

EXAM # \_\_\_\_\_

Professor DeWolf  
Fall 2008

Criminal Law  
December 16, 2008

FINAL EXAM--PART ONE

*Instructions*

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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 all of the exam answers. You will then receive Part II, which contains a duplicate of these instructions.

Part II is a modified OPEN BOOK exam. It will last **90 minutes**. You may use any notes you have made yourself, your textbook, and any materials that I have distributed to you. YOU MAY NOT use any commercially printed outlines, hornbooks, treatises, articles, etc., except that you may use up to 100 pages photocopied from such materials.

Read these instructions carefully and be sure that you are otherwise ready to begin. If you are using bluebooks, please use SEPARATE BLUEBOOKS for each question.

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 2½: . . . . .	15 points
	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. When you are done answering the questions, transfer your answers to the ANSWER SHEET.

(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 in Question 2 would differ if the jurisdiction in which the hypothetical arose had rejected one or more features of the Model Penal Code

GOOD LUCK! MERRY CHRISTMAS! HAPPY HOLIDAYS!

**MULTIPLE CHOICE (60 points)**

1. Judge Holmes is getting ready to sentence a criminal defendant, a former governor, who has been convicted of selling his power of appointment for a cash donation. In arguing for a shorter sentence, the defendant's lawyer would have LEAST success in arguing the following?

- (a) As a person with no prior criminal history, his early release is unlikely to pose a danger to society;
- (b) Since he is unlikely to be able to commit similar crimes in the future, punishment would serve no deterrent function;
- (c) The stigma of incarceration and public humiliation will make even a short sentence a significant punishment;
- (d) His crime did not involve violence toward others, but he is likely to be a target for violent attack while in prison.

2. Mary has incurable multiple sclerosis. She tried marijuana and found that it produced a "remarkable remission" of her symptoms. If she is charged with violating a statute that makes possession of marijuana a crime, her best defense would be:

- (A) A person of reasonable firmness would have been unable to resist the temptation to relieve her symptoms;
- (B) She has the right, under the Constitution, to decide for herself fundamental questions about the meaning of life;
- (C) She suffers from a mental defect that excuses her;
- (D) Her medical condition justifies her use of marijuana.

3. Steven has been charged with possession of child pornography. The statute punishes possession of "images of children engaged in sexually explicit conduct," but makes an exception for law enforcement officers while in the course and scope of their duties. Which of the following is true?

- (A) Steven could succeed in challenging the statute for vagueness if he could show that he couldn't understand from the statute what conduct was being prohibited;
- (B) Steven could succeed in challenging the statute for vagueness if he could show that a reasonable person would be unable to understand what was being legally prohibited, even if Steven knew that what he possessed was in violation of the statute;
- (C) Steven could argue a mistake of law if he wasn't aware that the pictures he possessed contained images of children engaged in sexually explicit conduct;
- (D) Steven would be entitled to an acquittal if he were a law enforcement officer.

4. Jim was standing in line at a big department store just before the doors opened on a big sale. There was a crowd of about 300 people. At first the line was orderly, but then people started to cut in line. Jim said in a loud voice to Sam, "Hey, you've got to go to the end of the line," Sam responded, "I just went to my car to get something." A loud argument ensued, there was pushing and shoving, but then the doors opened and everybody rushed inside. In the confusion, Sam was knocked to the ground and then pushed outside the view of the security cameras. Ten minutes went by before someone reported his injury and help was summoned. Because of the fall and the delay in treatment, Sam suffered permanent brain damage. Which of the following is true?

- (A) Jim owed a duty not to harm Sam, but he owed no affirmative duty to summon help.
- (B) If a person of reasonable firmness would not have been able to resist getting pushed along with the crowd, Jim would be excused;
- (C) If Jim's conduct led, even indirectly, to Sam's injury, he had a duty to summon help,
- (D) Jim had a duty to summon help if he knew that Sam had been injured, if a reasonable person in his position would have done so.

