

Final Examination

Professor Ritter
Criminal Law
Fall 2009

Anonymous # _____

General Instructions

This exam consists of four parts. Part I contains 15 multiple-choice questions. Each question is worth 2 points for a total of 30 points. Part II is worth 28 points. Part III is worth 12 points. Part IV is worth 20 points. The entire exam contains 90 possible points.

You have three hours to complete this exam. Except for the multiple-choice questions all answers should be written in your bluebooks. Please write legibly. Including this page, there are 8 pages in this exam. Please make sure that you have all 8 pages. Good luck.

Part I – MULTIPLE CHOICE

In this section there are twelve multiple-choice questions. They are worth two points each for a total of 30 points. Please answer these questions on the computer answer sheet form.

Questions 1- 4

Abby has a pet chimpanzee that she keeps in her home. One day, while Abby's friend Beth was visiting, the chimp got out of the house and started running towards the street. Abby asked Beth to help her lure the chimp back into the house. Beth went toward the chimp with Abby, but the chimp attacked Beth who suffered serious injury to her hands, eyes and face. Abby is charged with aggravated assault, which is defined as, "purposely, knowingly or recklessly causing serious bodily injury to another."

1. At a minimum, the prosecutor should prove:
 - A. The chimp had attacked others in the past
 - B. Abby hoped the chimp would attack Beth
 - C. When she bought the chimp, Abby was warned that it could be aggressive
 - D. Reasonable people don't have chimps as pets

2. Abby would like to assert the defense of necessity because she feared that if she didn't ask Beth to help her, the chimp would have run away and thereby presented a danger to the whole neighborhood. This defense will fail if:
 - A. Her choice to have a pet chimp was unreasonable
 - B. Her choice to have a pet chimp was reckless
 - C. A reasonable person would have called the police instead of asking for her friend's help.
 - D. There are no children in the neighborhood.

3. Under these facts, can the prosecutor prove an *actus reus*?
 - A. Yes, because her act was asking Beth to help
 - B. Yes, through the theory of complicity
 - C. No, because Abby never thought her friend would get hurt
 - D. No, because the chimp, not Abby, attacked Beth

4. The prosecutor will be able to establish causation because:
 - A. But for Abby asking Beth to help catch the chimp, Beth would not have been injured
 - B. Abby owned the chimp
 - C. The chimp attack was the only cause for the injury
 - D. Beth was not negligent

Questions 5- 8

James was woken from sleep by a noise in his living room. He came upon an intruder who was unplugging the television set. When the intruder heard James, he pulled a gun out of his pocket, shot and killed James and ran for the front door. James' wife Kate heard the shot. She came into the living room and saw her husband dead on the floor. She started screaming and took a gun out of a drawer. When she opened her front door, she saw the intruder running toward the street. She shot him in the back, killing him.

5. Is Kate guilty of murder?
 - A. Yes, because it was premeditated
 - B. Yes, because she was devastated when she saw her husband on the floor
 - C. No, because it was self-defense
 - D. No, because she killed the intruder in the heat of passion.

6. Had he lived, the intruder should have been found guilty of:
 - A. Burglary and Murder
 - B. Involuntary Manslaughter
 - C. Just Murder because all other crimes merge with the killing
 - D. Murder only if he intended to kill or seriously injure James

7. If Kate raises the defense of self-defense, the prosecutor's best argument to defeat this is:
 - A. The victim was not dangerous
 - B. Kate's life was not in danger
 - C. A reasonable person would have called the police
 - D. One cannot take a life to save another life

8. The gun Kate used was unregistered. If she is charged with possession of an unregistered handgun, and she claims that her husband told her it was registered, the prosecutor should argue that:
 - A. Kate's husband was not trustworthy
 - B. Mistake of law is no defense
 - C. This is a strict liability crime because it concerns public welfare
 - D. This is a strict liability crime because people with guns are morally blameworthy

