo analyzing whether, assuming the jury heard the evidence described above, Milton could be convicted of any crime based upon arson, MPC § 220.1(1).

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?