

CRIMINAL LAW EXAMINATION

Mr. Fleissner

Fall 1997

Instructions

1. **Time.** You have three and one half hours (210 minutes) to complete this examination. You will be alerted to the time every 30 minutes and when 15 minutes and 5 minutes remain. A suggested allocation of time is set forth for each part of the exam. Of course, the allocation of your time is up to you.

2. **Marking Your Blue Books.** Do not put your name on your blue books. Before you begin the exam, put your examination number on the cover of each blue book. Number your blue books on the cover. After time expires, you will be given time to indicate the total number of blue books you used.

3. **Writing Your Answers.** Please double space your answers and use a separate bluebook for each section of the exam. You may write on both sides of a page or one side.

4. **If You Are Typing Your Exam.** If you elect to type your exam, you should proceed to the typing room (Room D).

5. **Scoring Of The Exam.** The examination has three sections:

| <u>Section</u> | <u>Description</u> | <u>Grade %</u> | <u>Suggested Time</u> |
|----------------|-----------------------|----------------|-----------------------|
| I | Fact Pattern Problems | 40% | 90 minutes |
| II | Fact Pattern Problems | 30% | 60 minutes |
| III | Legal Essay Questions | 30% | 60 minutes |

6. **Reminders.** This is an open book exam. You should have the course text with you (LaFave, Modern Criminal Law); you may also use other materials that you assisted in preparing. Read the questions with care. Follow instructions found in the questions. Plan your answers before you begin writing. Do not merely state conclusions; set forth your reasoning, make arguments, and give examples. Do not merely recite legal rules; remember that your answers will be evaluated on your application and analysis of the law.

Section I: Fact Pattern Problems

Reminders and Instructions: This section is 40% of the grade; suggested time is 90 minutes. Please label your blue book(s) "Section I."

In this section, your role is that of an assistant prosecutor. You are assigned to prepare a memo for your boss, the District Attorney. In the memo, your task is to evaluate possible criminal charges, discussing any legal issues or defenses relating to the possible charges. *You must address each of the four cases.* Assume that the facts described in the cases can be proven. Carefully read the directions at the end of each case before you begin writing.

Your jurisdiction has adopted the Model Penal Code. Only the Model Penal Code provisions on the list captioned "Model Penal Code Provisions" need be considered. Your answers should explain how the relevant code provisions apply to the facts. You may identify code provisions by number ("2.02(1)"). You may refer to persons using initials if you wish.

Case A

Odom had been out of work for some time and was growing increasingly frustrated with his inability to provide for his family. On November 7, 1997, Odom went to a state office to apply for unemployment benefits. Odom became angry with the paperwork and with having to wait in line. After angrily confronting Andy Adams, an employee of the office, Odom stormed out.

Odom returned to the office an hour later. Odom again confronted Adams, declaring that he was tired of being pushed around and announcing that he was going to settle things once and for all. Odom then pulled out a pistol and shot Adams. Adams survived, but is permanently disabled. After shooting Adams, Odom reloaded his pistol and fled the office by a rear exit. He got into his car, which he had left in a nearby alley. Two police officers, Burns and Cullen, were the first to respond to the report of the shooting. As the officers pulled up in a police car, they spotted Odom sitting in his car. As Officer Burns was getting out of the police car, Odom opened fire, and Burns returned the fire. No one was hit in this exchange, but one of Odom's bullets hit the windshield of the police car near where Cullen was sitting. Odom got out of his car and began running, reloading his pistol as he ran.

Another officer, Daniels, approached in a police car. When Daniels got close to Odom, Odom pointed his gun at Daniels. Before a shot was fired, Daniels accelerated his police car and struck Odom, knocking him to the pavement. While Odom was still dazed, Daniels took Odom's gun, which was cocked and loaded. As Daniels took the gun, Odom said, "I've had enough." After his gun was taken, Odom said to Daniels, "You SOB, I wish I had shot you."

You may assume that the use of force by the police was justified. You are to evaluate possible Model Penal Code charges against Odom.