Questions 9-12

Defendants, a married couple, were desperate to attend a recent state dinner at the White House. The guest of honor was the Prime Minister of India. Without an official invitation, the couple passed through White House security and was admitted to the

dinner which was held in a tent on the south lawn. Just before dessert was served, the couple wandered inside the White House and started to explore. They were delighted that they managed to get inside and couldn't wait to tell their friends. In order to prove to their friends that they really attended the dinner, the couple decided to take a picture drawn by one of the President's daughters. The defendants were just about to remove the magnet that held the drawing on the refrigerator, when a Secret Service agent came in. The agent told the couple that they were under arrest. The defendants told the agent that if he did not let them take the drawing, they would tell the media that they snuck into the dinner without an invitation. Afraid that the Secret Service would be embarrassed if word got out, the agent told the defendants to take the drawing and leave at once.

9. Under modern criminal codes, the defendants could be guilty of which of the following:

- A. Robbery
- B. False Pretenses
- C. Extortion
- D. Embezzlement

10. Pursuant to the old common law definition of theft, the defendants would not be guilty because:

- A. The simple child's drawing had very little value
- B. The agent allowed them to take the drawing
- C. They did not threaten anyone with physical harm
- D. The owner of the drawing was not present when it was taken

11. The defendants drank some alcoholic beverages at the dinner. If they are charged with larceny, which of the following statements is *untrue*?

- A. They have a constitutional right to assert the defense of incapacity due to voluntary intoxication because the crime of theft has a *mens rea* of purpose.
- B. They will not be entitled to a jury instruction on voluntary intoxication if they were only mildly intoxicated.
- C. If an intoxication defense is successful, it means that the prosecution could not establish mental culpability.
- D. A state may prohibit the defense of voluntary intoxication in all cases.

12. The Penal Code states that, "it is an affirmative defense to prosecution for the crime of trespass that the actor reasonably believed that the owner of the premises would have licensed him or her to enter or remain." The defendants claim that since the First Lady has stated that she wants the White House to be the "people's White House," she would have been happy to have them attend the dinner with or without a formal invitation. The assertion of this affirmative defense will:

- A. Fail because the First Lady did not mean her words to be taken literally

- B. Fail if it is proven that the defendants tried to get an invitation, but being unsuccessful, they went anyway
- C. Succeed because a tent is not a building
- D. Succeed if the jury believes that they truly believed they would be welcomed

Questions 13-15

Ike is charged with raping his co-worker. He has come to you for legal advice. He tells you that she is lying and that she consented to sexual relations with him on the date of the alleged rape. He also says that the alleged victim is Satan and her accusation against him is just a part of her plot to take over the world.

13. You have Ike examined by a psychiatrist who tells you that Ike is a paranoid schizophrenic. He also tells you that, due to this illness, Ike cannot control his impulses. You consider an insanity plea and conclude that:

- A. You would be most likely to succeed if your jurisdiction follows the ALI/MPC definition of insanity.
- B. You would be most likely to succeed if your jurisdiction follows the M'Naughton definition of insanity.
- C. Insanity can never be a defense to rape.
- D. A plea of "Guilty, But Mentally Ill" would make it more likely that Ike would not be incarcerated.

14. Your investigation reveals that at the time of the alleged rape, although there were many other people nearby, no one in the vicinity heard screaming or sounds of a struggle. You consider whether this is important to the case and decide:

- A. It is, because in order to establish non-consent, the prosecutor always has to prove that the victim resisted.
- B. It is, because there is no way for the prosecutor to prove force.
- C. It could be relevant to Ike's mental culpability
- D. It has no relevance.

15. Your investigation also reveals that the victim has had multiple sexual partners. Ike wants to know whether you can use this information at trial. You tell Ike:

- A. Yes, it will undermine her overall credibility.
- B. Yes, the jury will be instructed to consider this on the issue of consent.
- C. Probably not because the Rape Shield Laws of most states forbid this.
- D. Probably not because the victim is unmarried.

Part II (28 points)

Even though the following story may be familiar, please rely solely upon the facts stated below.

