

# CRIMINAL LAW FINAL EXAMINATION

PROFESSOR SAMMONS FALL, 1993

Please read these instructions now.

**PLEASE DO NOT TURN THE PAGE  
UNTIL YOU ARE TOLD TO DO SO.**

1. You have three hours to complete this examination. I will post notices of the time remaining about every thirty minutes until we get near the end and then I will do it more frequently. You must stop completely when I call time.
2. There are three questions. The first two questions are designed to take approximately 50 to 70 minutes each and will each count 40% of the total score. The third question is designed to take approximately 30 to 40 minutes and will count 20% of the total score.
3. You do not need to answer the questions in order, but you do need to clearly label your answers so they can be quickly located in your bluebooks. I strongly recommend that you do the first two questions before the third question. You may use both sides of each page in the bluebooks.
4. This is a closed book examination. You are not permitted to use any materials to assist you in answering the questions on this examination. You should have nothing with you now other than something to write with. Use a bluebook as scratch paper.
5. Put your examination number, the name of the course, and the year on your blue books. *Do this before you start writing.* Number your blue books in the following manner: 1 of X (total number used), 2 of X, etc.
6. Each question asks you to take a particular role. Do so. This is important! Think back over the mistakes I identified for you in our writing exercises, classroom discussions, and handouts and try to avoid those mistakes. These questions call for the *application* of substantive knowledge; not just substantive knowledge.
7. If you have a difficult time getting started, please just start having a conversation with me on paper about what you are thinking. If you get stuck or upset during the examination for any reason, please come see me as soon as it happens.
8. *Do not turn in the examination questions. Turn in your blue books with the first blue book on the outside and all other blue books placed within it.*

# Question #1

(40% of Examination Total--Approximately 70 minutes)

*Assume that you are in a jurisdiction that follows the Pennsylvania homicide scheme we have studied in class (i.e., involuntary manslaughter, voluntary manslaughter, second degree murder defined by malice aforethought, first degree murder defined by premeditation and deliberation). There is no death penalty in this jurisdiction. This jurisdiction follows the majority of state in defining each level of mens rea required for each level of homicide including the usual varieties of malice aforethought. The jurisdiction also follows the majority in the mens rea and actus reus requirements of attempt offenses. You are an assistant district attorney and you have been assigned the task of identifying all potential homicide charges in the following facts that have been presented to you by a resourceful squad of detectives. In addition, you should identify and discuss any potential defenses you will need to counter. Finally, you should evaluate each charge, recommend charges for prosecution, and justify your recommendations. If you need more factual information to do any of these, say so. Tell me what information is needed and why it is needed.*

Late one afternoon after school, three teenagers, their parents still at work, broke into a vacant house in their neighborhood to drink three six packs of beer an older friend bought for them at the local grocery store. After finishing all the beer within an hour, they were drunk, bored, and anxious to do something. One of them, we do not know who, came up with the idea of joy riding. From the vacant house they could see a neighbor's red, four wheel drive, sports vehicle. The view of the red vehicle, combined with their knowledge of some good dirt roads in the nearby woods, was more temptation then these three could stand. They quickly hot wired the sports vehicle and took off through the woods.

Two of these teenagers, Cal and Tracy, thought it would be fun to ride on the running board of the sports vehicle as it bounced through the rough terrain of the dirt road. And so, while the vehicle was still moving, they squeezed out through the window onto the running board, and there they stood, holding on to the window post for security, as the vehicle bumped and lurched along the road.

Now, one of these teenagers, Reynold, the driver of the sports vehicle, routinely carried a loaded pistol with him that he kept in a black Atlanta Falcon book bag. This book bag was Reynold's constant companion. So constant was this companionship that he was often teased unmercifully by his classmates about the bookbag. But Reynold ignored them; he felt safer knowing his pistol was always at hand.

While he was driving, with Cal and Tracy on the running board, the sports vehicle brushed against the top limbs of a fallen tree that stuck out into the road. Cal yelled at Reynold, "Watch out!" Reynold's responded to Cal with an obscenity--the apparent anger of his response surprised both Cal and Tracy. They gave puzzled looks at each other and both shrugged. Reynold caught a glimpse of their shrugs and again

yelled an obscenity. Moments later, however, when the vehicle again brushed against a limb, Cal yelled, sarcastically, "That's right, Reynold, wreck it, wreck it!" With that, Reynold quickly grabbed his book bag and pulled it closer to him. Now, Cal knew that Reynold carried a loaded pistol in the bag and Reynold knew that Cal knew. Cal, however, only laughed at Reynold. That was enough for Reynold. He jerked open the book bag, withdrew the pistol, and shot and killed Cal. Tracy, frightened by the shot, released her grip on the window post, fell from the running board, and was struck fatally by the right rear wheel of the sports vehicle.

## Question #2

**(40% of Examination Total Score--Approximately 70 minutes.)**

***Write a dissenting opinion in the following case:***

UNITED STATES v. WALKER  
Court of Appeals of District of Columbia  
380 A.2d 1388 (1977)

Before KELLY, KERN and YEAGLEY, Associate Judges.

KERN, Associate Judge.

