

Final Examination

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Criminal Law
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General Instructions

This exam consists of four parts. Part I contains 12 multiple choice questions. Each question is worth 3 points for a total of 36 points. Part II is worth 21 points. Part III is worth 20 points. Part IV is worth 17. The entire exam contains 94 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 6 pages in this exam. Please make sure that you have all 6 pages. Good luck.

PART I - MULTIPLE CHOICE – 36 points

In this section there are twelve multiple choice questions. They are worth three points each for a total of 36 points. Please answer these questions on the computer answer sheet form. All of the questions pertain to the following facts:

A state recently enacted the following criminal statute:

Harassment and Cyber-Harassment : it is a crime for an adult to contact a child under the age of 18 in a communication that would cause a reasonable person to suffer substantial emotional distress or cause a reasonable parent to fear for the child's well being. This offense is a misdemeanor, punishable by up to a \$500 fine and up to 90 days in jail.

This statute was enacted after a 13 year old girl killed herself after receiving cruel messages on the Internet. The State Legislature attached the following comment to the legislation: "It is our hope that we can do our part to ensure this type of behavior never happens again anywhere. After all, harassment is harassment regardless of the mechanism or tool."

1. After reading the statute, an attorney commented, "this law has no *mens rea* language." This statement is:
 - A. Correct, because this is a regulatory offense.
 - B. Correct, because the term, "reasonable," is not used in reference to the mental culpability of a perpetrator.
 - C. Incorrect, because the statute requires negligence as the minimum *mens rea*.
 - D. Incorrect, because the statute requires a purposeful *mens rea*.

2. The State Attorney General has taken the position that this is a strict liability statute. Which of the following arguments does **not** support that position:
 - A. The offense is not a felony.
 - B. The legislative intent is to protect children.
 - C. The maximum penalties are not severe.
 - D. Harassment of others, especially children, is *mala in se*, or inherently evil.

3. The defense bar takes the position that it would violate the United States Constitution if this law were interpreted as one of strict liability. If this argument is rejected by the courts it will most likely be because:
- A. The crime is only a misdemeanor and the penalties relatively low.
 - B. The legislative intent is to protect the welfare of children.
 - C. A strict liability criminal statute never raises constitutional issues.
 - D. The crime is *mala prohibitum*.
4. Alice, a 19 year old (adult) student told her parents that a classmate was spreading rumors about her. According to Alice, Vera was telling everyone in school that Alice was a drug user. Alice's mother suggested to Alice that she send Vera an anonymous email telling Vera that she was going to be in "big trouble," for spreading rumors about Alice. Alice took her mother's advice. If Alice's mother is prosecuted for this crime under a theory of complicity, which of the following is most likely?
- A. She will be acquitted if Vera is over 18.
 - B. She will be acquitted because she didn't commit any act.
 - C. She will be convicted because her act was an omission.
 - D. She will be convicted if Vera suffered substantial emotional distress.
5. Alice's mother claims that when she suggested the email she thought that Alice might send several emails and that Vera might suffer substantial emotional distress but it didn't matter to her whether Alice did or did not take her mother's advice. If this is true, this would:
- A. Not be a defense only if the statute is considered strict liability.
 - B. Not be a defense if a reckless *mens rea* is read into the statute because this crime has a result element.
 - C. Be a defense if a reckless *mens rea* is read into the statute because this crime does not have a result element.
 - D. Be a defense because in all jurisdictions an accomplice must always have a purposeful *mens rea*.
6. Alice's mother also claims that she was sure that Vera was 19 just like her own daughter. If this offense is not strict liability and Vera is, in fact, under 18, Alice's mother's mistake:
- A. Is not a defense because it is a mistake of fact.
 - B. Is not a defense because it is a mistake of law.
 - C. Is a defense if honest.
 - D. Is a defense only if the mistake was reasonable.

