ANSWER KEY

Criminal Law /Spring 2011

- I. Multiple Choice:
 - 1. C 2. A 3. D 4. A 5. C 6. D 7. B 8. D 9. A or B 10. D 11. A or C 12. A 13. B
- II. 5 points each
 - 1. Elements of Rape: answer should raise the following issues:
 - a. Focus- element variations designed to shift focus away from alleged victim
 - b. Mens rea- elimination of requirement and how this is justified
 - c. Resistance- elimination of requirement as proof of non-consent
 - d. Spousal exception elimination
 - 2. <u>Theft</u> Modern vs. old common law: answer should raise the following issues:
 - a. Previous requirement of "trespassory" taking along with why and how modern statutes addressed the problem
 - b. Consolidated Statutes- What this means and what purpose they serve
 - 3. A. <u>Involuntary Acts</u> not punishable because to do so would not serve goals of punishment such as deterrence and retribution
 - B. Involuntary Act vs. Insanity -

Involuntary act – insufficient actus reus with result of not guilty verdict due to inability to control physical movement

Insanity – assumes sufficient act and mental state but defense/excuse if due to <u>mental</u> disease or defect defendant satisfies requirements of M'Naughton or ALI/MPC definition of insanity. Result is not guilty by reason of insanity

4. <u>Strict Liability and the Constitution</u> - strict liability for high penalty and/or stigma crimes violates right to substantive due process. Significant deprivations without sufficient proof of culpability

III. Bob and Nicky essay - 37 points

Issues:

- 1. Conspiracy:
 - a. Between Bob and Nicky? Was there an actual agreement? Law re tacit vs. express agreement and whether these facts satisfy the requirements
 - b. Pinkerton liability- If conspiracy Nancy can be liable for Bob's crimes and Bob for Nancy's assault. Elements of Pinkerton liability
- 2. Homicide:

Security Guard – Has he committed a homicide? What type? Can he assert defensive force in his defense and what if his beliefs were unreasonable?

3. Attempted Robbery:

Has Bob gone far enough in *actus reus*? Three tests for sufficient act and apply to facts. Could he have an abandonment defense?

4. Felony Murder:

Law of Felony Murder: enumerated felonies/attempts; death is proximate result; MPC difference and application to facts

5. Intoxication:

Jurisdictional variations
Negate *mens rea* for purpose or knowing crimes
Degree of Intoxication
Application to facts

IV. Bigamy Statute and Mistakes – 6 points each

- 1. Mistake of non-governing law
 - a. What element is mistake about?
 - b. What is mens rea for that element?
 - c. Does mistake negate this?
- 2. Mistake of non-governing law
 - a. Statute addresses this type of mistake and requires reasonableness
 - b. Was mistake reasonable?