

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

Professor DeWolf  
Spring 2025Criminal Law  
April 28, 2025

## FINAL EXAM

*Instructions*

DO NOT GO BEYOND THIS PAGE UNTIL YOU ARE TOLD TO BEGIN.

THIS EXAM WILL LAST 3 HOURS. Except for the 12-page supplement previously distributed, and any notes you have made on those 12 pages, the exam is CLOSED BOOK.

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 you should devote to completing each section. The division is as follows:

MULTIPLE CHOICE:	60 points
ESSAYS      Question 1:	<u>15 points</u>
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. 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 asks for your reflection on a question involving some (controversial) policy aspect of criminal law. You may express an opinion regarding the proper resolution of that issue, but be sure to acknowledge competing policy arguments. Question 2 will ask you to assess the basis for a criminal conviction under the Model Penal Code given a hypothetical set of facts. Question 2½ asks you to describe how your analysis of criminal liability in Question 2 would change if the jurisdiction in which the hypothetical arose (the hypothetical state of Everglade) had rejected one or more features of the Model Penal Code.

GOOD LUCK! ENJOY THE SUMMER!

## MULTIPLE CHOICE (60 points)

(Assume that all facts take place in the State of Everglade, which has adopted all provisions of the Model Penal Code)

1. Morris had lived with his girlfriend Tonya and her six-year-old son Grant for three months. Morris had observed Tonya beat Grant rather severely, but did not feel it was his place to interfere. One day Tonya struck Grant with a frying pan and rendered him unconscious. Morris told Tonya she should take Grant to the emergency room, but she refused. As a result of a delay in medical treatment, Grant suffered permanent brain injury.

Morris was charged with abuse or neglect of a child. Previous cases in the State of Everglade had held that a live-in boyfriend who was not legally related to the child did not owe a legal duty to a child for purposes of a statute prohibiting child abuse. Could the Everglade Supreme Court overrule the previous cases and find that what Morris did (or failed to do) was properly subject to prosecution for child abuse or neglect?

- (A) Yes, so long as Morris was unaware of the previous interpretation;
- (B) Yes, if the rule was applied prospectively;
- (C) No, because it would violate the due process clause;
- (D) No, because it would violate the rule of lenity.

2. Jennifer's husband Tom was very abusive, and threatened to kill her many times. One night Jennifer ran to her neighbor's house in the middle of the night, screaming that she had done something terrible to Tom. When the police arrived, they discovered Tom dead, with a single bullet wound to his head. When they questioned Jennifer, she claimed she was having a nightmare and in her nightmare there were zombies who were coming after her. She woke up to find a gun in her hand, and then she went screaming to her neighbor. If Jennifer is charged with murder, assuming the jury believed her testimony, which of the following would be a proper result?

- (A) Jennifer would be acquitted based on a lack of substantial capacity to appreciate the wrongfulness of her conduct;
- (B) Jennifer would be acquitted because her conduct wasn't voluntary;
- (C) Jennifer would be convicted, unless she could show that she believed that killing Tom was immediately necessary to protect herself;
- (D) Jennifer would be convicted, unless she argued that killing Tom was the lesser of evils.

3. Mike drove an old car that needed a lot of repairs, but he was trying to save money, so he decided to wait to get the repair work done. On a very cold night he was driving on a deserted country road when the temperature gauge began to report that the car was overheating, and when he pulled over to see what was wrong he saw steam coming out of the engine. When he tried to start the car up again it made loud noises and simply stopped. There was a driveway that looked like it led to an expensive house, and Mike thought he could ask the owners for help. After walking about a quarter mile, Mike came to a gate that said "No Trespassing. This means you. Violators will be reported to the police." Believing that if he did not proceed he might freeze to death, Mike climbed over the gate and kept walking. Alarms then sounded and the police showed up and arrested Mike for trespassing, which is defined as

“knowingly entering or remaining in any place as to which notice against trespass is given.” It turns out that Mike had blankets in the car. If Mike pled the defense of necessity, what is the likely outcome?