7. Alice and her mother both claim that Vera is too sensitive and that the email did not threaten physical harm. Assuming that Vera is someone who is easily frightened this will:
- A. Not prevent a conviction if Vera was truly frightened after getting the email.
 - B. Not prevent a conviction if a reasonable person would have had the same reaction.
 - C. Not prevent a conviction because Vera's perspective is what matters.
 - D. None of the above.
8. Alice and her mother also claim that they had not heard about this new statute. This is not a defense because:
- A. If the law was published, it does not matter how many people actually knew about it.
 - B. This mistake is not about an element.
 - C. Ignorance of the law is no excuse.
 - D. All of the above.
9. Alice and her mother contacted the Center for Constitutional Rights because they hoped the Center might be interested in challenging this statute. If the Center's lawyers are interested, it will most likely be because:
- A. The statute punishes an innocent act.
 - B. The statute punishes a status.
 - C. The statute lacks specificity.
 - D. The punishment is too uncertain.
10. It turns out that after sending the email to Vera, Alice tried to telephone Vera to tell her the same thing. When Alice called, however, no one was home at Vera's house and Alice hung up when the answering machine went on. If Alice is charged with Attempt, she will probably be:
- A. Convicted under the Model Penal Code substantial steps test.
 - B. Acquitted because the completed crime was factually impossible.
 - C. Acquitted because she abandoned the attempt.
 - D. Convicted if she tried again and reached Vera.
11. Assume that when Vera received Alice's email, Vera thought it was funny and laughed it off. This fact would probably:
- A. Prevent a conviction because there is no proximate causation.
 - B. Prevent a conviction because there is inadequate proof of *mens rea*.
 - C. Not prevent a conviction because Alice was not joking.
 - D. Not prevent a conviction if Vera's reaction was unreasonable.

12. Could Alice and her mother be convicted of conspiracy?

- A. No, because there was no overt act.
- B. Yes, if their conversation about the email is deemed an “agreement.”
- C. No, because conspiracy is not a crime.
- D. Yes, but only under the Pinkerton Rule.

PART II – 21 points

O.J. Again: The media has provided extensive coverage of O.J. Simpson’s recent arrest. In answering this question, please rely only upon the facts stated below.

O.J. Simpson was a professional football player who, years later, was tried and acquitted for the murder of his ex-wife, Nicole Simpson, and her friend, Ron Goldman. Because of his notoriety, his personal sports memorabilia are very valuable. In recent years, several of these items had been stolen from O.J.

Bob is an old friend of O.J.’s. When Bob spots some of the stolen items in Carl’s shop he comes up with a plan. He tells Carl that he knows someone who will pay a lot of money for these items and arranges for Carl to meet this person the next day in a room in a local hotel. Bob then tells O.J. that he has found his memorabilia and tells O.J. to come to the hotel room at the time that Carl is expected. O.J. agrees.

On the following day, Bob rents a hotel room and he and Carl meet there. Before O.J. arrives Bob tells Carl to put the items on the coffee table and Carl does so. Just then, O.J. knocks on the door and Bob opens it. O.J. walks in, sees the objects and starts to put them in a suitcase. When Carl, who has no idea the items were stolen, sees this he tries to stop O.J. O.J. then takes out a gun and points it at Carl. Carl backs off and while still pointing the gun at Carl, O.J. finishes placing the objects in the suitcase. When he is closing the suitcase, the gun accidentally goes off and Carl is shot and killed.

The police arrive and Bob tells them what happened. O.J. is arrested and the story is all over the news. When Ron Goldman’s father hears that O.J. has killed again, he becomes enraged. He rushes down to the police station and when the police escort their prisoner to the car, Goldman goes berserk and fires a shot. The prisoner is killed instantly, but it was not O.J. It was another prisoner who closely resembled him.

A. List the charge(s) that might be brought against O.J. and explain the possible theories of prosecution. (9 points)

B. Of what crime is Mr. Goldman likely to be convicted? (6 points)

- C. If Mr. Goldman offers an insanity defense, what would he have to prove if the M’Naughton test is used by this jurisdiction? (3 points)**
- D. If Bob is charged with possession of stolen property, will the prosecutor be able to prove possession? Explain. (3 points)**

PART III – 20 points

Danielle feels desperate. She has no money and no job. She has not had a full meal in days. Danielle decides to steal a chicken from the local market. She asks the meat clerk for a one-pound chicken. He wraps it up and hands it to Danielle. Danielle turns away and hides the chicken in her purse. She then leaves the store without stopping at the cashier’s counter. While this was happening, the store owner was outside the store raking leaves. When he hears what has happened, he runs toward Danielle yelling, “get back here.” When Danielle sees the owner running toward her, still holding the rake, she becomes afraid and picks up a large glass bottle from a nearby trash can. She throws the bottle at the owner, just missing his head. Danielle is apprehended and taken into police custody.

Analyze Danielle’s criminal liability.

PART IV – 17 points

You are employed as a legislative aide to a State Senator. The Senator would like to propose revisions to the State’s Code section on forcible rape. She has asked you to draft a forcible rape statute. Her primary goals for the statute are: deterrence, to encourage reporting of rapes by shifting the focus away from the victim and preventing the use of voluntary intoxication as a defense.

Draft a statute in accordance with the Senator’s wishes and explain why your draft language should accomplish the Senator’s goals.

**END OF EXAM
HAPPY HOLIDAYS**