Appellee was charged with two counts of involuntary manslaughter and one count of carrying a pistol without a license (D.C. Code 1973, §22-3204). The government appeals from the trial court's dismissal of the count in the indictment which charged that appellee

feloniously, in perpetrating and attempting to perpetrate the crime of carrying a pistol without a license, involving danger of injury, did shoot Ernestine Curry

with a pistol, thereby causing injuries from which the said Ernestine Curry died. . . .<sup>3</sup>

At the hearing on appellee's motion to dismiss this count of the indictment, the government's proffer of evidence was that appellee, while carrying a pistol without a license, dropped it in the stairwell of an apartment building, and that the gun went off, fatally wounding a bystander. Appellee's proffer was that a firearms expert had determined that when the hammer of the pistol was not cocked, it would fire on impact only if dropped at a particular angle. These proffers constitute the only explanation in the record of the incident underlying the indictment.

There is no statutory definition of manslaughter in this jurisdiction;<sup>4</sup> this court had occasion in *United States v. Bradford*, D.C. App. 344, A.2d 208 (1975), however, to review at length the law of manslaughter in the District of Columbia. In respect to involuntary manslaughter, we said:

Involuntary manslaughter is an unlawful killing which is unintentionally committed. By unintentionally it is meant that there is no intent to kill or to do bodily injury. The crime may occur as the result of an unlawful act which is a *misdemeanor involving danger of injury*. . . . The requisite intent in involuntary manslaughter is supplied by the intent to commit the misdemeanor, or by gross or criminal negligence. . . .

The state of mind in involuntary manslaughter is characterized, on the one hand, by a lack of intent to cause death or injury and, on the other, by a lack of awareness of the consequences of the act amounting to an unreasonable failure of perception [criminal negligence] or *the intention to do an act which is a misdemeanor and is in some way dangerous*.

We defined the elements of involuntary manslaughter as: "(1) an unlawful killing of a human being (2) with either (a) *the intent to commit a misdemeanor dangerous in itself* or (b) an unreasonable failure to perceive the risk of harm to others." Id. at 216, emphasis added.

This appeal therefore presents for our determination the question whether the unlawful act of carrying a pistol without a license is also a dangerous act. The pertinent statute provides:

No person shall within the District of Columbia carry either openly or concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided. . . . [D.C. Code 1973, §22-3204.]

Appellee . . . argues that the plain intent of Section 3204 is to stop the prohibited conduct *before* danger of injury arises, and that such danger is not a

3. Another count of the indictment charged appellee with involuntary manslaughter in shooting Curry "unlawfully, feloniously, and with gross negligence" thereby fatally injuring her.
4. The Code specifies only the punishment for manslaughter. D.C. Code 1973, §22-2405.

necessary concomitant of the offense. Appellee proceeds to illustrate what he deems to be the "essence" of the offense of carrying a pistol without a license by the following hypothetical:

[T]wo persons [are] walking peaceably on a public street carrying holstered pistols. One . . . has a license to carry a pistol, but the other has no license. The second person is violating section 3204, and the first is not. Yet there is no difference between them in terms of the danger presented to others. . . .

Appellee's hypothetical and argument notwithstanding, we conclude that carrying a pistol without a license exposes the community to such inherent risk of harm that when death results, even though an unintended consequence, the defendant may be nonetheless charged with involuntary manslaughter. Appellee in the instant case was carrying a loaded handgun, which, so far as the record shows, had no purpose other than its use as a weapon. . . .

Additionally, we think it significant in assessing the dangerousness vel non of the unlawful act of carrying a pistol without a license that Congress has expressly required one who seeks the license to be "a suitable person to be so licensed." Issuance of these licenses is the responsibility of the Chief of the Metropolitan Police Department, and is subject to restrictive regulations which, among other things, require the applicant to be of sound mind, to be without prior criminal record, not be an alcoholic or user of narcotics, to "be trained and experienced in the use, functioning and safe operation of the pistol," and finally, "to be free from physical defects which would impair his safe use of the weapon."

Thus, taking up appellee's hypothetical of the two persons carrying pistols on a public street, one of whom is licensed and the other of whom is not, we conclude that Congress intended to preclude the non-licensee from being on the street with his weapon because of the danger he posed to the community as a result (1) of the inherent dangerousness of the weapon he carried, and (2) of the absence of any evidence of his capability to carry safely such a dangerous instrumentality. . . .

. . . We now hold that a charge of violation of Section 3204 resulting in the shooting and death of another validly charges involuntary manslaughter because the misdemeanor of carrying a pistol without a license is dangerous in and of itself. Accordingly, the trial court's order must be reversed and the count at issue restored to the indictment.

So ordered.

## Question #3

**(20% of Examination Total--Approximately 30 minutes)**

**Your client has been charged with being an accomplice to a rape. Her estranged husband, who was not living with her at the time, raped his step-daughter, her daughter, on one of the daughter's visits to him. (Note that the couple was not legally divorced or separated; they were simply living apart at the time.) She was charged as an accomplice when the daughter revealed to the prosecutor that she had frequently warned her mother of her step-father's previous sexual assaults on her.**

**The client says to you: "But I didn't do anything." Write out what you would say to her about the law on this issue. (Do not discuss complicity issues. Only discuss issues that we covered in our classroom discussions.) Hint: Think about our hypothetical of the son drowning in the lake when the father drives by.**