CRIMINAL LAW EXAMINATION

Mr. Cole Fall, 1995

The following examination is 3 hours and 5 minutes long. The examinations will be picked up at 5:30 P.M. thus allowing an extra 25 minutes for planning, organization, and general browsing. Each question includes a time limitation for your information. Please budget you time very carefully so that you can finish the examination.

Put only your examination number, the course name, and my name on the front of the bluebooks. You may keep the examination if you wish. Please put one bluebook inside the other when you turn them in, and put your exam number on each bluebook.

Good luck, and have a good (and restful) holiday.

I. 40 minutes/points.

1. In People vs. Newton, Newton was charged with the murder of a police officer who died after a struggle with Newton. The jury found him guilty of homicide. During the struggle Newton was shot in the stomach and claimed not to remember much about what happened until he reached the hospital. Newton appealed claiming that the trial court failed to give a necessary instruction to the jury. What degree of homicide was Newton found guilty of and why? What was the specific question in that case and how did the Court answer the question posed by the appellant? (8 minutes.)

2. In Jones vs. United States, the deceased was a ten month old baby whose mother, Shirley Green, placed him with the defendant Jones. Through failure of care, the baby died. There was conflict in the evidence concerning whether Shirley paid Jones to take of the baby and for how long Shirley lived in the house with Jones. Jones was convicted of homicide and appealed. What degree of homicide was Jones found guilty of and what was the specific question raised by his appeal? What did the Court of Appeals say? (8 minutes.)

3. In Regina vs. Cunningham, Cunningham was engaged to be married and his prospective mother-in-law lived in the next house, separated only by a loose brick wall. Cunningham went into the cellar of 7A and wrenched the gas meter from the gas pipes and stole the meter along with its contents. There was a valve to turn off the gas within two feet of the meter but he did not turn off the gas. Gas thus leaked into the house next door and harmed his mother-in-law. He was convicted under a statute that made it a crime to "unlawfully and maliciously" administer to another person any noxious gas so as to endanger or harm that other person.

What fact in the above account is inaccurate? What was the issue on appeal and what did the court say about it? (8 minutes.)

4. In Regina vs. David Smith, the defendant, while preparing to leave the apartment he had been renting, damaged some wall panels and floor boards in order to retrieve stereo wiring which he had installed with the landlord's permission. He was charged under a statute which read: "A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be damaged or destroyed, shall be guilty of an offence."

Smith argued that he thought the property was his and he could do with it what he wanted because he had put in the floorboards and wall himself. He was convicted under an instruction that told the jury that the defendant's belief that he had a right to

do what he did is not a lawful excuse because in fact he had no right to do what he did.

On appeal the Court of Appeals reversed. What would the issue have been concerning this charge, and why would the Court of Appeals reverse this conviction? (8 minutes.)

5. In Morissette vs. United States, the defendant, a junk dealer, openly entered an Air Force practice bombing area and took spent bomb casings that had been laying around for years. He flattened them out and sold them for junk. He was convicted under a statute that read:

Whoever ... knowingly converts to his use...or sells...any thing of value belonging to the United States... shall be fined or imprisoned.

Morissette said that he thought that the casings had been abandoned and that it was all right to take them. The Court of Appeals affirmed the conviction but the Supreme Court of the United States reversed and overruled the Court of Appeals. What is the specific issue on which the two courts differed, and why did the Supreme Court reverse the conviction in this case? (8 minutes.)

II. 30 minutes/points

In Commonwealth vs. Carrol, the defendant's wife had mental problems and had been causing the defendant big problems with his job. She had also apparently hurt their children on several occasions. She had put a great deal of pressure on the defendant. After a bitter argument one night, he remembered that he had put a loaded .22 caliber pistol by the bed for her protection. He reached up and grabbed the pistol and shot her twice in the back of the head. He said that he did not really know what he had done - then he saw the blood. Then he tried to hide the body and the crime. The defendant plead guilty generally to murder, and the judge found him guilty of first degree murder.

1. On what basis did the trial court find this to be a case of first degree murder and what did the appellate court say about that ruling. (5 minutes.)

2. On what basis could the trial court have found Carrol guilty of second degree murder? (5 minutes.)

3. Could Carrol have been found guilty of manslaughter? Would a conviction of manslaughter be easier to justify under the Model Penal Code's definition or under the common law definition of manslaughter? Why do courts say that the MPC's definition is "significantly broader" than traditional common law manslaughter? (10 minutes.)

4. How, if at all, would a battered spouse defense help Carrol in this case? Is there such a defense as a battered spouse defense? Should there be? (10 minutes.)

III. 15 minutes/points

Suppose a husband fatally shoots his wife after a heated argument. The trial judge instructed the jury on voluntary manslaughter, stating that "the provocation must be such as would arouse a reasonable and ordinary person to kill someone." The trial court refused to charge that the situation should be assessed from the perspective of the defendant, a "Hispanic farm worker living with a Caucasian woman on a low income."

The husband was convicted of second degree murder. On appeal how would defense counsel object to the charge given and the charge refused by the trial court? Explain. (15 minutes.)

