

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

Professor DeWolf  
Summer 2009

Criminal Law  
August 5, 2009

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 the proctor will collect all of the exam answers. If you finish ahead of time you may read Part II (Questions 2 and 3) and make notes but you may not begin writing your answer to it.

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 have distributed to you. YOU MAY NOT use any commercially printed outlines, hornbooks, treatises, articles, etc., except that you may use the recommended text and up to 100 pages photocopied from other commercial materials.

While waiting for the exam to begin, write your EXAM NUMBER on at least one bluebook (more if you are not using Examsoft) and on the MULTIPLE CHOICE ANSWER SHEET. Read these instructions carefully and be sure that you are otherwise ready to begin. If you are using a bluebook, start a NEW BLUEBOOK 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: 15 points

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. 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 had rejected one or more features of the Model Penal Code.

GOOD LUCK! ENJOY YOUR BREAK!

## MULTIPLE CHOICE (60 points)

1. Sam owned a riding stable that offered customers the opportunity to ride horses. Customers could also take horses to a place where there were "gates" that allowed them to practice jumping. One day Rachel was riding a horse and jumping "gates," but the horse stumbled on a hole that was just before one of the gates, missed the gate and fell, causing Rachel bodily injury. It turns out that Bill, one of Sam's employees, was supposed to fill in the hole, but he forgot to do so. Simple assault is defined as occurring when a defendant "attempts to cause or purposely, knowingly or recklessly causes bodily injury to another." Which of the following is true?

- (A) Sam could be convicted of simple assault if Rachel suffered serious bodily injury;
- (B) Sam could be convicted of simple assault if Bill was aware of the risk that serious bodily injury could result;
- (C) Bill could be convicted of simple assault if Bill should have been aware of the risk of injury and his conduct was a gross deviation from the standard of care that a reasonable person would observe in Bill's situation.
- (D) None of the above.

2. Emily's roommate Linda was employed as a stock broker. Emily worked at the XYZ company, whose stock price fluctuated quite a bit. Emily noticed that Linda was often looking over her shoulder when she was typing at the computer, and she suspected that Linda was trying to get information about the XYZ company to use in her work as a stock broker. One day a very big transaction was about to occur at the XYZ company and Emily was emailing a fellow employee about the impending transaction. Linda saw the information on Emily's screen and immediately advised several clients to sell XYZ stock. As a result of this, Linda and Linda's clients were charged with insider trading, in violation of federal securities laws. Which of the following is true?

- (A) If Emily knew that Linda was obtaining the information illegally, Emily could be convicted as an accomplice.
- (B) If Emily wanted Linda to use the information to gain a financial advantage, Emily could be convicted of conspiring to commit insider trading.
- (C) If Emily allowed Linda to obtain the information because she was jealous of Linda's success and wanted Linda to get arrested for insider trading, Emily could be convicted as an accomplice.
- (D) If Emily allowed Linda to obtain the information because she was jealous of Linda's success and wanted Linda to get arrested for insider trading, Emily could be convicted of conspiring to commit insider trading;
- (E) All of the above are true;

3. Dr. Brown's patient, Mrs. Green, was dying of cancer. She expressed to Dr. Brown that she didn't want to suffer any more, and didn't want her children's inheritance to be eaten up by expensive medical care. Dr. Brown gave her a dose of morphine that slowed her respiration rate. Eventually she stopped breathing and died. Can Dr. Brown be convicted of homicide?

- (A) Yes, assuming that he failed to consult with Mrs. Green's family prior to administering the medication;
- (B) Yes, if Mrs. Green would have lived but for the dose of morphine;
- (C) No, if Mrs. Green's request was a reasonable one;
- (D) No, if Dr. Brown's purpose of giving her morphine was to reduce her pain, and the resulting death was an indirect result of his medical treatment.

4. Tracy was in an abusive relationship with Donald. Donald had repeatedly threatened to kill her if she left him. One day while Donald was watching television, Tracy shot Donald fatally. Tracy was charged with murder. Which of the following is true?

- (A) Tracy would be entitled to assert self-defense as a justification if she honestly believed that the use of force was immediately necessary to prevent serious bodily harm to herself.
- (B) Tracy would not be justified in using deadly force to defend herself if her assessment of the need to use such force was not reasonable under the circumstances.
- (C) Tracy would be guilty of manslaughter (recklessly causing Donald's death), if she was negligent in forming her belief in the need for deadly force.
- (D) None of the above.

5. Mike was a passenger on a plane that had been hijacked by a terrorist. The terrorist had a hand grenade that he announced would explode if he released his hold on the firing mechanism, and he threatened to do so if anyone interfered with him. Mike believed that if the terrorist wasn't stopped, he would get into the cockpit and crash the plane, killing everyone on board and even more people on the ground. Mike pushed a cart at the terrorist, causing him to release his hold on the hand grenade, and it exploded, killing three passengers. Mike survived. In fact, the cockpit was completely secure, and there was never any danger that the terrorist could accomplish his goal. If Mike was charged with murder, which of the following is true?

- (A) Mike would be entitled to an acquittal so long as he believed that killing the passengers was the lesser of evils;
- (B) Mike would not be entitled to an acquittal based on necessity because that defense does not permit the deliberate killing of another human being.
- (C) Mike is not entitled to the defense of necessity because he was at least reckless in forming his belief in the necessity of his actions.
- (D) Mike would be entitled to an acquittal because the terrorist, and not Mike, caused the death of the passengers.

6. Intending to cause serious bodily injury to his ex-wife, Bob asked Bill to push her down a flight of cement stairs. Which of the following is correct?