- (A) Mike would be convicted, because the alleged necessity arose through his own fault;
- (B) Mike would be convicted, if trespassing was not immediately necessary to prevent him from freezing to death;
- (C) Mike would be acquitted, even if he was negligent in bringing about the need to trespass;
- (D) Mike would be acquitted, unless he was reckless in bringing about the need to trespass.

4. Sharon was the skipper on a sailboat that was equipped for sailing at night. On a beautiful night on the bay she was on deck looking up at the stars when she heard the sound of an engine nearby. It turned out that a rather boisterous crowd was partying on what looked like an overcrowded fishing boat. Sharon’s sailboat was well equipped with navigational lights, and she assumed that the fishing boat was being operated by someone aware of the rules of navigation, which provide that the duty of avoiding a collision rests on a motorboat rather than a sailboat, which has less maneuverability. Sharon saw the other boat approaching and grew more apprehensive, but believed that the best thing was to stay the course. Unfortunately the other boat crashed into her boat, and the other boat began to take on water and sink. Sharon was alarmed, but was worried that the people on the other boat were untrustworthy and so she continued on her way. If the passengers on the fishing boat suffered injury from the collision, could Sharon be charged with failing to help them?

- (A) No, because the collision was not her fault;
- (B) No, because she owed no duty to rescue them;
- (C) Yes, if she had the means to summon help and failed to do so;
- (D) Yes, but only if the State of Everglade has adopted a statute imposing a duty to rescue.

5. Everglade statute § 789 provides, “It is a misdemeanor to offer for sale any food item that has been treated with chemicals that have been identified by the Department of Food Safety as creating a risk of cancer.” George operates a grocery store that purchases food items from a large multistate wholesale business. George heard that there were problems with some meat containing “malaprop,” a food preservative, so he asked the wholesaler, who assured him that the meat was okay. In fact, inspectors discovered that some of the meat products George is selling contain “malaprop,” which was listed on the website of the Department of Food Safety as a chemical that creates a risk of cancer. George has been charged with violating § 789. What is the likely outcome?

- (A) George would be acquitted if he did not know that the meat he sold contained malaprop;
- (B) George would be acquitted if he did not know that malaprop was listed as a forbidden chemical on the Department of Food Safety website;
- (C) George would be convicted if he was reckless in relying on the wholesaler’s assurances;
- (D) George would be convicted because food safety falls within a category of strict liability.

## FACT PATTERN FOR QUESTIONS 6-8

Luke and Margaret were college students at Everglade State College. Luke invited Margaret to attend a fraternity party where they both expected that lots of alcohol would be consumed. Luke (aged 20) thought that Margaret was 18 years old, because she was attending college. It turns out that Margaret was only 15 years old, although she looked much older. Both parties consumed a lot of alcohol during the evening. When a bartender asked Margaret how old she was, she laughed and replied “25.”

Everglade Statute § 213.3, Corruption of Minors, provides: “A male who has sexual intercourse with a female not his wife is guilty of an offense if the other person is less than 16 years old and the actor is at least 4 years older than the other person. It is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the child to be above the critical age.”

6. For purposes of this question only, assume that Luke began fondling Margaret and tried to have sex with her, but she resisted. If Luke were charged with attempted Corruption of Minors, what result?

- (A) Luke would be acquitted if Margaret looked at least 17 years old;
- (B) Luke would be acquitted even if he was reckless regarding her age;
- (C) Luke could be convicted if he was negligent in failing to determine how old she was;
- (D) Luke could be convicted unless his intoxication prevented him from recognizing the risk that she was only 15.

7. For purposes of this question only, assume that Margaret didn’t want to have intercourse, but Luke was persistent, and because Margaret was slightly tipsy because of the alcohol she had consumed, she acquiesced. If Luke were charged with violating Everglade Statute § 213.3, what result?

- (A) Conviction, because Margaret didn’t affirmatively consent;
- (B) Conviction, if Luke was reckless in failing to ascertain her age;
- (C) Acquittal, if Luke reasonably believed that she consented to intercourse;
- (D) Acquittal, if Luke did not use force or the threat of force.

