

Exam # _____

Criminal Law Final – Fall 2007
Professor Temple

Standard 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. If you are using a laptop, please follow the directions provided by the proctor regarding the use of TWEN.

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.

Question #1 (5 points):

You are a judge presiding over a rape trial. The defendant is requesting an instruction that includes language focusing on the lack of physical and verbal resistance by the alleged victim. The defendant is charged with having intercourse with the alleged victim. The alleged victim was dating the defendant at the time of the offense. As the trial judge, please indicate whether or not you will grant the defendant's request. You should also provide the jury with a definition of rape (sexual assault).

Question #2 (5 points):

You are a defense attorney handling a case for a client accused of cocaine possession (.05 gram). The statute provides for a maximum sentence of three (3) years. The State has filed a Notice of Extended Imprisonment asking for a sentence of ten (10) to thirty (30) years because your client has two (2) prior felony drug convictions. Your research shows the average sentence for felony cocaine possession in New Hampshire is six (6) months. Please write an objection to the State's Motion for Extended Imprisonment.

Question #3 (5 points):

You are a prosecutor in the Attorney General's Office. Buzz Scheer is charged with first degree murder of the infamous Professor Temple. Please do a brief memorandum setting forth all of the lesser included homicide offenses of first degree murder. You need to cover the elements of each homicide offense.

Question #4 (5 points):

You are a legislator considering a bill to abolish the death penalty. You recently decided to vote against the legislation. Please address the reasons why you believe the death penalty in its present statutory form after the Gregg case is constitutional.

Question #5 (5 points):

On December 6, 2007, Professor Temple accompanied Professor Simon to the jury box for lunch. During lunch, Professor Scheer began an argument with a student over the use of laptops in the classroom. The student told Professor Scheer to "shut up." Professor Temple approached the student accompanied by Professor Simon. As Simon watched, laughed, and yelled "go T-Ball," Temple assaulted the student. Simon did not report the assault to Dean Hutson or the police. Is Professor Simon guilty of a criminal offense? Please justify your answer.

Question #6 (5 points):

Tim Jones is charged with the crime of conspiracy to commit theft of a laptop computer. The evidence submitted to a grand jury shows that Tim and his brother, Joe, agreed to enter Wal-Mart and stuff a laptop into a carry bag held by a Wal-Mart greeter. Tim and Joe then ate at the Wal-

Mart cafeteria. Security cameras show the greeter delivering the laptop to Tim in the parking lot. Please draft an indictment charging Joe with conspiracy to commit theft.

Question #7 (10 points):

Professor Temple is diagnosed with paranoid schizophrenia. On September 13, 2007, he shot and killed his beloved T.A., Adam. Immediately after the homicide, Temple was admitted by his family to the New Hampshire State Hospital. Dr. Jones, a psychiatrist at the facility, will testify at trial that Temple was suffering from command hallucinations at the time of the homicide. Basically, Dr. Jones reports that Temple believed he was under orders from the CIA to kill Adam. Temple was arrested at the New Hampshire State Hospital on September 14, 2007. The police report indicates that he was sobbing, shaking, and screaming that the CIA made him knock off the "T.A. terrorist."

At the time of his arrest, Temple was still teaching at Pierce Law. A recent employment review indicated that his performance was "good," but noted several episodes of "bizarre" behavior in Criminal Law class. Additionally, Temple's wife and children will testify that in the weeks leading up to the murder, he was acting "normal," except for his random references to the CIA and evil Adam. Members at Concord Country Club will testify that Temple was suspended from the Club for carrying a rifle in his golf bag on September 1, 2007. Temple stated the rifle was an extra "club" for protection against a known terrorist.

An evaluation done on December 1, 2007, indicates that Temple suffers from depression and schizophrenia. It goes on to indicate that Temple knows that he is charged with murder of a "terrorist," understands he faces life in prison, and acknowledges he is entitled to a trial in that "Kangaroo Court." He knows all the players in the process (Judge, Jury, Prosecutor, and Defense Attorneys) and their respective roles. He wants to represent himself at trial and present a "Battered Professor Syndrome" defense. Temple expressed his desire that his defense team from the New Hampshire Public Defender's office help him as standby counsel at trial. He is able to explain the constitutional rights involved in a trial with great specificity.

The evidence does show that Adam assaulted Temple with a pink highlighter just days before the murder. A student will also testify that he heard Adam threaten to kill Temple just hours before the murder if he did not give him an A+ for his Clinic class. Another student will testify that Adam was laughing and mocking Temple in the library as Temple approached him on September 13, 2007. This student will testify that just before Temple shot Adam, the T.A. raised his hand and said "I want my A+ and if I don't get it, you'll pay for it with another highlighter beating!" Temple shot Adam in the face with a 357 Magnum upon hearing this threat. Adam only had a pink highlighter in his possession at the time of the murder.

Please evaluate all of the defenses Temple can assert at trial. You also need to address any pretrial issues presented by this situation.