5. Louis Kildare was a pediatrician at a big hospital. Patrick, an 8-year-old boy, was brought into the hospital after a serious automobile accident. In consultation with Patrick's parents, Dr. Kildare ordered the nurses to turn off a ventilator that was kept Patrick breathing. Twenty minutes later Patrick was pronounced dead. If Dr. Kildare was charged with murder, which of the following arguments would be the LEAST helpful to his defense:

- (A) He didn't actually turn the ventilator off; it was the nurses who did so;
- (B) The ethical guidelines of the hospital allowed him to do what he did;
- (C) He didn't owe a legal duty to keep Patrick alive;
- (D) The parents had the right to decide what medical care was appropriate for their child;

6. John, aged 19, went to a party where punch was being served. After drinking a glass of the punch John suspected that it might contain alcohol. He asked the host, who assured him that the punch did not contain alcohol. John continued drinking the punch, and then got in his car and drove home. He was pulled over by a police officer, who gave him a breathalyzer test and determined that his blood alcohol content (BAC) was .04. A statute in this jurisdiction makes it illegal for a person under the age of 21 to drive with a blood alcohol content above .02. In the trial of the case the defense argued that John reasonably believed the punch contained no alcohol. In response, the prosecuting attorney argued that the statute contains no mens rea requirement with regard to the BAC level. Which of the following is the most likely response from the judge?

- (A) It is unconstitutional to remove the mens rea requirement for a material element of the crime;
- (B) The constitution requires interpreting a statute in a way favorable to the defendant;
- (C) If John was neither reckless nor negligent in assuming that his host was telling the truth, he is not guilty of the crime;
- (D) Guilty as charged.

7. Sam, the owner of a restaurant, is counting the money from the cash register when he finds a \$100 bill that looks suspicious to him. He calls his lawyer to find out what his responsibility is in depositing money that might be counterfeit. The lawyer then looked in an obsolete statute book that incorrectly identified the standard for passing counterfeit currency as "Anyone who intentionally passes counterfeit coin or currency . . ." In fact, the statute in force as of the time of the offense provided, "Whoever knowingly passes, or attempts to pass, counterfeit coin or currency shall be fined not more than \$2,000,000 or imprisoned not more than 10 years, or both." Sam then deposits the \$100 bill at his bank. The bill is rejected by the bank as counterfeit. Can Sam be convicted of passing counterfeit currency?

- (A) Yes, if Sam thought it highly probable that the bill was counterfeit, even if he thought it might be genuine;
- (B) Yes, even if Sam reasonably relied on the lawyer's advice;
- (C) Both (A) and (B) are correct;
- (D) Neither (A) nor (B) is correct.

8. Jean was the daughter of Mark, the doorman at a very expensive apartment building in BigCity. Richard, who lived in the apartment building with his mega-rich parents, spotted Jean one day when she was bringing her father some prescription medicine he had left at home. Richard asked Jean on her way in the door if she wanted to play pool with him. "Uh, I don't think so," said Jean, and hurried off to find her father. When Jean gave her father the medicine he said to her, "I'm really worried. You know the Corleones, the big crime family -- they live in this building. I might be in real trouble." "We'll talk about it tonight," said Jean. As she was leaving, Jean saw Richard, who was waiting for her. "Do you know who I am?" he asked. "No," she said, but saw that he had a briefcase that said "Corleone" on it. "If you miss this opportunity, you'll be sorry." he said. "C'mon. Have a drink with me?" "Uh, okay," said Jean. After they reached Richard's apartment, he began to kiss and fondle her. She did not resist, but she started crying. Richard ignored her crying and took her into the bedroom, where he proceeded to have sexual intercourse with her. Richard then left the room and she got dressed and left. Could Richard be convicted of rape?

- (A) Yes, if Jean's acquiescence was not truly consensual;
- (B) Yes, if Jean reasonably believed that if she did not consent Richard would use force against her;
- (C) Yes, but only if Jean did not resist out of fear that otherwise her father would suffer serious bodily harm and Richard was at least reckless in ignoring that risk;
- (D) None of the above.

9. A statute provides, "A person who purposely aids or solicits another to commit suicide is guilty of a felony of the second degree if his conduct causes such suicide or an attempted suicide, and otherwise of a misdemeanor." Carl was depressed and wanted to end his life. He asked Bill to pick up a prescription he had for barbiturates. Bill took the prescription to a pharmacy and had it filled. Has Bill committed a crime under the statute?

