

Exam # _____

Professor DeWolf
Summer 2012Criminal Law
July 30, 2012

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**.

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, and up to 200 pages that you have printed out from sources other than those you have created yourself.

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 3: 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 (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! ENJOY YOUR BREAK!

MULTIPLE CHOICE (60 points)

1. Arnie shared an apartment with Brenda. Arnie was very computer savvy and used his computer expertise to access PayPal accounts of unsuspecting users and transferred money to his own account. Brenda knew that Arnie paid his share of the rent using the money he fraudulently derived from his computer activities. If Brenda were charged with conspiring to commit financial fraud, which of the following is true?

- (a) Brenda would be guilty if she knew that Arnie's activities were illegal;
- (b) Brenda would be guilty if (but only if) Brenda derived financial benefit from Arnie's activities;
- (c) Brenda would be acquitted if Arnie thought that Brenda didn't know about the computer fraud.
- (d) Brenda would be acquitted if she thought that Arnie would do something bad to her if she didn't keep her mouth shut.

2. Charlie ran a convenience store that sold beer. The local police department set up a sting operation that was designed to catch stores that sold alcohol to minors. Jack Webb, a police officer, was 22 years old but appeared to be 15. He came to Charlie's store and took a six-pack of beer off the shelf and put it on the counter with a \$10 bill. Charlie looked at Jack and said, "This isn't right," but made change for the \$10 bill and handed Jack the beer and his change. Charlie was subsequently arrested for attempted sale of alcohol to a minor. Which of the following is true?

- (a) Charlie could be convicted if he actually thought that Jack was a minor;
- (b) Charlie could be convicted only if a reasonable person would have thought that Jack was a minor;
- (c) Charlie would be acquitted if, given the circumstances, the completion of the crime would be legally impossible;
- (d) None of the above.

3. Daisy and Ralph were dating. Daisy didn't want to have sex with Ralph, but Ralph was determined. One night Daisy drank enough margaritas that Ralph's persistence was more than she was able to resist. After they had sex, Daisy filed criminal charges against Ralph. Under what circumstances would Ralph be guilty of rape?

- (a) If Daisy did not consent to having sex with Ralph;
- (b) If Ralph was aware of a risk that Daisy did not consent to have sex with Ralph, and his proceeding to have sex with her was a gross deviation from the standard of a law-abiding person;
- (c) Only if Ralph used force or the threat of force to have sex with Daisy;
- (d) Only if Daisy, prior to having sex with Ralph, communicated by words or actions that she did not consent to having sex with Ralph.

4. Gary was surprised in the middle of the night by Hubert, who had broken into the screened-in porch on the first floor of his house. Gary's bedroom was on the second floor. Gary took a gun from the nightstand and shot Hubert. Hubert recovered from his injuries, but Gary was charged with attempted murder. Which of the following is true?

- (a) Gary would be justified if Hubert was in the course of committing a violent felony;
- (b) Gary would be justified if Hubert was in the course of committing a violent felony, but only if Gary reasonably believed that he was threatened with death, serious bodily harm, rape or kidnapping;
- (c) Gary would not be justified if he actually believed that he was threatened with death or serious bodily harm, but that belief was unreasonable;
- (d) Gary would be guilty if Hubert was running away and it was obvious that he posed no immediate threat of death or serious bodily injury.

5. Irene was driving on a mountain road when one of her tires blew out and the car swerved to the edge of the road where it was in danger of falling over. Irene's daughter Jennifer was in the backseat of the car. Irene opened her door and climbed out. As a result, the weight of car shifted and the car plunged to a ravine below, killing Jennifer. If Irene was charged with negligent homicide, which of the following is true?

- (a) Irene would be guilty if a reasonable person in Irene's situation would have recognized the risk and the potential for the car to cause a fatal injury;
- (b) Irene would be guilty if the likelihood of causing injury by escaping was greater than the likelihood of Irene losing her own life.
- (c) Irene would be guilty only if Jennifer's death would not have occurred but for Irene's actions;
- (d) None of the above.