Case B

This case involves the death of George Stafford on a cold December night. On the night he died, Stafford met two men, Kibbe and Krall, in a bar at about 9:00 p.m. Stafford had been drinking heavily and was so intoxicated that the bartender refused to serve him any more drinks. Kibbe and Krall saw that Stafford was carrying a lot of money. When Stafford asked for a ride to another bar in a nearby town, Kibbe and Krall decided together to give Stafford a ride and take the opportunity to rob him of his money. Before starting out for their intended destination, Kibbe and Krall tried unsuccessfully to get Stafford more to drink, but another bartender refused to serve him.

Kibbe, Krall, and Stafford drove off in Kibbe's car. As Krall drove the car, Kibbe demanded Stafford's money and, upon receiving it, forced Stafford to lower his trousers and remove his boots to prove he had no more. At around 9:30 p.m. Kibbe and Krall abandoned Stafford on the side of an unlit, rural two-lane highway, about a quarter mile from the nearest shelter. Stafford's boots and jacket were thrown by the side of the road. His eyeglasses, however, remained in the car.

About 30 minutes after Stafford was abandoned, he was struck by a car and killed. The car, driven by a college student named Blake, was going 10 miles an hour over the posted speed limit at the time it hit Stafford. When Blake's car hit him, Stafford was sitting in the middle of the road, his trousers still around his ankles and his shirt still pulled up. Stafford was wearing neither his boots nor his jacket. Blake was so shocked to see Stafford in the road that Blake failed to brake before striking Stafford. The Medical Examiner found that injuries from the collision were the direct cause of Stafford's death.

You need not address the issue of whether Blake should be charged with a crime. You should assume that it has already been decided to charge Kibbe and Krall with robbery and that they confessed to that crime. You are to evaluate possible homicide charges against Kibbe and Krall.

Case C

James Law is a 32 year old African-American man who recently had married and moved into a predominantly white middle-class neighborhood. From the beginning, Law and his wife found the neighborhood unfriendly. Within two weeks, the Laws' home was burglarized and a substantial amount of property was taken. Law was highly agitated over the burglary and told the police that he would take the matter into his own hands. Law stated, "I will take care of the job. I know who it is. I know where to get a gun and I'm going to take care it." Soon thereafter, Law purchased a shotgun and ammunition.

The burglar had entered the Laws' home by breaking a windowpane in the rear door, which opened onto a screened back porch. The intruder then apparently reached in and unlocked the door. Law later installed "double locks" which required the use of a key both inside and outside. He replaced the glass in the door window in a temporary manner by holding it in place with a few pieces of molding, without using the customary sealing compound.

One week after the break-in, a well meaning neighbor saw a flickering light inside of the Laws' otherwise darkened house. The neighbor was aware of the earlier burglary and became suspicious. The neighbor called the police and reported that someone was breaking into the Laws' home. Although it was about 8:00 p.m., the Laws had retired for the evening. When the police arrived, A FUSE OF CIRCUMSTANCES IGNITED BY FEAR EXPLODED INTO A TRAGEDY OF ERRORS!

The police did not question the neighbor who called. Instead they went to the Laws' home and began checking for the possible illegal point of entry. They checked windows, shaking them to see if they were locked. They shined flashlights into the windows. Eventually, two of the police, Smith and Jones, entered the back screened porch and saw the windowpane which was temporarily repaired in a makeshift manner. Neither of these officers knew about the cause of the damage to the windowpane or how it was repaired. The Laws heard what sounded like attempts to enter their home. Keenly aware of the recent break-in, James Law grabbed his shotgun and loaded it. Law then went downstairs, positioned himself near the door to the back porch, and waited for more sounds.

Officers Smith and Jones, speaking to each other in hushed tones, agreed that they had found the point of illegal entry. They decided to examine the windowpane. While Officer Smith shined the flashlight on the window, Officer Jones removed the windowpane and reached inside the door to open the lock. Upon determining that the door had a deadlock, Officer Jones removed his arm. At that moment, James Law fired the shotgun through the door, fatally wounding Officer Jones and slightly wounding Officer Smith. James Law said that he fired the gun because he was fearful that someone was about to enter his home. After shooting, he called to his wife, saying that she should call the police because "I think I just shot a burglar."

