

EXAM # _____

**CRIMINAL LAW MIDTERM FALL 2007
INSTRUCTIONS
(PROFESSOR TEMPLE)**

You have ninety (90) minutes to complete this midterm exam. As you know, there are three (3) essay questions. I strongly recommend that you spend thirty (30) minutes on each question. Each question is worth ten (10) points for a total of thirty (30) points.

Please write your answer 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 each blue book. I would ask that you write in a legible fashion.

You may use your textbook (Dressler) during the exam. You may refer to any marginal notes you have made in your textbook. You may not have class notes or any outlines/study aides in the exam. You may bring in copies of the cases Adam has posted on TWEN.

You do not have to format your answers in a court-type format (i.e., don't write the caption, docket number, etc.). These answers should be in essay form.

Good luck and GO RED SOX!

Question 1 (10 points):

You are a judge in the Merrimack County Superior Court. On October 10, 2007, Tim Jones enters a plea of "guilty" to the crime of negligent homicide, a Class A Felony, for causing the death of his daughter, Shauna Jones. Mr. Jones has admitted to being under the influence of alcohol and drugs while driving Shauna to school on September 5, 2006. Unfortunately, Mr. Jones drove off the road and Shauna died as a result of being ejected from the vehicle when it hit a tree. Shauna was seven (7) years old at the time of the incident. She was not wearing a seatbelt. Mr. Jones is a thirty-eight (38) year old alcoholic and heroin addict who has completed two (2) in-patient substance abuse rehabilitations in the past fifteen (15) years. He is employed on a full-time basis as a sales representative for Verizon Wireless. He has been employed by Verizon for ten (10) years. Mr. Jones is married to Tina Jones. They have two (2) other children: Tom is ten (10) years old and Mary is thirteen (13) years old.

Tina is a stay-at-home parent. Mr. and Mrs. Jones have raised their children in a loving, caring, and stable environment. The presentence investigation report has described Tim as a devoted and involved father. Tina has testified at the sentencing hearing as to the overwhelming grief and devastation caused by Shauna's tragic death. She has urged you not to send Tim to prison. She has described Tim as a pillar of strength and support during the last year. Tim is the only source of financial support for the family.

In its presentence investigation report, Probation has recommended a sentence of twelve (12) months to be served through home confinement. The presentence investigation report also recommends probation supervision with appropriate substance abuse treatment and counseling for the next ten (10) years. The State has asked for the maximum sentence: seven and a half (7 ½) to fifteen (15) years at the New Hampshire State Prison and a \$4,000.00 fine. The defense has requested a seven and a half (7 ½) to fifteen (15) year sentence, all suspended for five (5) years upon good behavior and completion of long-term, out-patient substance treatment. The defense agrees with the recommendation of a ten (10) year probation term. The defense has also proposed that Mr. Jones give twenty (20) presentations over the next two (2) years to high school audiences on the dangers of driving under the influence of alcohol and drugs. Mr. Jones has agreed to surrender his license for an indefinite revocation period.

Mr. Jones has a previous driving while intoxicated conviction in 1997. He does not have any criminal history. He is presently serving on the Concord School Board. He is also a coach in the Concord Express Soccer League and a deacon at a local church. Mr. Jones volunteers on a weekly basis at the Friendly Soup Kitchen.

As the sentencing judge, you must sentence Mr. Jones on October 10, 2007. Please be sure to justify your sentence by addressing the underlying theories, goals, and considerations applicable to your sentencing of Mr. Jones.

Question 2 (10 points):

On October 10, 2007, at 11:30 p.m., John Damon entered the residence of David Ortiz in violation of a restraining order issued by the Boston District Court. Mr. Damon found Mr. Ortiz in his downstairs basement celebrating the elimination of the New York Yankees from the playoffs with Manny Ramirez and Mike Lowell. Ortiz, Ramirez, and Lowell were spraying champagne all over each other in the unfinished basement of the home. When Mr. Ortiz saw Damon, he sprayed Johnny directly in the face with champagne as he chanted "traitor."

Damon repeatedly yelled at Ortiz to stop. Ramirez and Lowell immediately joined in the spraying of Damon. Damon, who suffers from depression, anxiety, and bipolar disorder, began to cry. He fell to the floor of the basement with his face buried in his hands.

Ortiz, Ramirez, and Lowell stopped spraying Damon. They all began calling Damon a "traitor." Damon did not respond to them at all. He stayed huddled in a fetal position on the floor.

Ortiz then climbed a set of stairs to the kitchen to eat three (3) Fenway Franks. Ramirez and Lowell continued to taunt Damon with chants of "here we go Red Sox." Damon, in a despondent state, exited the basement area and went upstairs to the kitchen.

