

CRIMINAL LAW FINAL EXAM
Criminal Law Final Exam Instructions -Vorenberg SP 10

****THIS IS A 3-HOUR EXAM****

IMPORTANT: By submitting your answers to this final exam, you acknowledge that you are bound by Pierce Law's Honor Code, and that any material that is plagiarized, even if negligently so, is a violation of the honor code.

- This is an **open-casebook** exam no notes, commercial outlines other books allowed.
- This is an individual exam - do not collaborate or discuss this with anyone.
- This exam is worth 50% of your grade in the course.
- This exam has 7 pages (including 2 for these directions). Be sure you have all of them.

Exam number identification only:

1. **Use only your assigned Exam Number for this exam.**
2. Do not use your name or Social Security Number anywhere.
3. Do not provide any identifying information anywhere on the exam.
4. Providing any identifying information on or after the exam and before the exam is returned is a violation of the Pierce Law conduct code.
5. Put the number of the exam question next to your answer (e.g. 1A, 1B, 2, 3 et.) so it clear which question you are answering.

"Tips" for taking this examination:

- Read the "call of the question" and the specific instructions first. Determine the specific relevant legal issues and parties as you read through the entire fact pattern.
- Map out or outline your response. There will be multiple parts - elements, factors - that require you to address different points. Having a sense of how many different points you need to address will help you allocate the time you spend on each.
- You know a lot about criminal law. Remember that I can assess your knowledge and abilities only by what I see and can understand in your written responses; **EXPLICITLY** show the steps in your reasoning.

Criteria for evaluating exam responses (essay questions)

<p>1. Identifies basic legal issues and ambiguities in legal issues</p>	<ul style="list-style-type: none"> ○ Identifies elements and/or tests of crime or legal concepts ○ Identifies issue(s) ○ Uses reasoning when appropriate ○ Uses policy concerns when appropriate
<p>2. Applies facts from problem</p>	<ul style="list-style-type: none"> ○ Specifically applies facts to law
<p>3. Responsiveness to questions asked</p>	<ul style="list-style-type: none"> ○ Identifies all issues, weaknesses (if asked) and key facts ○ Draws reasonable inferences from facts
<p>4. Communicates clearly</p>	<ul style="list-style-type: none"> ○ Writing is legible (if writing), understandable, basic organization is apparent.

Criteria for evaluating exam responses (short answers)

<p>5. Identifies basic legal issue</p>	<ul style="list-style-type: none"> ○ Correctly identifies elements and/or tests of crimes or legal concepts
<p>6. Communicates clearly</p>	<ul style="list-style-type: none"> ○ Writing is legible (if writing), understandable, basic organization is apparent.

1. Dobbs, while intoxicated, drove his car through a playground crowded with children just to watch the children run to get out of his way. His car struck one of the children, killing her instantly. (2 pt)

Which of the following is the best theory for finding Dobbs guilty of murder?

- (A) Transferred intent
- (B) Felony murder, with assault with a deadly weapon as the underlying felony.
- (C) Intentional killing, since he knew that the children were there and he deliberately drove his car at them.
- (D) Commission of an act highly dangerous to life, without an intent to kill with disregard of the consequences.

2. Mandy and Samantha are invited to a lavish party at the home of a rich Hollywood producer. Mandy drinks seven glasses of champagne and is quite drunk when she goes to the powder room. As she leaves the powder room, Mandy spots a diamond and sapphire necklace on the dresser in the adjoining bedroom. After admiring it for a few minutes, she puts the necklace in her purse, intending only to show it to Samantha. Returning to the party, she is greeted by a famous movie star. Under his spell, she forgets she has the necklace. When Samantha tells her it is time to go, she leaves the house with the necklace still in her purse. Unfortunately, another guest saw Mandy put the necklace in her purse and tells the Pinkerton guard who is on hand to guard the family jewels. Mandy is arrested while she is waiting for Samantha to bring her car to the door. (2 pts)

Based on these facts, if Mandy is prosecuted for larceny, it is most likely that:

- A) She is guilty because she put the necklace in her purse.
 - B) She is guilty because she left the house with the necklace.
 - C) She is not guilty because she lacked the *mens rea*.
 - D) She is not guilty because the requisite *actus reus* elements are lacking.
3. Matt and his friend, Fred, were watching a football game at Matt's home when they began to argue. Fred became abusive, and Matt asked him to leave. Fred refused, walking into the kitchen, picked up a knife, and said he would cut Matt's heart out. Matt pulled a gun from under the sofa, walked to his front door, opened it, and again told Fred to leave. Fred again refused. Instead, he walked slowly toward Matt, brandishing the knife in a threatening manner. Matt, rather than running out the door himself, shot in Fred's direction, intending only to scare him. However, the bullet struck Fred, killing him instantly. (2 pt)

Charged with murder, Matt should be

- (A) convicted, because the use of deadly force was unreasonable under the circumstances
- (B) convicted, because he had a clear opportunity and duty to retreat.
- (C) acquitted, because he did not intend to kill Fred.
- (D) acquitted, because he was acting in self-defense and had no duty to retreat.