You are to evaluate possible charges against James Law.

Case D

Following the reversal of his conviction on burglary charges in the District of Columbia [see text at 109], Thomas Melton moved to your jurisdiction. On December 1, 1997, Melton was arrested after the following events:

Melton believed that Nathan Green was trying to lure Melton's girlfriend away from him. Melton decided to kill Green. Melton purchased a handgun and began to study Green's daily routine, looking for an opportunity to shoot Green. Melton finally decided to shoot Green as he left work one day. On December 1st, Melton waited for Green to leave the building where he worked. At 3:00 p.m., as Green walked out of the building with a co-worker, Tim Brown, Melton fired his gun. The shot missed Green and struck Brown, killing him.

Melton fled the scene on foot. As he ran down a nearby alley, he spotted an old house that he believed to be deserted. Melton decided to hide in the house. He kicked in the back door, breaking the lock. After being in the house for a few minutes, Melton began to hear noises coming from the second floor, which led him to believe that someone else was present in the house. Melton quietly ascended the stairs to the second floor, and saw household items suggesting that someone lived there. Because leaving the house would almost certainly result in his capture, Melton decided that he would have to kill the occupant. Suddenly, Melton heard scratching noises coming from behind a closed door. Melton fired two shots through the door and heard something fall to the ground. When he pushed the door open, Melton discovered that he had shot and killed a very large guard dog. The house's human occupant apparently was not home.

Unfortunately for Melton, the police heard the shots that killed the guard dog. Melton could see police cars pulling up to the house in the front. He decided to leave by the back door. As Melton ran from the house and down the alley, he had his gun drawn. When Melton tried to jump over a fence with the gun in his hand, the gun discharged, striking Tim White, who was an innocent bystander. White was rushed to the hospital and doctors operated on him. Unfortunately, the operation made White susceptible to developing pneumonia. White died from pneumonia two weeks later.

Shortly after the shooting of White, police cornered Melton and he surrendered. After being advised of his rights, Melton gave a confession consistent with the above facts.

You are to evaluate possible charges against Melton.

Section II: Fact Pattern Problems

Reminders and Instructions: This section is 30% of the grade; suggested time is 60 minutes. Please mark your blue book(s) "Section II." *You must address both cases.*

Case A

You have been retained to represent Carl Custer in his appeal from his federal conviction for selling adulterated foods. Custer is the chief operating officer of Custer Foods, a company that sells meat products and other foods wholesale to retail business. After the media attention given to incidents involving the distribution of tainted meat to fast food chains, Congress enacted a new criminal statute. The sponsor of the new law declared that the law was designed to "bring to justice rich corporate executives who endanger America's food supply." The statute states:

Any chief operating officer of a company in the business of selling or distributing meat or other food products wholesale who fails to ensure the safety of meat or food products sold or distributed by his company shall be guilty of a felony punishable by up to three years' imprisonment and a fine of up to \$100,000. For purposes of this statute, failure to ensure the safety of meat or food products means that the meat or other food products fail to meet government standards for food safety after being received by a buyer engaged in retail sales.

At Custer's trial, the prosecution maintained that Custer Foods had sold 2000 pounds of hamburger to a fast food restaurant chain. When government inspectors tested the meat upon its delivery, the inspectors found bacteria that caused the meat to fail to pass tests and therefore fail to meet the applicable government standards. Those facts are not in dispute. Custer offered evidence showing that he had no knowledge of the sale in question and had implemented strict company policies to prevent the sale of sub-standard meat. The trial judge gave the following instruction to the jury: "You may convict the defendant if you find the following elements beyond a reasonable doubt: (1) The defendant is the chief operating officer of a company in the business of selling or distributing meat wholesale, and (2) that the defendant failed to ensure the safety of meat sold or distributed by the company. Food is unsafe if it fails to meet government standards when received by the buyer engaged in retail sales."