- (A) Yes, if the quantity of barbiturates was sufficient to cause Carl's death;
- (B) Yes, if Bill was at least reckless with regard to the risk that Carl would use the barbiturates to commit suicide;
- (C) No, unless Bill intended to give the barbiturates to Carl to help him commit suicide;
- (D) No, unless Bill actually gave the barbiturates to Carl with the intent to help him commit suicide;

**FACT PATTERN FOR QUESTIONS 10-12**

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure.

10. At this stage, has Nancy committed a crime?

- (A) Yes, because she solicited someone to commit the crime of murder;
- (B) Yes, because she had conspired with Brad to commit murder;
- (C) Both (A) and (B)
- (D) Neither (A) nor (B).

11. Assume (for purposes of this question only) that in response to Nancy's proposal Brad said nothing, but about ten minutes later he said, "You know, we tied up Tom's horse. If it appears that he was paralyzed by the fall, and then died of exposure, won't it be fishy that his horse was tied up?" "You're right," said Nancy. "I'll go back and untie the horse." At this stage, has Brad committed a crime?

- (A) Yes, because he encouraged Nancy to commit a crime;
- (B) Yes, but only if Nancy acted on his suggestion;
- (C) No, if his purpose was to convince Nancy to change her mind, even if it had the effect of helping Nancy avoid detection;
- (D) No, if Tom was ultimately rescued and suffered no harm.

12. Assume (for purposes of this question only) that Brad and Nancy rode back to the ranch, never told anyone about Tom's condition, and simply waited for him to die. However, through a stroke of luck Tom was discovered by a hiker who used his cell phone to summon help. Tom was rescued without any physical injury resulting from Nancy and Brad's failure to summon help. Which of the following is true:

- (A) Brad could be charged with attempted murder, or conspiracy to commit murder, but not both;
- (B) Brad and Nancy could both be convicted of attempted murder;
- (C) Brad could not be an accomplice to attempted murder unless some action on his part was a but-for cause of injury to Tom;
- (D) Brad could only be convicted of attempted murder if Nancy was also guilty of attempted murder.

**ESSAY QUESTION 1 (15 points)**

You are a law clerk for Justice Weiner, who has been appointed to a law reform commission sponsored by the state bar association. One of the questions posed to the commission is how, if at all, the sentencing of convicted criminals should reflect the potential for the defendant to be rehabilitated. Justice Weiner has asked for some reflection on this topic. What could you tell her?

YOU MAY TEAR THIS OFF AND TURN IT IN TO THE PROCTOR

EXAM NUMBER \_\_\_\_\_

MULTIPLE CHOICE ANSWER SHEET

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

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11. \_\_\_\_\_

12. \_\_\_\_\_

END OF THE CLOSED BOOK PORTION OF THE EXAM

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FINAL EXAM--PART TWO

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**ESSAY QUESTION 2 (60 points)**

Daniel was a member of a theater company that performed Friedrich Schiller's play "Mary Stuart." Daniel played Mortimer, who at the end of the play is so despondent that he slits his throat. Daniel had performed the play several times using a prop knife that looked real but had been blunted to prevent injury. When the company moved to a new city to perform the play, they couldn't find the prop knife. Arthur, the prop manager, sent Barry, a fellow actor, to purchase a replacement knife. Barry bought the knife at a nearby store and put it in the prop drawer. It still had the price tag on it. At the next performance Daniel had his mind on other things, and before the last scene he took the knife from the prop drawer without looking at it. At the ultimate moment Daniel opened the knife and then "pretended" to slash his throat. In fact, the blade went into his neck and narrowly missed Daniel's carotid artery, which would have been a fatal injury. As blood spurted from Daniel's neck, the audience applauded wildly at what they thought were convincing special effects. Daniel managed to stagger offstage and get medical help. He survived -- in fact, he was on stage the next night to perform the same scene (after double-checking the knife to make sure it was blunted).

Subsequent investigation reveals that there was considerable jealousy among the actors in the theater company, and that Barry had been heard to say to one of his fellow actors, "You know, I wish one day Daniel would slit his throat for real." The clerk at the store where Barry bought the knife reported that Barry appeared quite intoxicated when he purchased the knife.

You are the prosecutor. Assuming that this jurisdiction has adopted the Model Penal Code, analyze the crimes that Arthur and/or Barry could be charged with, and any defenses they 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 this jurisdiction?

**END OF EXAM**