Final Examination

Criminal Law

Spring 2003/Section W

Professor Ritter

General Instructions

This exam consists of three parts. Part I contains 14 multiple choice questions. Each question is worth 2 points for a total of 28 points. Using a No. 2 pencil, please place your answers to this part on the computer sheet provided.

Part II is an essay worth 28 points. The essay has two sections, A and B. Section A is worth 14 points, and Section B, 14 points.

Part III contains six short answer questions. Each question is worth 6 points for a total of 36 points. The entire exam is worth 92 points.

You have three hours to complete the exam. Except for the multiple choice part all answers should be written in your bluebooks. Please write on one side of the bluebook page only and please write legibly. Including this page, there are 12 pages in this exam. Please make sure that you have all 12 pages.

Good luck.

I. Multiple Choice - 28 points

This section contains 14 multiple choice questions. Each question is worth 2 points for a total of 28 points for this section. Your answers for this section should be entered with a No. 2 pencil on the answer sheet provided. For each question choose the best answer from amongst the four choices. The questions are presented in pairs of two with each pair preceded by a short factual recitation.

Q. 1 & 2: C was arrested and charged with violating the following statute:

Animal fighting—A person commits a felony of the third degree if he or she pays for admission to an animal fight or attends an animal fight as a spectator. The maximum penalty for a violation of this provision is a period of incarceration not to exceed five years.

- 1. If C moves to dismiss the charge and alleges that the statute is unconstitutional because it fails to require proof of a culpable mental state or *mens rea* the court should:
 - a. Deny the motion because this is most likely a strict liability offense.
 - b. Deny the motion because lack of a mens rea element is never a constitutional problem.
 - c. Deny the motion because the court will simply read in a mens rea requirement.
 - d. Grant the motion.
- 2. C has also alleged that the statute is unconstitutional because the term, "spectator" is too vague. The court will most likely:
 - a. Deny the claim because vagueness is not a constitutional issue.

- b. Grant the claim if the court believes that the language of the statute permits the arbitrary and discriminatory enforcement of the law.
 - c. Deny the claim because the statute has a definition section.
 - d. None of the above.
- Q. 3 & 4: Ike and Mike are in business together selling crack cocaine. Ike has contacts with major drug suppliers and he obtains crack for Mike to sell on the street. They share the profits. One day Mike made the mistake of selling crack to an undercover narcotics officer. He was arrested. During a search incident to Mike's arrest, the officer found an unregistered gun in Mike's pocket which Mike claimed he carried for protection.
- 3. If Ike is charged with conspiracy to sell crack cocaine he will probably be found:
 - a. Not guilty because he committed no overt act.
- b. Not guilty because, even though Ike knew Mike was selling the crack, there was no proof that Ike intended that Mike sell crack.
- c. Guilty because there was an agreement, an overt act and the *mens rea* for conspiracy is knowledge.
- d. Guilty because there was an agreement, an overt act and a purposeful *mens rea* can be inferred from these facts.
- 4. If Ike is charged with possession of an unregistered firearm, he will probably be found:
 - a. Not guilty if he didn't know that Mike carried a gun.
 - b. Guilty if the "Pinkerton" rule applies.

- c. Not guilty if the"Pinkerton" rule applies.
- d. Guilty, but, only through a theory of complicity.
- Q. 5 & 6: The Criminal Code for the State of W defines the crime of rape as: "sexual intercourse with another with force and without consent."
- 5. You have done research and have discovered that in rape trials in the State of W juries are instructed that, "a reasonable mistake of fact regarding consent is a defense." This tells you that in order for the prosecution to get a conviction, the minimum *mens rea* that must be proven for the element of consent is:
 - a. None because it is a strict liability element.
 - b. Purpose
 - c. Recklessness, because it is the default.
 - d. Negligence
- 6. W's rape statute does not include an exemption for defendants accused of raping their spouses. This is most likely because:
- a. Such an exemption would likely violate the equal protection clause of the Fourteenth Amendment of the United States Constitution.
- b. Such an exemption would likely violate the due process clause of the Fifth
 Amendment to the United States Constitution.
 - c. Spouses are no longer considered property.
 - d. None of the above.

