

WIDENER UNIVERSITY SCHOOL OF LAW
SPRING 2007 EXAMINATION
CRIMINAL LAW, SECTION D4

PROFESSOR MOULTON

May 7, 2007

Instructions:

1. This is a closed book exam.
2. You have exactly three (3) hours to complete this exam. The exam consists of three (3) parts and a statutory appendix on a total of twelve (12) pages, including these instructions. **Check now to be sure that your exam is complete.**
3. Part I consists of fifteen (15) questions in multiple choice format. For Part I:
 - A. On the answer sheet, write your anonymous number in the place for I.D. number, starting from the left, and fully darken the circles that correspond to your number. Do not use a sticker.
 - B. In the block marked "TEST FORM," darken the circle designated "A."
 - C. To be scored, your answers must be recorded on the answer sheet using side 1, numbers 1-15. Choose only circles "A" through "D."
 - D. Use only a #2 pencil. Fully darken the circle for the answer you select. Do not make stray marks on the answer sheet.
4. Parts II and III consist of essay questions. Write your answers for Parts II and III in one or more blue books, or use ExamSoft. Be sure to write legibly, and please try to write only on one side of each blue book page. If I can't read it, I can't give you credit for it.
5. When you have finished the exam, you must hand in the exam itself, the computer answer sheet, your blue books, and any scrap paper. Please put your exam number on all blue books, the exam itself, and the computer answer sheet.
6. Each of the three parts of the exam is worth one-third ($\frac{1}{3}$) of the total exam grade. You should structure your time accordingly, but be aware that equally weighted parts may not take the same amount of time to answer. Before beginning to write, take sufficient time to think about and organize your answers.
7. GOOD LUCK AND ENJOY THE SUMMER!

Part I - 15 Multiple Choice Questions - 4 points each - 60 points total

Part I consists of 15 multiple choice questions. Select the one best answer to each question. The term “best answer” means the best among the alternatives provided; it is not necessarily the best possible answer, or the best expression of the correct answer. Sometimes the best answer will be arrived at by a process of elimination; i.e., because something is wrong with each of the other choices. Unless otherwise indicated, assume that the jurisdiction in question follows traditional, common-law-based definitions of its criminal offenses and has not adopted Model Penal Code § 2.02. Also, do not use the State of Brandywine statutory appendix unless the question directs you to do so.

MULTIPLE CHOICE OMITTED

**End of Part I
Exam Continues on Next Page**

Part II - 60 points total

Part II consists of one essay question. Think and organize before beginning to write.

You are a deputy Attorney General for the State of Concord, assigned to charge and prosecute the first two cases that have arisen under section 22.04 of Concord's criminal code, which is reprinted below.

In the first case, Daisy Dawn was arrested in connection with the severe burning of her three-year-old son in the bathtub. The victim had second and third degree burns over most of his body, and will be permanently disfigured. Dawn told the investigating detective that she had been angry with her son for resisting his bath and refusing to get undressed and that she had placed him, fully clothed, in the water without first testing it. She denied, however, that she knew the water was hot enough to cause burning.

In the second case, Donald Dripps operated a small boarding house catering chiefly to senior citizens of limited means. In exchange for a weekly fee, Dripps provided a furnished room and three meals a day, served by Dripps in the dining room of the boarding house. One of Dripps' tenants, Vivian Vance, age 71, was discovered by a fellow tenant in a state of malnutrition and severe dehydration. According to an examining physician, Vance had not eaten for at least three days, but is likely to fully recover. When asked about Vance's condition, Dripps said to the state investigator: "Hey, I'm not a nurse. Vance told me she was '65 years young' – her words – and I thought she could take care of herself."

Section 22.04 was enacted last year, as part of an overall revision of Concord's criminal code, which included the adoption of section 2.02 of the Model Penal Code. The complete text of section 22.04 is on the next page.

Prepare a memorandum to your supervisor that addresses the potential criminal liability of Dawn for the injuries to her son and of Dripps for the injuries to Vivian Vance under section 22.04. Be sure to (1) identify all elements, non-mental and mental, that you would need to establish to convict any defendant under section 22.04; (2) assess whether or not you have sufficient evidence to prove those elements against Dawn and Dripps; and (3) pinpoint what level of offense (first, second, or third degree felony, or misdemeanor, or no liability) you believe best describes each actor's level of liability and explain why. (This is your recommendation as to what, if anything, to charge, so you must take a position.)

With respect to the applicable mental states, be sure to provide definitions as they apply to particular non-mental elements of the offense. For all issues, be sure to include arguments in support of your position as well as reasonable alternative interpretations and arguments. If you believe you need any additional information, state what you need to know and why it is relevant.