8. Assume for purposes of this question only that Luke began fondling Margaret and told her that she should have sex with him. Margaret resisted and pushed him away. Assume further that Luke were charged with attempted Corruption of Minors under § 213.3, but he claimed that he was intoxicated at the time. What bearing does his intoxication have on the outcome of the case?

- (A) The evidence would be admissible to show whether or not he had the purpose of engaging in sexual intercourse with Margaret;
- (B) The evidence would be admissible to show whether or not he was aware of the risk that she might be younger than she appeared;
- (C) The evidence would be inadmissible but only if Luke voluntarily consumed the alcohol;

- (D) The evidence would be inadmissible even if the consumption of alcohol was involuntary.

### FACT PATTERN FOR QUESTIONS 9-11

Andrew proposed to Brendan that they rob a liquor store. Andrew identified A1 Liquors because he heard the owner of the store say he had a gun but he kept the gun unloaded so that he could use it to scare potential robbers but would not risk shooting and killing someone. Andrew said he would drive the getaway car while Brendan threatened the owner with a gun and obtained the money. Andrew asked Brendan to use Brendan's gun, but to keep it unloaded so that no one got hurt. Brendan agreed. Andrew drove Brendan to A1 Liquors and sat in the car with the engine running while Brendan went inside, carrying a gun.

9. For purposes of this question only, assume that, unbeknownst to either Andrew or Brendan, the owner now kept his gun loaded. It turns out that, contrary to their agreement, Brendan also carried a loaded gun. When Brendan approached the owner and threatened him with a gun, the owner pulled out his gun and shot, but missed Brendan. Brendan was surprised and instinctively shot back, killing the owner. Andrew has been charged with violating Everglade Statute § 210.3, Manslaughter, which is defined as "recklessly causing the death of another human being." What is the likely outcome of that charge?

- (A) Andrew would be acquitted, because the owner's death was not reasonably foreseeable based on the plans they made;
- (B) Andrew would be acquitted, if the owner's death was not a natural and probable consequence of planning a robbery;
- (C) Andrew would be convicted, but only if he had the purpose of assisting Brendan in committing the robbery;
- (D) Andrew would be convicted, unless it was found that Brendan was not responsible for the death of the owner.

10. Assume, for purposes of this question only, that Brendan went into the store and shot the owner with a loaded gun, causing him serious bodily injury. If Andrew were charged with being an accomplice to aggravated assault, defined as attempting to cause serious bodily injury to another, could he be convicted?

- (A) Yes, if he was at least reckless with respect to the likelihood that serious bodily injury would result;
- (B) Yes, because he had the purpose of facilitating the robbery, and serious bodily injury was a natural and probable consequence of their plan;
- (C) No, if Brendan's promise to bring only an unloaded gun was not inherently unreliable;
- (D) No, if Andrew did not have the purpose of helping Brendan shoot the owner.

11. Assume, for purposes of this question only, that prior to the robbery, Brendan had loaded his gun, but while he went to the bathroom, Andrew checked it and unloaded it. Brendan thought he had a loaded gun when he went into the liquor store. He pointed it at the owner, who raised his gun. Brendan said "I know your gun isn't loaded, so put it down." Instead, the owner shot at Brendan, but hit him in his left hand. With his right hand Brendan pulled the trigger, but nothing happened. He then realized he was outmatched, and dropped the gun and raised his arms in surrender. The police arrived and Brendan was arrested. If Brendan were charged with a form of aggravated assault, which is defined as attempting to cause or purposely or knowingly causing bodily injury to another with a deadly weapon, could he be convicted?

- (A) Yes, because under the circumstances as he believed them to be, he was attempting to cause serious bodily injury to another with a deadly weapon;
- (B) Yes, but he would be entitled to raise self-defense, even if it was imperfect self-defense;
- (C) No, because an unloaded gun is not a deadly weapon;
- (D) No, because if he honestly believed that the owner would not be able to fire at him, there would be no need for him to threaten deadly force.