- Q. 7 & 8 Darlene suffers from schizophrenia. As a result of her mental illness she hears voices, has hallucinations and sometimes becomes violent. Recently, as she was walking down the street, Darlene heard a voice tell her that a child was in trouble in the house she was standing in front of. Darlene broke the window of the house, saw a 3 year old boy, grabbed him and carried him off. The police caught up with Darlene a few blocks away. They rescued the child and charged Darlene with kidnaping.
- 7. Darlene has pled, "not guilty by reason of insanity" and has demanded a jury trial. In the jurisdiction where she is to be tried the M'Naghten test is accepted as the legal definition of insanity. Darlene will most likely be successful with her defense:
 - a. If the jury finds that she thought the voice she heard was that of God.
 - b. If the jury finds that her schizophrenia was the cause of her behavior.
- c. If the jury finds that her schizophrenia caused her to think the child was a toy or that it prevented her from recognizing that taking the child was wrong.
- d. If the jury finds that her schizophrenia prevented her from recognizing that taking the child was wrong or prevented her from being able to conform to society's view of right and wrong.
- 8. Assume that while running with the child Darlene stepped into the street causing an oncoming car to swerve out of the way. The car collided with a truck and the driver was killed. If Darlene is charged with felony murder she will be:
 - a. convicted if her insanity defense to kidnaping is unsuccessful

- b. acquitted because the death of the motorist was unforeseeable
- c. acquitted because she lacked the mens rea for murder
- d. convicted even if her insanity defense to kidnaping is successful
- Q. 9 & 10: Several weeks ago basketball superstar, Allen Iverson, was with a crowd of friends when shots were fired in their direction. Iverson wasn't hurt, but, one of his associates was. The police eventually arrested the alleged gunman and he will soon go on trial for attempted murder.
- 9. The defendant will likely be:
 - a. acquitted if he intended to shoot Iverson and not the associate.
 - b. convicted regardless of his mental state
 - c. acquitted if he lacked the intent to kill
- d. convicted because a reasonable person would know that shooting a firearm would probably cause a death
- 10. Assume that the defendant asserts that he was coerced into the shooting by a deranged Detroit Pistons fan. The defendant claims that the fan threatened to kill the defendant and his wife if the defendant did not shoot Iverson. If the Model Penal Code's prescription for the defense of duress governs, the defendant will:
- a. be found guilty of attempted manslaughter if the jury finds that he was reckless in coming into contact with the Pistons fan.
 - b. be found guilty of attempted murder if the threat was that the fan would harm the

defendant and his wife at a future time.

- c. be found not guilty of attempted murder if the defendant honestly believed that his life would be in danger if he didn't do the shooting.
 - d. all of the above
- Q. 11 & 12: Emily is accused of theft ("the knowing taking of another's property with the intent to permanently deprive the owner of the property") through the theory of complicity.

 Emily was babysitting for V's children when Emily's boyfriend, Roger, came over. While Emily looked on, Roger took two hundred dollars that he found in a kitchen drawer. After V came home Emily and Roger used the two hundred dollars to go on a shopping spree.
- 11. In the criminal prosecution of Emily, the actus reus element is:
 - a. not satisfied because all she did was stand there while Roger took the money
 - b. satisfied because she had a moral duty to watch the house
- c. not satisfied because while she knew Roger was taking the money, it was not her purpose that he do that
- d. satisfied because she invited Roger over and stood by while he looked through the drawers.
- 12. Emily was shocked by her prosecution because she didn't know that she could be found guilty of theft simply for aiding the thief. Emily was, of course, mistaken and this mistake will:
 - a. not be a defense because it does not negate the mens rea of a material element
 - b. be a defense because it negates the mens rea of a material element
 - c. be a defense if the jury finds that Emily was misinformed by her father who is a lawyer