6. Kevin suffered from severe alcoholism. One night he was desperate to get a drink and held a knife to the back of a woman waiting for the bus and demanded money from her. Later he was arrested and charged with robbery. Which of the following would be true?

- (a) Kevin would be entitled to an acquittal if, by reason of intoxication, he was unable to conform his conduct to the requirement of law;
- (b) Kevin would be entitled to raise the defense of insanity if the continued use of alcohol had caused permanent brain damage;
- (c) Both (a) and (b);
- (d) Neither (a) nor (b).

7. Linda was employed as a bookkeeper by Marvin Industries, a sole proprietorship owned by her boss, Marvin. Linda entered all of the company financial data into a computer program that produced all of the reports used to calculate Marvin Industries' taxes. As part of her regular duties Linda prepared a tax return to be filed with the state tax authorities. When Marvin saw the return, but before he sent in the return and a check for the tax due, he told Linda that he couldn't afford to pay what the tax return said was due, and he wanted Linda to enter a series of expenses into the bookkeeping program so that it would show a lower amount of income and a correspondingly lower amount of tax due. Linda did as Marvin told her to do, and Marvin subsequently filed the revised tax return with the lower amount of tax. If Linda were later charged with tax evasion, which of the following is true?

- (a) Linda would not be guilty if Linda complied with Marvin's request only because she was afraid of losing her job, and a person of reasonable firmness in Linda's position would have done the same thing;
- (b) Linda would not be guilty if she did not know that tax evasion was illegal;
- (c) Linda would be guilty if she assisted Marvin in committing tax evasion;
- (d) Linda would be guilty only if Marvin were also guilty of tax evasion.

8. Nancy and Ophelia were next door neighbors. Ophelia was regularly beaten by her husband Patrick. Nancy encouraged Ophelia to get away or go to the police, but Ophelia told Nancy that Patrick would track her down and kill her if she did either of those things. Ophelia told Nancy that Patrick was most violent on Friday nights, and Nancy should come over to the house Friday night to witness one of the beatings. Nancy showed up at 8 pm and when she walked into the kitchen she observed a screaming match between Ophelia and Patrick. Nancy picked up a knife and told Patrick, "I'm going to kill you if you so much as touch my friend Ophelia." Patrick started swearing and walked in Nancy's direction, whereupon she stabbed him. If Nancy was charged with attempted murder, which of the following is true?

- (a) Nancy would not be convicted if the jury found that she believed that Ophelia would suffer death or serious bodily harm if she did not stab Patrick, even if that belief was unreasonable;
- (b) Nancy would not be convicted if the jury found that Patrick was armed with a deadly weapon, even if Nancy was unaware of it at the time.
- (c) Nancy would be convicted if the jury found that stabbing Patrick was grossly excessive in comparison to the threat that he posed;
- (d) Nancy would be convicted based upon the fact that she was the initial aggressor.

9. Quentin and Roger met each other in prison while each was serving a prison sentence for possession of illegal drugs. Quentin ran into Roger after both had been released and they wound up talking about how they might acquire some easy money. Roger had previously suffered an amputation of his leg below the knee, and so his mobility was limited. Roger told Quentin that Roger's neighbor often left the back door open, with an unlocked screen door, to keep the house cool at night. Roger suggested that Quentin should come to Roger's house at 2 am, scale the fence that separated Roger's property from his neighbor's, and steal the neighbor's valuable baseball card collection. Quentin agreed. For purposes of this question, assume that burglary is committed if one "enters a building or occupied structure with the purpose to commit a crime therein," and that burglary is a second degree felony if it is committed at night in the dwelling of another. Which of the following is true?

- (a) Quentin and Roger are both guilty of conspiracy to burglarize the neighbor's house;
- (b) Neither Quentin nor Roger is guilty of conspiracy until at least one of them commits an overt act;
- (c) Quentin could be convicted of solicitation to commit burglary, or conspiracy to commit burglary, but not both;
- (d) None of the above.

