

## Final Examination

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Criminal Law  
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### General Instructions

This exam consists of four parts. Part I contains 13 multiple-choice questions. Each question is worth 2 points for a total of 26 points. Part II is worth 25 points. Part III is worth 37 points. Part IV is worth 12 points. The entire exam contains 100 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 7 pages in this exam. Please make sure that you have all 7 pages. Good luck.

## PART II Multiple Choice (26 points)

Questions 1-7 rely upon the following set of facts:

Two Upper Darby, Pennsylvania men were found dead in their apartments last week of apparent carbon monoxide poisoning after workers in a grocery store below used a gas generator to power store freezers. The employees turned to the generator because the store's electricity had been cut off for lack of payment. The workers were immediately arrested.

The victims were found dead about 7:40 a.m., around 12 hours after the generator had been left running at the grocery store. "They are dead for no reason, because someone didn't want to pay the electric bill," Upper Darby Police Superintendent said. "This is really stupid, bringing a generator into the locked environment." Paramedics measured carbon monoxide 30 to 60 times greater than safe levels, the Upper Darby Fire Chief said. It took firefighters three hours to clear the building of carbon monoxide.

A PECO spokesman confirmed that PECO shut off the electricity two days earlier because the account was in arrears, but only after repeated warnings. "It's our very last resort," the spokesman said. After the electricity was shut off, an employee went to a Home Depot and leased the generator. The investigation is continuing, and autopsies will be conducted.

After the bodies were brought out and placed in the Medical Examiner's van, investigators wheeled out the gas-powered, red and black generator – the size of a footlocker, capable of generating 6,500 watts of power. It took four men to load the generator into the police evidence van. A card on the side of the device read, "Using a generator indoors can kill you in minutes".

1. The prosecuting attorney is outraged by this case and would like to bring the most serious charges possible. She knows that she cannot prove that the defendants intended to kill the victims. Which of the following facts, if proven, is the **strongest proof** that this was murder rather than manslaughter?
  - a. The defendants were aware of the risk that using a generator in this manner might be dangerous.
  - b. A reasonable person pays their electric bills.
  - c. The defendants read the sign on the generator that said using it indoors "can kill you in minutes."
  - d. The defendants didn't know that anyone lived above the store.
  
2. Assume that the owner of the grocery store was out of town on the date in question, but he sent an email to the defendants directing them to rent and use the generator. If the defendants are charged with involuntary manslaughter, which of the following describes the biggest obstacle to prosecuting the owner for that crime, through accomplice theory.
  - a. Proving the *mens rea* element for accomplice liability.

- b. Proving the *actus reus* because he didn't do anything beyond sending an email
  - c. There was no agreement to kill
  - d. The owner was not present at the time the victims died.
3. When the prosecutor reviews the autopsy reports, what will she be interested in learning?
- a. Whether the use of the generator was the "but for" cause of death.
  - b. Whether either of the victims had any pre-existing serious medical conditions.
  - c. The coroner's opinion regarding the time of death
  - d. All of the above.
4. The defendants' lawyers are wondering whether a necessity defense might be a worthwhile strategy. If they were to pursue such a defense, which of the following would best describe their theory?
- a. The defendants used the generator to avoid the economic loss that would be caused if the store's freezers could not keep the food frozen
  - b. The defendants used the generator because their boss asked them to
  - c. The defendants are not responsible for paying the electric bill
  - d. The victims had no right to be living in the apartment above the store.
5. Assume that the defendants are charged with Criminally Negligent Homicide. If they assert a defense of necessity, under the Model Penal Code framework for necessity/choice of evils defense, which of the following is most likely true?
- a. They can use the defense even if they kept putting off making payment on the electric bill.
  - b. They cannot use the defense because the carbon monoxide was the cause of the victims' death.
  - c. They cannot use the defense if they kept putting off making payment on the electric bill
  - d. They cannot use the defense because they purposefully leased the generator.
6. Consider the potential accomplice liability of the Home Depot clerk who rented the generator to the defendants. Which of the following best explains why he would likely **not** be criminally liable for any homicide?
- a. He didn't assist in the crime in any way.
  - b. He didn't know the victims
  - c. He didn't form an agreement to kill with the defendants.
  - d. He was not informed of the way in which the defendants planned to use the generator.