In October of this year, Mr. and Mrs. Heene notified the Colorado State Police that their homemade hot air balloon had flown away with their 6 year-old son Falcon, alone inside. The balloon was silver and resembled a flying saucer or UFO. A large rescue mission got underway immediately. Military aircraft were sent to locate and secure the balloon, all air traffic in the vicinity was suspended and emergency vehicles and personnel were at the ready. Within a few hours, the balloon landed in a field and it was soon discovered that Falcon Heene was not inside. Falcon was subsequently found hiding in the attic of his family's home. When Falcon was found he was experiencing difficulty breathing because the ventilation in the attic was inadequate for the amount of time he was hiding there.

After a brief investigation, the police reported that they believed that the whole event was a hoax. They claimed that the Heenes knew that their son was not inside the balloon and that they had him hide in their attic just before releasing the balloon. The couple then falsely reported that Falcon was inside the flying balloon. The police theorized that the reason for the hoax was for the Heenes to get publicity, which they hoped would lead to their own reality television series. According to the police, Mr. Heene admitted that it was a hoax.

Mrs. Heene has retained counsel who has reported that she has been abused by her husband for years. According to her lawyer, Mrs. Heene has no interest in a television series, but her husband told her that if she didn't go along with his idea, including the balloon hoax, he would "beat her until she saw things his way." She therefore went along and was the one who actually made the call to police about her son being in the balloon. The story has another character, Richard Thomas, who spent several months earlier this year working with Mr. Heene on developing a reality science TV show to pitch to networks. Among the ideas that Heene, Thomas and two others came up with for their reality TV proposal — and one that he says most intrigued Heene — involved a weather balloon modified to look like a UFO which they would launch in an attempt to drum up media interest in both the Heene family and the series he was desperate to get on the air. Still, Thomas never imagined that Heene would involve his 6 year-old son in what he is certain was a "global media hoax" to further Richard Heene's own celebrity.

The penal code for the State of Colorado contains the following provisions:

False Public Alarms

A person is guilty of a misdemeanor if he or she initiates a false or baseless report of an impending crime or catastrophe that is likely to

cause evacuation of a building, place of assembly or facility of public transport or to cause public inconvenience or alarm.

Recklessly Endangering Another Person

A person commits a misdemeanor if he or she recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury.

Criminal Conspiracy

A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he or she agrees with such other person or persons that they or one or more of them will engage in conduct that constitutes such crime.

With reference to the three offenses defined above, analyze which character or characters in the above facts are likely to be convicted of any or all of the three offenses. Make sure to analyze theories of prosecution, obstacles to prosecution and possible defenses.

Part III (12 points)

- A. “Attempt” is a commonly recognized criminal offense. Most jurisdictions make the attempt to commit a crime a slightly lesser offense than the completed crime. In a few paragraphs, define “attempt” and explain why it has been criminalized and whether its criminalization raises any concerns.

- B. The old saying, “ignorance of the law is no excuse,” is still mostly true. Nevertheless, there are at least two situations in some jurisdictions in which a defendant’s lack of knowledge of the criminality of his or her behavior may negate guilt. Describe these situations or exceptions and state why they are recognized.

Part IV (20 points)

Earlier this year, a Yale graduate student who was about to get married was killed while she was working in her laboratory. A lab worker has been charged with her murder. The defendant told his lawyer the following regarding the incident:

He has been working in that lab for two years. He feels that none of the students show him any respect. He grew up in a family of very high achievers. From a very young age, he has felt inferior to his parents and siblings. They are always telling him that he will not be successful. On the day of the incident, the victim yelled at him for misplacing a piece of equipment and called him an idiot. He snapped. He got so upset and angry that he decided to kidnap her so that she would miss her wedding. He used his hands to choke her, expecting that she would pass out and then he would keep her in his apartment for just a few days. He must have used too much pressure, because she died. He panicked and hid her body inside the wall of the lab.

Discuss any and all offenses suggested by the above facts.

END OF EXAM

HAPPY HOLIDAYS!