12. Roger is a sales representative for a large pharmaceutical company. Roger's boss, the sales manager, told Roger he needed to make more sales to keep his job. Roger said he was doing the best he could, but some of the products he was assigned to sell had been found to have serious side effects. The sales manager told Roger to assure his customers that the studies showing side effects were outdated, and that he should tell customers the products were perfectly safe. Roger said that it wouldn't be right to do so, but his manager told him he wouldn't be able to keep his job unless he complied. Roger reluctantly made some sales calls pursuant to the instructions he received. If Roger were charged with violating a statute that prohibited knowingly giving false information concerning prescription medications, could Roger be acquitted based on the claim that he did so only under duress?

- (A) No, because a person of reasonable firmness would have resisted;
- (B) No, because the only threat was a financial one;
- (C) Yes, if a jury decided that a person of reasonable firmness would have resisted;
- (D) No, because Roger put himself in that situation by his poor job performance.

#### FACT PATTERN FOR QUESTIONS 13-14

Susan lived with her boyfriend Duane, who had a history of abusive behavior toward women, including Susan. Susan had a 3-year-old son, Nathan, who was still having difficulty with potty-training. Susan had to work as a housekeeper at a local motel. Previously she was able to leave Nathan with her mother, but her mother left for two weeks to take care of a new grandchild who lived in another state. Susan wasn't sure she could trust Duane to take care of Nathan, but she didn't know what else to do. While Susan was at work, Nathan had some toilet

accidents, and when Susan got home she discovered that Nathan had bruises on his arm. Susan Asked Duane what happened, and he said that he had taken Nathan to the park and Nathan fell off a swing and fell on his arm. He claimed there are other people who could verify his story. Susan determined to find other child care arrangements, but the next day she again left Nathan with Duane. When she came home she discovered that Nathan had bruise marks on his neck, and Duane was nowhere to be found. Susan took Nathan to the hospital, and after the hospital personnel heard the story they reported to the police, who in turn charged Susan with violating Everglade Statute § 230.4, “Endangering Welfare of Children,” which provides: “A parent, guardian, or other person supervising the welfare of a child under 18 commits a misdemeanor if he knowingly endangers the child's welfare by violating a duty of care, protection or support.”

13. Is it likely that Susan could be convicted of violating § 230.4?

- (A) No, because Susan was merely reckless in risking leaving Nathan with Duane;
- (B) No, because Susan did not willingly leave Nathan with Duane.
- (C) Yes, so long as Susan was aware of a high probability that Duane would abuse Nathan;
- (D) Yes, because Duane’s past behavior put her on notice that he was likely to abuse Nathan;

14. For purposes of this question only, assume that the police found Duane and arrested him. If he were charged with being an accomplice to Susan’s alleged violation of § 230.4, could he be convicted?

- (A) Yes, because he had the purpose of assisting Susan in endangering Nathan’s welfare;
- (B) Yes, but only if Susan was also convicted;
- (C) No, because he was not Nathan’s parent;
- (D) No, unless someone actually saw him abusing Nathan

15. Howard owns and operates a motel located near a major highway interchange. Close by are lots of truck stops, restaurants, motels and other businesses that cater to truck drivers. Howard is aware that there are a significant number of prostitutes who prowl the truck stops looking for customers. Some of the prostitutes stay at Howard’s motel, and he knows several by name, including one named Jenny. Howard observes the number of men who arrive at the hotel and leave 30 or 60 minutes later. Howard is sure that the men are customers of Jenny. After a sting operation conducted by the police, Jenny is arrested for prostitution, which is defined as “the exchange of money, goods or services for sex or lewd conduct.” The prosecutor offers Jenny better treatment if she testifies against other defendants. Jenny offers to testify against Howard, who is charged with conspiring to commit prostitution. Is it likely that Howard would be convicted of conspiring to commit prostitution?

- (A) Yes, because he profited from Jenny’s criminal conduct;
- (B) Yes, because he knew that Jenny engaged in criminal conduct;
- (C) No, because he never formally agreed with Jenny that she should engage in prostitution;
- (D) No, if he charged Jenny no more than he charged other customers at the motel.