- d. not be a defense because it is a mistake of non-governing law
- Q. 13 & 14: The State of W provides that a homicide committed in the heat of passion upon adequate provocation may be downgraded from murder to voluntary manslaughter.
- 13. One probable explanation for this scheme is:
 - a. the victim is, at least partially, at fault
 - b. the defendant lacks the intent to kill
 - c. this type of killing is difficult to deter
 - d. these defendants suffer from mental illnesses
- 14. For murder to be downgraded to voluntary manslaughter the jury must find that:
 - a. the defendant's passion was reasonable under the circumstances
 - b. there was an inadequate cooling off period
 - c. the defendant's passion had not cooled at the time of the homicide
 - d. all of the above

II. Essay - 28 points

The Pennsylvania Crimes Code, 18 Pa.C.S. § 6310.1(a) provides the following:

A person commits a misdemeanor of the third degree if he intentionally and knowingly sells or intentionally and knowingly furnishes any liquor or malt or brewed beverages to a person who is less than 21 years of age.

B. J. has a son named D. D turned 21 last week. To celebrate D's birthday, B.J. told D to invite up to 30 friends over to the house for a party. In preparation for the party, B.J. purchased beer, wine and soft drinks. Before D's friends arrived, B.J. told D to make sure that only the friends who were 21 drank the alcohol. B.J. invited some of her friends to the party as well.

The party was quite lively. In fact it became quite noisy and a little rowdy. Many of the guests were intoxicated. A bunch of D's friends seemed quite drunk. B.J. has a hard time remembering some of what took place as she drank a lot of wine and became intoxicated as well. She does remember seeing some of D's friends drinking soda, but, many drinking beer. At the time, she assumed that the beer drinkers were over 21.

At some point in the evening B.J. asked some of D's friends to leave because they seemed out of control. Three of his friends, E, F and G left together in E's car. They were so drunk that they had a hard time walking to the car.

The next morning B.J. and D received terrible news. While driving home from the party, E hit a tree and F and G were killed. E survived without a scratch. The lab results on E's blood

work show that his blood alcohol level was .20, which is twice the legal limit for driving.

Because of the fatal accident, the police conducted a full investigation of the evening's events. They learned that E, F & G were all 20 years old and that only 2 of D's friends, Y & Z were over 21. For this question, assume that Pennsylvania has adopted all relevant sections of the Model Penal Code.

- A. Discuss whether B.J. is likely to be found guilty of violating 18 Pa.C.S. § 6310.1(a). (14 points)
- B. Discuss any other criminal liability B.J. is likely to face. (14 points)

III. Short Answers - 36 points

This part contains three questions, each with two subparts. Each subpart is worth 6 points. Your answers to each subpart should be no more than 1-2 short paragraphs.

A. Bill was running late for an appointment. He saw a taxi pull over to the curb nearby and started to get in. Just then a man yelled, "Hey you jerk, that's my cab." Bill stepped out of the way, but, the angry man headed in Bill's direction. Bill punched the man in the face causing physical injury. Bill is charged with assault and claims that he was just defending himself because he thought the man was about to hit him.

- 1. Does it matter whether Bill's belief was reasonable? Explain.
- 2. What facts would you like to have to help you determine whether Bill's belief was reasonable.
- B. You are working as a law clerk to a criminal trial judge. The judge asks you to do the following:
 - 1. Draft a jury instruction providing the definition of premeditated murder.
- Draft a jury instruction explaining the difference between reckless homicide and extremely reckless homicide.
- C. James is accused of attempted burglary. You are in charge of the prosecution. The police investigation reveals that James had a telephone conversation with Martha during which he told her of his plan to break into his law school and steal a copy of his Criminal Law exam.

The police apprehended James in the middle of the night lurking outside the registrar's office.

- 1. What questions do you have for the police regarding James' actions and the surrounding circumstances? Why?
- 2. Under modern codes would it help James if it turned out that, as of the night in question, his Criminal Law professor hadn't yet written the exam? Why or Why not?

END OF EXAM - HAVE A GREAT SUMMER!

Answer Key - Criminal Law Spring 2003

Multiple Choice

1: C

8: A

2: B

9: C

3: D

10: Removed

4: B

11: D

5: D

12: A

6: A

13: C

7: C

14: D