Once in the kitchen, Damon confronted Ortiz. He began yelling at Ortiz about various financial, family, and other issues from their past relationship as teammates. Ortiz yelled at Damon to leave his house. At that point, Damon pulled out a loaded handgun and fired five (5) shots at Ortiz. One (1) of the shots grazed off the top of Ortiz's head. One (1) shot hit him directly in the abdomen. The other three (3) shots all hit the ceiling of the kitchen.

After he shot Ortiz, Damon dropped the handgun in the kitchen. He calmly walked out of the residence. He went to a restaurant a block away from the Ortiz residence and ordered a meal.

Ramirez immediately called 911 upon hearing the gunshots. The local fire department arrived without any emergency medical technicians. The fire personnel treated Ortiz for the wound to his head. The fire personnel did not notice the wound to Mr. Ortiz's abdomen region.

Ortiz died several hours after his admission to Boston General Hospital. He died as a result of inter-abdominal bleeding caused by the bullet wound. The treating physician stated that he was extremely concerned about the complete lack of treatment by the fire personnel at the scene. He has indicated to you that he will testify that the death was caused by the entry of the bullet into the abdomen region. It is his expert opinion that that is the cause of death, although the lack of treatment at the scene did contribute to the extensive bleeding that ultimately resulted in Mr. Ortiz's death.

Damon was found by the police at the local restaurant. He had a floor plan of Mr. Ortiz's house in his backpack. He also was in possession of a copy of the restraining order. On the back of the restraining order, Damon had a note in his handwriting that stated "Ortiz is a dead man walking."

You are the prosecutor in this particular case. You have made a final decision to charge Damon with first degree murder. Please write a memorandum detailing the elements of this crime and the strengths/weaknesses of the State's case against Damon.

Question 3 (10 points):

You are a defense attorney in a homicide prosecution brought against Leon Smith. Leon is charged with second degree murder for causing the death of Ted Rogers.

The evidence is fairly simple in this case. Ted and Leon were engaged in a private game of survivor on Mt. Washington in March 2006. These two (2) highly experienced mountaineers agreed to a challenge in which the person remaining at the summit of Mt. Washington for the longest period of time would win a cash prize of \$5,000.00.

Both men arrived at the summit of Mt. Washington on March 1, 2006. During the evening of March 30, 2006, Leon snuck inside Ted's tent and stole his sleeping bag and propane heater. Leon always carries a semi-automatic 38 pistol with him to protect against wild animal attacks. He was carrying this firearm when he stole the sleeping bag and propane heater.

During the evening hours of March 30, 2006, Ted returned to his tent. He could not locate the sleeping bag or the propane heater. He had returned to his tent at about 4:00 p.m. on March 30, 2006, when the temperature began to drop in a significant manner and the winds were approaching 100 mph. As the night wore on, the temperature dropped to -40°F. The winds reached 120 mph on a sustained basis during the evening hours of March 30, 2006 and the early morning hours of March 31, 2006.

Leon suffered minor frostbite in his feet that evening while he slept in both sleeping bags and used Ted's propane heater. Ted did not survive the early morning hours of March 31, 2006. He died of hypothermia due to his exposure to the extreme weather conditions.

The prosecutor in this case has advised you that they have two (2) theories of second degree murder they are considering filing as alternative charges against your client. The director of the New Hampshire Public Defender Program has asked you to provide her with a legal memorandum discussing Leon's potential liability for second degree murder and any lesser included homicide offenses. Please write a detailed memorandum to the director discussing the second degree murder exposure and any lesser included homicides that Leon could be charged with.

*The following statutes are included for your reference:

RSA 630:1-b Second Degree Murder

A person is guilty of murder in the second degree if:

- a. He knowingly causes the death of another; or
- b. He causes such death recklessly under circumstances manifesting an extreme indifference to the value of human life. Such recklessness and indifference are presumed if the actor causes the death by use of a deadly weapon in the commission of, or in an attempt to commit, or an immediate flight after committing or attempting to commit any Class A Felony.

RSA 630:2 Manslaughter

A person is guilty of manslaughter when he causes the death of another:

- a. Under the influence of extreme mental or emotional disturbance caused by extreme provocation but which would otherwise constitute murder; or
- b. Recklessly.

RSA 630:3 Negligent Homicide

A person is guilty of a Class B Felony when he causes the death of another negligently.

RSA 637:11 makes the theft of any personal property with a value in excess of \$1,000.00 a Class A Felony. The sleeping bag and propane heater had a combined value of \$1,500.00.