## ESSAYS

## QUESTION 1 (15 points)

You are a young attorney working for a United States Senator. The Senator has expressed interest in a bill that would allow a defendant to offer as a defense to a criminal charge that the defendant was unaware of the existence, meaning, or application of the law making the defendant's conduct criminal. If this defense were offered, the prosecution would have to prove beyond a reasonable doubt that the defendant's lack of awareness was unreasonable. The Senator would like you to analyze whether the principle of "ignorance of the law is no excuse" should be continued to be recognized.

## QUESTION 2 (60 points)

Paul Linden was being held in the Springfield County Jail after his arrest at a mobile home in late April for alleged acts of domestic violence against his wife. On May 16, the inmate in the adjoining cell ("MS") used the communal phone in the cell block to call his girlfriend. The couple discussed obtaining bail for MS and mentioned the impending eviction from their apartment. Once MS had returned to his cell, Linden knocked on the wall and passed a note through the cell bars. The note proposed a deal. Linden would give MS a house if MS did "two things" for him: kill Linden's wife and mother-in-law using "shop heroin and new drugs"; and make arrangements for the care of his two children. Linden proposed that if he arranged for his release, MS would complete his assignment as soon as he was released from jail, and Linden sent a note stating an address and the names of the two targets along with instructions on the time the murders should take place.

Although MS had no intention of following through on Linden's requests, MS played along. He wrote Linden that he expected to be released in two days, on May 18, and could "do it" on either May 19 or May 20. Linden asked that the job be done "clean[ly] with drugs" and with "[n]o violence," and requested that MS "[u]se gloves." In a "detailed plan to follow," Linden gave instructions on how to carry out the murders: MS was to display drugs on a table to stage a fake overdose, get the victims' fingerprints on "everything" that MS used to kill them, pick up keys to the house and cars, and take Linden's two young children with him once he was done. After this initial back-and-forth with Linden, MS informed a corrections officer that he had "very serious information" to share and turned over the notes to the jail authorities. They told him to continue communicating with Linden and act as though the plan would proceed as discussed.

The next morning, on May 17, Linden provided MS with a hand-drawn map showing the location of a third party's house, where, according to Linden's instructions, MS was to take the children after killing Linden's wife and mother-in-law. Linden also gave MS a letter for the third party. Lastly, Linden instructed MS on where to park when he arrived at the targets' identified address and gave a vague description of the location of a hidden set of keys—"on the left up to your head"—for MS to use after making sure that the two targets were inside. MS turned these notes over to the authorities and was removed from his cell block until his release from jail the next day.

After being released on bail, MS learned from his girlfriend that Linden had called, using a



number provided by MS, and asked that MS visit him in jail. In coordination with the authorities, MS recorded his conversation during his visit with Linden on May 19. Linden discussed the “game plan” for the murders and presented MS with a paper he asked him to read, which MS understood to be a blueprint for a suicide letter to make it look like Linden's wife committed suicide. According to Linden's plan, MS would kill the wife and mother-in-law that evening and call Linden the next day using prearranged code words to confirm that the murders had been carried out. MS received a call from Linden the following day, on May 20. Speaking in code, MS told Linden that the “cars” (Linden's wife and mother-in-law) had been “fixed” (killed) and that the “tires” (Linden's children) were with him. Linden said he was “happy now.” Linden called MS on May 24 to again confirm that MS had fixed the “cars” and taken care of the “tires.”

The State of Everglade has adopted the 1965 Model Penal Code in its entirety. Section 210.2 provides as follows:

**Section 210.2. Murder**

- (1) A person is guilty of murder if he purposely or knowingly causes the death of another human being.
- (2) Murder is a felony of the first degree.

You work in the office of the Springfield County prosecutor's office. What charges could be brought against Linden? What defenses could he raise?

QUESTION 2½ (15 points)

How would your analysis of Question 2 be different if the Model Penal Code were rejected in the State of Everglade?