III. 100 minutes/points

Jack Spratt walked into his house early one afternoon and found his wife in bed with his best friend engaged in consensual sexual intercourse. The busy couple did not see Jack. Jack grabbed his gun to shoot them both but it was unloaded. He left to go to the store to buy bullets. He purchased the bullets and went back to the house. When he got there, they were gone. Jack, still burning with anger, realized that he would not be able to find them together that night and he wanted them both dead. He went to sleep, and as he woke up that morning, a plan came to him.

In putting his plan into action, he suggested to his wife, Jill, that they invite his friend, Jeff over for dinner on the weekend. (Jeff is Jill's lover.) She agreed enthusiastically and the plan was set. When Jeff got there Saturday night, Jack made sure that there was plenty of beer and liquor, and he mixed the drinks extra strong. He wanted all three of them to be intoxicated. By about 9:00 P. M. all three of them were very intoxicated. Jack noticed throughout the evening that Jeff and Jill kept looking at each other and whispering when he was out of the room. Jack suggested that they play a game of Russian Roulette with his revolver. Jeff was all for it and pressed Jill to do it. He thought it was a good idea, especially if Jack would get killed! They all agreed and Jack went first, using a fake bullet in the revolver. He then left the room and replaced the fake bullet with a specially weighted bullet which he had made. The bullet was designed to increase the odds of the bullet showing up in the firing chamber when the cylinder was spun around. In tests with the bullet it showed up in the firing chamber slightly over half of the time. He handed the pistol to Jill who spun the chamber. Before putting it to her head she walked over to Jeff and said (in a loud drunken voice) that "you are the one I love and if I die I want everyone to know it." She was very intoxicated by that time and did not really know what she was doing. She pulled the trigger and shot herself in the head.

Jack's plan had been to play the game with the weighted bullet and hope that

one of the two would be killed. He knew that there was substantial possibility that one of them would be killed. If neither one was killed then he would think of something else. If either one was killed, then his revenge would be complete because they would not have each other. When Jill shot herself, Jeff saw the little smile on Jack's face.

Jeff, seeing the little smile playing across Jack's face, realized immediately that Jack knew about the affair and wanted to kill him and Jill. Jack said, "you both deserve to die - you were my best friend." Jack walked over toward Jill's body. Jeff, who was standing near the open front door as Jack walked away from him, grabbed the nearest thing to him - a brass table lamp and lunged at Jack, hitting him in the shoulder. He said later that he thought that Jack was going to get the pistol and shoot him. In fact Jack was going to step over the body and fix himself another drink. Jack fell heavily and hit his head on the corner of a table by the sofa. Jeff ran out not bothering to check on either Jack or Jill before he left.

Jack regained consciousness a short time later, although he was in a lot of pain. He saw that Jill was still breathing (with difficulty), and he left the house and locked the door behind him. (No one but he and Jill had keys to the house.) As luck would have it, a friend stopped by about two hours later and saw Jill's body through the window. He called the police who arrived and called an ambulance. The ambulance arrived at about 11:30 P.M. and Jill was still alive. Through a mix-up on the computer system, the ambulance driver was instructed to take Jill to a hospital in a big city about an hour from the town where they picked her up. The local hospital was just 15 minutes away. She died en route to the hospital, although later medical evidence indicated that if Jill had been treated up to a few moments before she died should would probably have pulled through.

Jack left the house with the pistol which he loaded. He went looking for Jeff because now, after Jeff hit him, he was afraid of what Jeff would do and wanted to stop him before he did anything. He found Jeff in a local sports bar where he usually hung out. He went in and confronted Jeff and said "you were sleeping with Jill weren't you?" Jeff just smiled, and Jack swung at him and hit him on the arm. The pistol dropped out of his pocket and Jeff grabbed it and shot at Jack. He missed Jack but killed the bartender.

1) Excluding felony murder, what crime or crimes, if any, could Jack be charged with concerning the death of Jill? What would the defense argue concerning those possible charges? Explain. (30 minutes.)

2) What difference, if any, does the fact that Jill was quite intoxicated at the time of the shooting make in the analysis by the prosecution and the defense? Does the fact that Jack had seen Jeff and Jill in bed together make any difference in the culpability level? (10 minutes.)

3) If Jill survived the shooting, what crime, if any, could Jack be charged with

and how would the conversation regarding the issues in question 1) change? (10 minutes.)

4) Could Jack be charged with felony murder in the death of Jill? Explain, including a short description of the common law felony murder doctrine, merger, and the modern approach to felony murder. (10 minutes.)

5) What crime or crimes, if any, could Jack be charged with concerning Jeff, and what defenses would the defense assert. Explain. (10 minutes.)

6) What crime or crimes, if any, could Jeff be charged with assuming that Jack died from the blow to his shoulder and to his head from the table? What defense or defenses could be raised on his behalf? Explain. (10 minutes.)

7) What crime or crimes, if any, could Jack and/or Jeff be charged with concerning the events in the sports bar? (10 minutes.)

8) If Jack was arrested at his house when he first came back looking for Jeff and Jill, and admitted that he was going to shoot them, what crime, if any, could he be charged with? Explain. (10 minutes.)