The court gave the instruction over the objection of defense counsel, holding that the instruction correctly set forth all the elements of the offense. Custer was convicted. Under federal sentencing rules, the judge sentenced Custer to six months in prison and a \$50,000 fine. **You should assume that the sentence was imposed according to the rules and that the legality of the sentence is not an issue on appeal. What will you argue on appeal?**

Case B

As in Section I, your role is that of an assistant prosecutor. You again are asked to write an analysis of possible criminal charges under the Model Penal Code, which is the law of your jurisdiction. You need consider only the Model Penal Code provisions on the list provided. Here are the facts:

Steve Spade ("Spade") decided to kill his wife, Sylvia Spade ("Sylvia"). Spade hired Jon Hart to carry out the deed. Spade and Hart came up with the following plan: Spade would take a business trip out of town, leaving his wife at home alone. While Spade was out of town, Hart would break into the Spade house at night and shoot Sylvia with a gun. The plan called for Hart to ransack the house and take some valuables to make it look like a burglary. Hart told Spade that he would probably recruit some friends to assist. Spade said, "I'd rather not know."

Hart asked two friends, Carl Club and Don Diamond, to help kill Sylvia. Hart did not tell Club and Diamond about Spade's role. On the agreed upon day, Hart, Club and Diamond went to the Spade home. The three men entered the house through a first floor window. They found Sylvia in her bed asleep. When she was not awakened by their presence, the three men noticed an empty liquor bottle and a glass on the nightstand and concluded that Sylvia had passed out from drinking too much. Hart, Club, and Diamond decided that they would each have sex with Sylvia. Club and Diamond each had intercourse with Sylvia, but when it was Hart's turn, he declined, saying that the three better hurry up and get out of there. Hart then pulled out his gun and shot Sylvia to death. As was planned, the three men ransacked the house, took some valuables, and left the house.

After the killing of Sylvia, Hart was overcome with guilt and remorse and turned himself in. Hart cooperated with authorities and helped the police gather evidence establishing the above facts.

You are assigned to determine what criminal charges can be brought against Spade, Hart, Club, and Diamond.

Section III: Legal Essay Questions

Reminders and Instructions: This section is 30% of the grade; suggested time is 60 minutes. Please mark your blue book(s) "Section III."

You must answer each of the following two questions.

Question A

Your role is that of a law clerk to a Justice of the United States Supreme Court. Assume that the court is considering Barnes v. United States, but has not yet decided the case. You have received Justice Powell's draft opinion in the case, as well as the two draft dissents. These are set forth in the Text at pages 132-35. Your Justice (who did not author any of the draft opinions), has assigned you to write an analysis of the issues and recommend how the issues should be resolved. You may agree in whole or in part with any of the opinions or suggest a different resolution of the issues.

Question B

Respond to this statement: "The common law defining the types of criminal homicide, as reflected in Blackstone's Commentaries on the Law of England, contains illusory distinctions and legal fictions. The many American jurisdictions that borrowed the common law scheme have simply embedded the same illusory distinctions and legal fictions in their statutory definitions of criminal homicide."

[For purposes of this question, you should consider the portion of Blackstone's Commentaries quoted in the handout provided with this exam. This is a copy of the same handout provided during the semester with the Materials on Homicide.]

END OF EXAM

Model Penal Code Provisions

| <u>M.P.C.</u> | <u>Text Page</u> | <u>Description</u> |
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| 1.05 | 818 | All Offenses Defined by Statute |
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| 2.01 | 823 | Voluntary Act |
| 2.02 | 824 | Requirements of Culpability (Mental States) |
| 2.03 | 825 | Causation |
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| 3.08 | 837 | Domestic Authority, etc. |
| 3.09 | 838 | Use of Force: Mistake of Law, Reckless & Negligent |
| 3.11 | 839 | Definitions relating to use of force |
| 4.01 | 839 | Mental Disease or Defect Defined |
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| 4.03 | 840 | Mental or Defect: Procedure |
| 4.04 | 840 | Competence to Stand Trial |
| 4.10 | 844 | Immaturity |
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| 210.0 | 860 | Homicide Definitions |
| 210.1 | 861 | Criminal Homicide |
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| 210.3 | 861 | Manslaughter |
| 210.4 | 861 | Negligent Homicide |