See Next Page for Complete Text of Section 22.04

§ 22.04. Injury to a Child or Elderly Individual

(a) A person commits an offense if he purposely, knowingly, recklessly, or negligently by act, or purposely, knowingly, or recklessly by omission, causes to either a child or elderly individual: (1) serious bodily injury, or (2) bodily injury.

(b) In this section:

(1) "Child" means a person 14 years of age or younger.

(2) "Elderly individual" means a person 70 years of age or older.

(3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(4) "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(c) An offense under Subsection (a)(1) is a felony of the first degree when the conduct is committed purposely or knowingly. When the conduct is engaged in recklessly, the offense is a felony of the second degree.

(d) An offense under Subsection (a)(2) is a felony of the third degree when the conduct is committed purposely or knowingly. When the conduct is engaged in recklessly, the offense is a misdemeanor.

(e) An offense under Subsection (a) is a misdemeanor when the person acts with criminal negligence.

End of Part II – Exam Continues on Next Page

Part III - 60 points total

Part III consists of one essay question in two equal parts. Think and organize before beginning to write.

You are a legislative aide to newly elected state senator Toby Maguire of Brandywine. Senator Maguire, who has experience in law enforcement but is not a lawyer, has asked you to prepare two brief memoranda, as described below.

First memo - 30 points. Felony murder liability in Brandywine is currently addressed in section 102 of Brandywine's criminal code. See statutory appendix. You understand from your research that Brandywine courts have upheld felony murder liability under section 102(b) for all felonies not listed in section 102(a)(2). Senator Maguire's close friend Senator Dunst has introduced a bill that would amend section 102 to read as follows:

§ 102. **Murder; degrees. {Proposed amended version.}**

- (a) First degree murder is murder that is premeditated and deliberate.
- (b) Second degree murder is all other murder other than felony murder.
- (c) Third degree murder is felony murder, which is a death foreseeably caused during the course of and in furtherance of arson, robbery, burglary, or sexual assault.

Prepare a brief memo for Senator Maguire that (1) explains how courts could interpret the current version (see statutory appendix) of section 102(b) to include felony-murder liability, in light of the current version of section 102(a)(2); and (2) analyzes Senator Dunst's proposed amendment to section 102, in terms of how it would change felony murder liability in Brandywine and whether those changes would be good or bad from the standpoint of sound public policy.

Second memo - 30 points. Senator Maguire explains to you that Senator Dunst has told him that she plans to introduce another bill that would, in her words, "eliminate the ridiculous reasonableness limit on the mistake defense in section 1030."

Prepare a brief memo for Senator Maguire that (1) explains the reasonableness limit in section 1030 (see statutory appendix) and how it operates in relation to proof of mental state elements, (2) gives your view as to the soundness of doing what Senator Dunst has suggested, and (3) redrafts section 1030 without a reasonableness limit. Senator Maguire has asked that you provide a hypothetical to illustrate the difference between section 1030 with a reasonableness limit and section 1030 without a reasonableness limit.

End of Part III – Brandywine Statutory Appendix on Next Page

Statutory Appendix - State of Brandywine

§ 101. **Murder defined.** Murder is the unlawful killing of a human being with malice aforethought.

§ 102. **Murder; degrees.**

(a) First degree murder is murder that is (1) premeditated and deliberate, or (2) caused during the course of the commission of arson, robbery, burglary, or sexual assault.

(b) Second degree murder is all other murder.

§ 104. **Involuntary Manslaughter.** Involuntary manslaughter is the unlawful killing of a human being committed recklessly.

§ 301. **Burglary.** A person is guilty of burglary if, with purpose to commit a crime therein, he enters a building or occupied structure that he is not licensed, privileged, or invited to enter.

§ 401. **Larceny.** A person is guilty of larceny if he unlawfully takes, or exercises unlawful control over, property of another with purpose to deprive him thereof.

§ 501. **Robbery.** A person is guilty of robbery if, in the course of committing larceny or any other theft, the person threatens to inflict or knowingly inflicts bodily injury on another.

§ 601. **Attempt.** A person commits an attempt when, with intent to commit a specific crime, the person does any act which constitutes a substantial step toward the commission of that crime. To constitute a “substantial step” conduct must be strongly corroborative of criminal intent.

§ 1010. **Intoxication or drugged condition.** Voluntary intoxication or drugged condition defeats criminal liability only if it negates an element of the offense charged. If the element in question requires proof of only recklessness or negligence, then voluntary intoxication or drugged condition does not negate that element.

§ 1020. **Necessity; choice of evils.**

(1) Conduct that the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that:

(a) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charge; and

(b) the actor had no legal alternative but to violate the law.

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this Section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

§ 1030. **Ignorance or mistake.** Ignorance or mistake as to a matter of fact is a defense if the defendant reasonably arrived at the conclusion underlying the mistake, and the mistake negatives the culpable mental state required to establish the offense.

End of Exam