General Instructions

This exam consists of four parts. Question I contains 12 multiple choice questions. Each question is worth 2 points for a total of 24 points for Question I. Question II is worth 18 points. Question III is worth 24 points. Question IV is worth 24. 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 on one side of the bluebook page only and please write legibly. Including this page, there are 11 pages in this exam. Please make sure that you have all 11 pages. Good luck.

QUESTION I - Multiple Choice (24 points/2 points per question)

- 1-3. Phil went to his neighborhood hat store to pick out something special for his upcoming musical performance. He was very short on money as he was still waiting for his big break into show business. He thought that he might steal a hat if they were very expensive. When he walked into the store a sales clerk offered to show him some hats. When he spotted just the kind of hat he was looking for, he asked to try it on. The price tag said, "\$100." Phil asked if he could step outside to get his wife's opinion. His wife was out of town and Phil's intention, which he later admitted to police, was to take the hat without paying for it. The sales clerk said, "sure." Phil walked outside and was arrested just a few feet from the store.
- 1. If Phil is charged with theft, under modern penal codes he would likely be:
 - A. Convicted, because he took the store's property with the intention of keeping it.
- B. Acquitted, because he removed the hat from the store with permission and therefore there was no trespassory taking.
- C. Convicted even if he was intending to just show his wife the hat and then bring it right back.
 - D. Acquitted, if he offered to pay for the hat.
- 2. In this jurisdiction theft of an item under \$100 is petty theft. Theft of an item worth \$100 or more is grand theft. It turned out that the \$100 price tag was a misprint. The true price and retail value of the hat was \$10. Under modern penal codes Phil would most likely be:

- A. Convicted of grand theft because his belief that the value was \$100 was reasonable.
- B. Convicted of grand theft because the *mens rea* is all that matters.
- C. Convicted of attempted grand theft because he tried to steal a hat he believed to be worth \$100
 - D. Convicted of attempted grand theft because he went beyond mere preparation.
- 3. For this question, assume again that the price tag was wrong but that the true price of the hat was \$1000 and that theft of an item worth more than \$500 is theft in the first degree. Phil would likely be:
 - A. Not guilty of first degree theft because his mistake about the price was reasonable.
 - B. Not guilty of first degree theft even if his mistake about the price was unreasonable.
 - C. Guilty of first degree theft because mistake of law is never a defense.
 - D. Guilty of first degree theft because all of the elements are satisfied.
- 4-6. Chris and Melinda together severely beat Phil with a baseball bat in an attempt to eliminate him from a talent competition. They are charged with conspiracy and aggravated assault. The elements of aggravated assault are: "purposefully, knowingly or recklessly causing severe physical injury to another."
- 4. Even if the prosecutor can prove that Chris and Melinda made detailed plans ahead of time regarding how they would commit the assault together, the prosecution may still have a problem

with their conspiracy case:

- A. If Chris and Melinda didn't write down their plans.
- B. If the jury believes that when Melinda was plotting with Chris, she was highly intoxicated.
 - C. Because there was no overt act.
 - D. Because "conspiracy" is just a theory of guilt, not a crime.
- 5. If Melinda offers the defense of necessity, claiming that she had to eliminate Phil in order to advance her singing career, the best explanation for why this defense will fail is:
 - A. It is never necessary to harm an innocent person.
 - B. A reasonable person would know there were other ways to advance her career.
- C. The harm caused if Melinda were to lose the talent competition is not greater than the harm caused by the assault on Phil.
 - D. Phil did nothing to provoke the attack.
- 6. Assume that after the plans for the attack were made, without telling Melinda, Chris stole the baseball bat that was then used to attack Phil. If the prosecution wants to charge Melinda with the theft of the bat under the *Pinkerton* rule, the prosecution will be:
 - A. Unsuccessful because Melinda has no mental culpability for the theft.
 - B. Unsuccessful because stealing the bat was not part of the plan.

- C. Unsuccessful if Melinda reasonably believed that Chris was going to use a bat that he already owned.
 - D. Successful only if the conspiracy included the theft of a bat.
- 7-9. Section 5.06 (1) of the Model Penal Code provides that: "a person commits a misdemeanor if he possesses any instrument of crime with purpose to employ it criminally." LaKeisha borrowed her friend's car because hers was in the shop getting repaired. She had permission to use the car for as long as she needed it. On the first day, LaKeisha noticed a "slim jim" in the glove box. She knew right away that this was an instrument commonly used to break into cars. It made her wonder what her friend was up to. Nevertheless, LaKeisha left it in the glove box where it remained until it was discovered by the police four days later when they searched the car after LaKeisha was stopped for speeding. She was accused of possession of an instrument of crime pursuant to a code section that is the same as Section 5.06 (1) above.
- 7. LaKeisha's best overall defense to this charge is:
 - A. Lack of *mens rea*.
 - B. Lack of capacity to formulate *mens rea*.
 - C. Lack of actus reus.
 - D. Statute is unconstitutionally vague.
- 8. Which of the following would **not** be helpful for the prosecution's case that LaKeisha had

constructive possession of the slim jim:

- A. She was driving the car when it was found.
- B. Slim jims have no lawful use.
- C. LaKeisha admitted seeing it in the glove box.
- D. LaKeisha's friend told her to help herself to anything in the car.
- 9. Assume the following change in facts: LaKeisha learns that her car will cost thousands of dollars to fix. Remembering the slim jim in the glove box, she decides to steal the first cool looking Ford Mustang she comes across. She admits this to the police after they find the slim jim during a car search after a speeding stop. She is charged with attempted theft. She will likely be found:
 - A. Guilty if there was a cool looking Ford Mustang nearby.
 - B. Guilty because she had a purposeful *mens rea*.
 - C. Not guilty under the physical or direct proximity test.
 - D. Not guilty because it is unconstitutional to punish mere attempts.
- 10-12. Blake was accused of attempted murder after he shot Jordan in the head. Jordan survived the shooting and was kept alive in a coma by a life support system for three weeks. After three weeks, Jordan's family decided to have the doctors disconnect the life support. Jordan died hours later. Blake is now charged with murder.

10. Blake asks his attorney if he can avoid a murder conviction because of lack of causation. I	Не
should be advised that:	
A. Under these facts there is no "but for" causation.	
B. Causation is not a necessary element.	

- C. Under these facts there is "but for" causation and that is sufficient for guilt.
- D. None of the above.
- 11. Blake has been examined by a psychiatrist who is of the opinion that Blake shot Jordan because he thought she was a Martian who was about to take over the earth and destroy it.

 Blake's lawyer would like to assert the defense of insanity. If the jurisdiction for this case uses the M'Naughton test for insanity then Blake could be found not guilty by reason of insanity if:
 - A. Blake's delusion was a result of a mental disease or defect.
 - B. Blake was unable to stop himself from killing.
 - C. Blake's illness prevented him from formulating an intent to kill.
 - D. Blake is unable to understand the charges against him.
- 12. If Jordan's parents are accused of murder because they directed the doctor to turn off Jordan's life support, they should be found:
 - A. Not guilty because they didn't turn off the machine, the doctor did.

- B. Not guilty because they believed it was in Jordan's best interests to have her life support disconnected.
 - C. Guilty because their actus reus was an omission.
- D. Guilty if they told the doctor to disconnect the machine because they wanted to cause Jordan's death.

QUESTION II (18 points)

In the State of Florida it is a felony, subject to up to 5 years imprisonment, for, "any sexual offender to fail to file an official report of any change in personal address within 48 hours of the move." Robert, who has a prior conviction for statutory rape, has been accused of violating this Florida statute. Discuss the likely success of each of the following possible theories of defense:

- A. Robert did not know that the statutory rape conviction meant that he was a sex offender. (6 points)
 - B. Robert is not guilty because failing to register is not an act. (6 points)
- C. No one told Robert that it was against the law to fail to report his address change. (6 points)

QUESTION III (24 points)

Matthew Winkler, 31, a minister was fatally wounded from a single shotgun blast, fired at close range while he lay in bed March 22, 2006. His wife Mary, who was arrested a day later, told officials that "my ugly came out."

According to prosecutors, the shooting was a deliberate, planned act. Winkler killed her husband, they argued, because she did not want him to know she had fraudulently deposited several counterfeit checks from a "Nigerian scam" in the couple's joint accounts. Bank officials testified that the day before the shooting, they had urged Winkler to bring her husband to the

bank to discuss the illegal transactions.

The defendant's account was different. Winkler said her marriage was an unhappy one. Over the years, she said, her husband had threatened her with a shotgun, pushed her, shouted at her and kicked her in the face. She also said her husband forced her to dress "slutty" and have "unnatural" sex. On the morning of the shooting, Winkler testified, her husband was awakened by the cries of their 1-year-old daughter, After physically kicking her out of their bed, Winkler said, her husband walked into the daughter's room and attempted to suffocate the child, who has breathing difficulties, by pinching her nose and holding her mouth. After calming her daughter, Winkler said, she returned to the bedroom to talk to her husband. "I just wanted him to stop being so mean," she said. Winkler said she could remember holding the shotgun but could not remember pointing it at her husband or pulling the trigger. She remembered hearing a boom as "something went off."

- A. Analyze the above accounts of the homicide and discuss which forms of homicide are fairly presented by these alleged facts. (16 points)
- B. What legal obstacles might Mary Winkler encounter if she tried to assert self defense?(8 points)

QUESTION IV (24 points)

Paula, Randy and Simon are the celebrity judges on FOX TV's hit show "American Idol."

For months it has been reported by the media that Paula's sometimes strange or "loopy" behavior

may be due to substance abuse. Paula has vehemently denied this. This issue has given Simon an idea. He tells Paula that he wants her to steal a gold chain necklace from Randy and give it to Simon. He doesn't care how she gets the necklace, but he tells Paula that if she refuses, he will go to the press and tell them that he has personal knowledge that she is a drug abuser. Paula begs him to back off, crying that this could ruin her career forever. Simon, lacking compassion, sticks by his threat.

The next day Paula sneaks into Randy's dressing room while Randy is napping on the couch. She tries to quietly remove the chain from Randy's neck, but Randy is awakened. Paula throws hot coffee on him, grabs the chain and runs out of the building. Randy, stumbles off the couch, and trips over a coffee table. He falls to the floor, hits his head and dies.

A. Discuss Paula's criminal liability. (14 points)

B. Discuss Simon's criminal liability. (10 points)

END OF EXAM. HAVE A GREAT SUMMER!

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