7. If instead of being found dead, the victims had been rescued and successfully treated at a hospital, could the defendants be charged with Attempted Homicide?
- No, because they renunciated.
  - No, because they lacked the required *mens rea*.
  - Yes, because the victims would have died if they had not been rescued in time.
  - Yes, but only under the significant steps test.

Questions 8 & 9: Section 224.7 of the Model Penal Code makes it unlawful to: “make a false or misleading statement in any advertisement addressed to the public promoting the purchase or sale of property or services.”

8. Assuming that the maximum penalty for this offense is a \$1,000 fine, in claiming that this should be viewed as a strict liability offense which of the following arguments would the prosecutor be **least** likely to assert?

- The statute’s purpose is to protect the public.
- The statute contains no *mens rea* language.
- The penalty for violating this statute is relatively low.
- The statute outlaws cheating which is *mala in se* or inherently evil.

9. Assume that the above statute contains the following additional language: “It is an affirmative defense to prosecution under this Section if the defendant proves that his conduct was not knowingly or recklessly deceptive.” This means that if a defendant proves that he had no idea that his advertisement was false or misleading, he should be found:

- Not guilty if his mistake was reasonable.
- Not guilty even if his mistake was unreasonable.
- Guilty because he was reckless.
- Guilty because his state of mind is irrelevant.

Questions 10 & 11: Eileen was employed as a bookkeeper at a fast-food chain. Twice a day Eileen was responsible for counting the cash receipts and making out a deposit slip for a bank deposit. The management started to suspect her of taking money and unbeknownst to Eileen, arranged for another employee to count the cash before it was given to Eileen to count. On the date of her arrest, the first employee counted \$1500 in cash before giving the cash to Eileen. Eileen wrote a deposit slip for \$1200 and upon her arrest, \$300 in cash (unmarked bills) was found in Eileen’s desk drawer.

10. Eileen should be charged with:
- Robbery

- b. Fraud
- c. False Pretenses
- d. Embezzlement

11. Eileen claims that she must have accidentally counted wrong and that the \$300 in her drawer was to pay her electric bill when she went out at lunchtime. These factual claims translate into which of the following legal claims?

- a. Lack of *actus reus*.
- b. Lack of capacity.
- c. Lack of *mens rea*.
- d. No causation.

Questions 12 & 13: Model Penal Code Section 5.06 makes it a misdemeanor “for a person to possess any instrument of crime with purpose to employ it criminally. Instrument of crime means (a) anything specially made or specially adapted for criminal use or (2) anything commonly used for criminal purposes and possessed by the actor under circumstances that do not negative unlawful purpose.”

12. The police caught Defendant A in a dark parking lot peering inside of a number of expensive cars. When the police shone a flashlight on A, then saw that he was holding a slim jim in his hands. A slim jim is a tool very commonly used by thieves to break into cars. If A is prosecuted for a violation of Section 5.06 and claims that he had no idea that just possessing something like a slim jim was a crime, that defense will likely be:

- a. Unsuccessful, because A is not mistaken about an element of the crime.
- b. Successful, because A is mistaken about an element of the crime.
- c. Successful if a reasonable person would have thought the same thing.
- d. Unsuccessful because A was clearly planning to steal a car.

13. While riding in a car, B & C are pulled over by the police. B is the driver and C is sitting in the front passenger seat. The police search the car and find a slim jim on the floor right next to where C had been sitting. If B is charged with violating Section 5.06 his lawyer should advise B that:

- a. Since C had actual possession of the instrument, B cannot be liable.
- b. Because it was B’s car, B may be liable if he knew the instrument was there.
- c. Only one person can be in possession of a single item.
- d. The doctrine of constructive possession only applies to drug cases.