- (A) Bob would be guilty of solicitation of aggravated assault, even if Bill was an undercover police officer
- (B) Bob would be guilty of attempted aggravated assault, even if Bill was an undercover police officer and arrested Bob as soon as Bob finished his request.
- (C) Bob would be guilty of a conspiracy to commit aggravated assault (a second degree felony), if Bill said "Okay, I'll do it," even if Bill was an undercover police officer and arrested Bob as soon as the agreement was made.
- (D) All of the above are correct.
- (E) None of the above is correct.

7. Fred was intoxicated after a night of non-stop partying at his favorite watering hole. He asked Nancy, a woman whom he knew from the office building where they both worked to give him a ride home. Instead of giving her directions to his home, Fred told her to take a series of turns that led them to a deserted area where he grabbed the steering wheel and told her to stop. Nancy stopped the car but immediately jumped out and called the police. The police arrived 15 minutes later and found Fred asleep in the car. Fred was arrested and charged with attempted rape. Which of the following is correct?

- (A) Fred should be acquitted because he never took a substantial step strongly corroborative of an intent to commit rape;
- (B) Fred should be acquitted if, as a result of intoxication, he was unable to form the intent to commit rape;
- (C) Fred could be convicted of attempted rape if he was at least reckless in causing Nancy to believe that he would force her to have sex;
- (D) Fred could be convicted of attempted rape if a reasonable person in Nancy's position would fear that Fred was threatening her with serious bodily harm.

8. Joe was an inmate at a minimum-security prison. While working in the fields, Joe and two other inmates (Kyle and Larry) noticed that the guards had all gone to a different part of the prison, and it would be easy for them to escape down the road. Kyle and Larry started down the road. Kyle and Larry had a reputation in the prison of being extremely ruthless. Joe was afraid if he didn't go with them that they would kill him to prevent him from reporting their escape, and so he joined them. If Joe was later caught and charged with prison escape ("knowingly escaping from lawful confinement in a state correctional institution"), which of the following would be correct?

- (A) Joe would be entitled to the defense of duress, so long as a person of reasonable firmness would have done the same thing;
- (B) The defense of duress only be available to Joe if Kyle or Larry threatened Joe with imminent harm;
- (C) The defense of duress would be unavailable to Joe unless, as soon as practical after making his escape, he turned himself over to the authorities;
- (D) The defense of duress would be unavailable to Joe because he negligently placed himself in a position where he would be subject to duress.

9. Quincy committed a brutal murder in the course of a bank robbery. In the penalty phase of Quincy's trial, the defense attorney asked the jury to sentence him to life in prison without possibility of parole, rather than sentence him to death. The defense attorney pointed out that Quincy's childhood was full of abuse and neglect. The prosecutor's WORST argument in support of capital punishment for Quincy would be:

- (A) Only death is a commensurate penalty for the deliberate taking of human life;
- (B) It is impossible to make meaningful comparisons between the difficulties that one person faces in life and those faced by other people;
- (C) Only the death penalty will insure that Quincy will never kill again;
- (D) Imposing the death penalty on Quincy will deter other people from committing similar crimes.

10. George, a plumber, lived in Anystate, but he performed a lot of work in the neighboring state of Evergreen, which had a state income tax. George made sure that all of his work in Evergreen was paid in cash. He carefully reported all of his income for federal income tax purposes, but he did not report his income to Evergreen tax authorities, hoping that he could avoid paying Evergreen state income taxes. It turns out that his earnings in Evergreen were lower than the amount at which he would be required to file a state income tax return. Could George be charged in Evergreen with attempted income tax evasion?

- (A) No, because he made a mistake of fact;
- (B) No, because of true legal impossibility;
- (C) Yes, because if the circumstances were as he imagined them to be, his conduct would have constituted the crime of income tax evasion;
- (D) None of the above.

#### ESSAY QUESTION 1 (15 points)

You are a law clerk for Justice Johnson. He recently visited Germany and became friends with a German judge, who informed him of the following statute that is part of the German criminal code. Justice Johnson would like you to comment on the desirability of incorporating such a statute into the criminal code of your state.

(1)Whoever intentionally or negligently becomes intoxicated through the use of alcohol or other intoxicating substances is punishable up to five years in prison, if while in that intoxicated condition he commits a criminal act and if by virtue of the intoxication is not responsible for a criminal act (or his non-responsibility is a possibility) . . . (2) In no event may the punishment be greater than that for the wrongful act committed in the state of intoxication.

Please provide your commentary for Justice Johnson.

END OF THE CLOSED BOOK PORTION OF THE EXAM

## ESSAY QUESTION 2 (60 points)

Juanita Flores had four children, the youngest of whom was 2 and the oldest was 10. As a result of complaints from Flores' neighbors alleging that Flores was not a good parent to her children, the Division of Family Services took all of the children into custody. While resolution of the custody issue was pending, Flores was permitted to have supervised visitation of her children at the Division of Family Services Building in Springfield. On March 30, 2009, Flores asked Steven M. Spier, whom she had been dating for approximately two months, to accompany her on the following day to the DFS Building for supervised visitation of her children. She asked Spier to drive, so that he could drop her off in front of the building and pick her up when she was finished. Spier dropped Flores off in front of the building; after waiting in the car for approximately 15 minutes, Spier observed Flores emerge from the Building with her four children. They all got in the car and Spier began driving. Flores directed Spier to drive her mother's house, where all six of them stayed for ten days. At that time agents of the DFS placed the children back into the custody of DFS and both Ms. Flores and Mr. Spier were arrested. Please analyze Spier's criminal exposure under MPC §§ 212.1 and 212.4.

## 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?

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

MULTIPLE CHOICE ANSWER SHEET

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