

Final Exam
Criminal Law
Professor: Charles Temple
December, 2006

EXAM NO. _____

Instructions

You have three (3) hours to complete this exam. Please note the point values assigned to each question.

Please write your answers in the blue book. You should use the front side of each page. Please don't write on both sides of a page. You can write on each line of the blue book. You must write your exam number on the blue book.

You may use your text book (Dressler) during the exam. You may refer to any marginal notes you have made in your text book. You may not have class notes or any outlines/study aids in the exam. These answers should be in essay form. You do not have to format your answers in a court type format. (i.e. don't write the caption etc.) Good luck and enjoy your upcoming vacation.

5 pts

- I. You are a Superior Court judge. The Defendant is charged with the crime of Conspiracy to Commit First Degree Murder under RSA 630:1-a which reads as follows:

A person is guilty of murder in the first degree if he / she purposely causes the death of another.

As the presiding justice in this case you must provide the jury with an instruction on the crime of Conspiracy to Commit First Degree Murder. Please draft a Jury Instruction setting forth the parts or elements of the crime of Conspiracy to Commit First Degree Murder.

5 pts

- II. You are the Attorney General for the State of New Hampshire. You are reviewing a homicide involving the fatal shooting of a police officer by an eighteen (18) year old gang member. Please explain the factors you will utilize in completing your evaluation as to whether or not a Capital Murder (death penalty) charge is appropriate.

5 pts

- III. Please rank the following criminal defenses in terms of legal validity and value as a recognized defense. In ranking these defenses, please explain the reasoning for your specific rankings.

- A. Cultural Defense;
- B. Addiction Defense;
- C. Necessity (Choice of Evils) Defense.

5 pts

- IV. You have just been elected to the New Hampshire legislature. You have to vote on new legislation that will replace the existing New Hampshire hybrid felony murder rule with a more traditional felony murder rule. The more traditional felony murder rule will not

include any mental state. If a death occurs during the commission of a felony the defendant will be guilty of first degree murder. The existing hybrid felony murder rule requires that the defendant knowingly cause the death of an individual while engaged in the commission of certain felonies. How will you vote on this new legislation and explain the basis for your legislative vote.

10 pts

- V. You are a defense attorney who has just been retained by Professor Charles Temple. During the course of the fall semester at Franklin Pierce Law Center, Professor Temple was stalked and assaulted several times by a student (Tim Kelly) in his Criminal Law Class. Mr. Kelly had been convicted of Stalking and three separate complaints of Simple Assault for assaultive behavior against the professor. Professor Temple obtained a restraining order against Kelly. On December 10, 2006, a day before the final examination in Criminal Law, Professor Temple encountered Kelly in the Jury Box. Just prior to this encounter, Professor Temple was diagnosed with severe clinical depression and post traumatic stress disorder as a result of his multiple assaultive encounters with Kelly. The professor had been seen weeping in the hallway prior to entering the Jury Box. Several students observed that the professor was talking to himself and when they asked him about the upcoming Criminal Law exam he spoke to them in an incoherent manner. As he entered the Jury Box, Professor Temple came face to face with Kelly. He screamed at Kelly to get away from him. Kelly decided to push his way by Professor Temple. As he pushed the Professor towards the salad bar, Professor Temple shot him in the abdomen with a handgun. Kelly died instantly from his gun wound. Professor Temple proceeded to the Jury Box counter where he ordered a sandwich. He was arrested for murder by the Concord Police Department when they arrived at the law school.

Mr. Kelly had a switch-blade knife in his pocket and a loaded firearm in his backpack at the time he was shot by Professor Temple. There was also a detailed plan in his backpack for a violent and fatal attack on Professor Temple dated December 10, 2006. In your initial interviews with Professor Temple, he has told you that he thought based on all his prior dealings with Kelly that "Tim was going to kill me." He also advised you that he completely "blanked out" at the time he drew his weapon. He does not remember firing the gun at all. He advised you that he was in a state of depression and anxiety at the time of the shooting. A clinical psychologist is prepared to testify that Temple was suffering from both clinical depression and post traumatic stress disorder at the time of the shooting. The clinical psychologist is of the opinion that Temple's violent reaction to his encounter with Kelly on December 10, 2006 was a direct result of his depression and post traumatic stress disorder.

Professor Temple has been confused and disoriented in all his interviews. He refuses to talk to you about trial strategy because he "knows this prosecutor" and the case is going "no where." He missed a dispositional hearing because he thought the case was dismissed. The professor has missed four (4) scheduled appointments with you.

Professor Temple has been charged with Second Degree Murder for knowingly causing the death of Tim Kelly. As Professor Temple's defense counsel, you must formulate a defense strategy. Please do a memorandum to your file setting forth the various defenses

and strategies you will use to defend Professor Temple on the Second Degree Murder charge.

10 pts

VI. You are a prosecutor in New York City. On October 1, 2006, Joe Pope entered a McDonald's in New York City with his best friend, Tony Balboa. Joe knew that Tony was armed with a pistol when he entered the McDonald's. Joe also knew that Tony had talked for weeks about "knocking off" a McDonald's restaurant for some cash. Joe ordered his food first. As he was about to sit down, Tony ordered him to go watch the door and give him the high sign if he saw any cops. Joe saw Tony flash the pistol from underneath a long leather coat. They exchanged smiles at this time.

Joe watched Tony carefully as he stood in line to order his food. As he began to approach the McDonald's doorway, he saw a New York City police officer walk by. He did not give any hand signal or high sign to Tony at this point as Tony glanced back at him. Joe stood at the door for several minutes. He and Tony exchanged several nods of the head as Tony came to the front of the food line at McDonald's. At this point, Joe decided to leave the McDonald's restaurant. Tony showed his pistol and ordered all the clerks to empty their registers into a bag Joe had provided to him several weeks ago for the "job." Joe ran home from the McDonald's restaurant. He decided he did not want anything to do with Tony's "job." On his way to his apartment, he passed by a precinct for the New York City Police Department.

Tony ended up leaving the McDonald's restaurant with \$1,200 in cash. Tony was apprehended by the New York City Police several blocks from the McDonald's in response to a 911 call from the restaurant. After receiving his Miranda rights, Tony told the police that he and Joe had agreed to the "job" at McDonald's. He advised the police that Joe was acting as his lookout for the job. Tony has an extensive criminal history. Joe has one conviction for shoplifting in 2005.

The New York City department also interviewed Joe. Joe did not deny talking to Tony about this "job" at McDonald's. He indicated in his interview that Tony threatened him on multiple occasions with a beating if he either refused to help him or went to the police about their plans.

As the prosecutor you are evaluating Joe's criminal liability. Please discuss his potential criminal liability in detail, including any possible defenses you will encounter in prosecuting Joe.