## **PART II (25 points)**

Answer each of the following questions in 1-2 paragraphs:

1. What are the reasons there is a great deal of variation in the way jurisdictions specify the elements for the crime of rape?
2. Describe some important differences between the old common law definition of theft/larceny and how theft is defined in more modern codes.
3. a. There can be no criminal liability without proof of a voluntary act. Explain why the framers of our criminal justice system determined not to punish involuntary acts even when they cause harm.  
  
b. Explain the difference between an involuntary act and an act committed by a person who is legally insane.
4. What is the rationale behind the principle that the Constitution is violated if a criminal offense that carries a high penalty and strong negative stigma is prosecuted as a strict liability offense?

### **PART III (37 points)**

Bob and his wife Nicky were down on their luck. Bob's law practice was floundering and he was having trouble attracting new clients. They were running out of money and were very worried about how they would pay their daughter's college tuition. One morning, they were sitting at the breakfast table reading the newspaper. In the section of the paper that Bob was reading he read a story about a bank robbery. The robber, displaying a gun, took half a million dollars, ran off and the story said that the police had no leads. Bob slid the newspaper over to Nicky and pointed to the robbery story, which Nicky read in silence. After she read it, she looked over at Bob who simply nodded and pointed to an antique, non-operational pistol that the couple inherited. Nicky saw where Bob was pointing and smiled. Bob then opened the display cabinet, removed the antique pistol and took it upstairs. Bob then showered, dressed and left for his office.

On his way to the office, Bob passed a Federal Savings and Loan Bank. It appeared that a bank employee was just opening the bank doors for the start of the business day. Bob pulled his car into the bank's parking lot. He decided that it was now or never if he were going to do a bank robbery, but he was terribly nervous. To calm his nerves, he started drinking from a bottle of wine that was in the trunk of his car. Since it was early and Bob hadn't eaten much breakfast, Bob became fairly intoxicated after drinking only a portion of the bottle. He grabbed his pistol and headed for the bank. He peeked inside of the bank and noticed that there were no customers. He walked inside with his pistol in his hand. All of a sudden Bob panicked. He suddenly

realized that he was acting crazy and turned around to go back outside. Just then, one of the tellers noticed Bob and his pistol and screamed. The bank's security guard turned toward Bob who was still holding his pistol. The security guard fired his gun and accidentally shot a customer who was just entering the bank. The customer was killed instantly. Bob was arrested on the scene. Nicky, still at home, heard about what happened at the bank on the radio. A half hour later her doorbell rang and she felt sure it was the police. She opened her front door, sprayed mace in the face of the two FBI agents and ran for her car. Both agents suffered minor injuries to their eyes. Nicky was arrested shortly thereafter.

Discuss the potential criminal liability of Bob, Nicky and the security guard.

#### **PART IV (12 points)**

Assume that you are a lawyer in a jurisdiction that has the following statute in its criminal code:

Bigamy: A married person is guilty of a misdemeanor if he or she enters or attempts to enter into another marriage, unless at the time of the subsequent marriage the actor reasonably believes that he or she is legally eligible to remarry.

Answer the following questions based upon the bigamy statute above:

1. Suppose that a married defendant marries another in a Las Vegas wedding chapel. When he is tried for bigamy, he testifies that he thought the Las Vegas wedding ceremony was a joke, was nothing more than entertainment, and was in no way legally valid. If the jury believes this defendant is telling the truth, how should that affect their verdict?
2. Suppose that a different married defendant obtains the required license and marries another at the Bureau of Marriages office in her local city hall. When she is tried for bigamy, she testifies that she thought she was no longer married to her first husband because he left her two months ago saying, "I want a divorce." She hasn't heard from him since. If the jury believes this defendant is telling the truth, how should that affect their verdict?

END OF EXAM

Have a good summer!