10. Stanley worked as a mechanic in a garage that repaired school buses. Some of the repairs involved fixing broken seats or jammed windows, but occasionally he was asked to assist with the maintenance of engines and brake systems. One of the buses came into the shop with a tag that stated that the bus had made a grinding noise when the driver applied the brakes. Stanley's co-worker was assigned to work on the brakes, but he received some tragic family news and left work early. Before leaving, the co-worker showed Stanley the replacement parts that he was about to install, and told Stanley to complete the repair. Stanley was concerned that he wouldn't be able to do the repair properly, but he didn't want to burden his co-worker. Stanley did the best he could, but thought that he should have his co-worker inspect his work before the bus was put back in service. While Stanley was going to the restroom the maintenance supervisor saw the bus, thought the repairs were complete, and asked Tom, another employee, to return the bus to its normal parking spot. While driving there, Tom applied the brakes, but they failed because Stanley had put some parts in backwards, and the bus struck a pedestrian, causing fatal injuries. If Stanley were charged with negligent homicide, which of the following is true?

- (a) Stanley would be found guilty unless the jury found that Tom's actions in driving the bus were not reasonably foreseeable;
- (b) Stanley would be found not guilty if the jury found that Stanley was unaware of the risk that his actions would cause a fatal crash;
- (c) Stanley could only be found guilty if the crash would not have occurred but for Stanley's efforts to repair the brakes;
- (d) Stanley could only be found guilty if the co-worker had a reputation for irresponsible behavior and Stanley knew of this reputation.

ESSAY QUESTION 1 (15 points)

You are a judicial clerk to Judge Drang, a ten-year veteran of the Evergreen Court of Appeals. In Evergreen the judges are elected, so from time to time Judge Drang will give speeches to local service clubs. The Unity Club invited her to give a luncheon talk. One of the members of the club is a state legislator who has introduced a bill in the legislature that would provide, "A person's belief that his conduct does not constitute a crime is a defense only if it is reasonable and if the person's mistaken belief is due to his ignorance of the existence of the law defining the crime, he exercised all the care which, in the circumstances, a law-abiding and prudent person would exercise to ascertain the law." Judge Drang is uncertain what she should think of this proposal. Please provide your analysis of the issue.

END OF THE CLOSED BOOK PORTION OF THE EXAM

OPEN BOOK PORTION OF EXAM

ESSAY QUESTION 2 (60 points)

On April 12, 2012, Ronald Lemieux took a duffel bag containing 30 pounds of marijuana to the home of George Anderson in order to complete a prearranged sale with Anderson. When Lemieux walked through a doorway in the house, Aaron Borrero stepped out, pointed a pistol at him, and ordered him to lie face down. Another man, Michael Vaughn, held a shotgun to the back of the Lemieux's head. Borrero bound the victim's hands and feet with speaker wire, bound his hands and feet together, and stuffed him into a duffel bag. Lemieux was then carried to the back of his Jeep. After being driven around for several hours, Lemieux was taken from the vehicle while still hog-tied inside of the duffel bag and was thrown into the York River.

Lemieux managed to break the bond between his hands and feet, escape the confines of the duffel bag, and to reach the riverbank without being observed by his assailants. Lemieux then contacted a passing motorist, who summoned police. Borrero was arrested two months later and charged with kidnapping and attempted murder. Vaughn was also arrested and initially charged with the same crimes but has been offered a deal to plead guilty to kidnapping in exchange for dropping all other charges. According to Vaughn, Borrero helped him load Lemieux into the Jeep and throw him in the river. Borrero vigorously denies Vaughn's account; according to Borrero, he only participated in the robbery, and after Lemieux had been stuffed into the duffel bag, Borrero had no further role. Borrero says that Anderson and Vaughn took Lemieux to the Jeep, and it was Borrero's understanding that they were going to take him to the outskirts of town and release him alive.

Your law firm represents Borrero. Please prepare an analysis of the likelihood that, depending upon who the jury believes, he could be convicted of attempted murder.

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?