4. At a party, Diane and Victor agreed to play a game they called "spin the barrel." Victor took an unloaded revolver, placed one bullet in the barrel, and spun the barrel. Victor then pointed the gun at Diane's head and pulled the trigger once. The gun did not fire. Diane then took the gun, pointed it at Victor, spun the barrel, and pulled the trigger once. The gun fired, and Victor fell over dead.

A statute in the jurisdiction defines murder in the first degree as an intentional and premeditated killing or one occurring during the commission of a common-law felony, and murder in the second degree as all other murder at common law. Manslaughter is defined as a killing in the heat of passion upon an adequate legal provocation or a killing caused by gross negligence. (2 pt.)

The most serious crime of which Diane can properly be convicted is

- (A) murder in the first degree, because the killing was intentional and premeditated and, in any event, occurred during commission of the felony of assault with a deadly weapon.
- (B) murder in the second degree, because Diane's act posed a great threat of serious bodily harm.
- (C) manslaughter, because Diane's act was grossly negligent and reckless
- (D) no crime, because Victor and Diane voluntarily agreed to play a game and each assumed the risk of death.

5. Please explain your answer to question 4 above: (2 pts)

6. Defendant throws a firebomb into a passing freight train, unaware that a hobo is riding inside one of the cars. The hobo almost dies from the burns inflicted. Is Defendant guilty of either attempted murder or attempted manslaughter? Briefly (in one or two sentences) explain your answer. (1 pt)

7. Defendant stabs Victim. The wound itself is not fatal, but surgery is required. The surgeon negligently performs the operation, causing Victim to die. Has

Defendant committed a homicide? Briefly (in one or two sentences) explain your answer. (1 pt)

8. SHORT ESSAY (8 pts.)

You are working for a state legislator. A number of her constituents have alerted her to new menace. Apparently, there have been a number of injuries associated with people texting while walking down the street. On at least four occasions, a texter has injured a pedestrian. One of the people sustained a serious injury when they were knocked to the ground. The legislator would like you to draft legislation that addresses this problem. Include the punishment for the offense. In addition, include a brief (1-2 paragraph) justification for the law you draft.

9. ESSAY QUESTION (30 pts.)

Dr. Feelgood (Dr. Feelgood has a PhD in psychology) and his wife, Loona own and run a spa/spiritual retreat. People come to their establishment to seek spiritual enlightenment, cleansing, and overall good health (both emotional and physical). The couple runs the workshops and treatments. They have one office administrator, Joe, who manages the paperwork and gets all the necessary health information from the guests. The economy has lately been adversely affecting attendance at the spa. Consequently, the Feelgoods have to do more marketing and price discounting than they have in the past.

One of the Feelgood's signature programs is the "Sweat Lodge" experience. The program is described in their brochure as follows:

The sweat lodge is a purification sauna ceremony that takes place in a small windowless, dome-shaped adobe structure that stands 5 feet (1.5 meters) high. There is a fire in the middle of the structure with stones on top of the fire. Water and herbs are thrown onto the stones. The water slowly releases the heat in the stones, which rises as steam and permeates the air to create a very hot, humid atmosphere.

The Sweat Lodge is the Feelgoods most lucrative service. In order to participate in the Sweat Lodge, guests should have no health issues such as heart conditions or high blood pressure. Joe is responsible for getting this information and then passing it on to Dr. Feelgood who reviews the information. If someone has any health issues, Dr. Feelgood advises strongly against their participation in the Sweat Lodge.

Recently, Joe, Loona and Dr. Feelgood were meeting to discuss the shrinking clientele. Dr. Feelgood said "We have to get more people to sign up for the Sweat Lodge!" "Joe, I'll give you a bonus if you can get five extra people to sign up this month." Loona said "That's a good idea. Come on, Joe - you can do this...we need the money." Dr. Feelgood said "You know, guys, this is how we make our money." The other two nod.

The next day, Joe was on the phone with two prospective guests Mr. and Mrs X (a couple). Joe gave them the description of the Sweat Lodge and all its benefits. They were very interested in coming to the spa. Joe asked them the standard health questions and Mrs. X indicated that they both take medication for high blood pressure. Joe, in an effort to get the couple to sign up, did not indicate anything about their health issues on their form and did not discuss their health issues with Mr. and Mrs. X. Joe believes that the Sweat Lodge does not really pose any big health risks and if anyone wants to leave in the middle because they feel sick, they can do so, although recently, Joe had heard that a woman became sick as a result of her sweat lodge experience.

The couple agreed to come to the spa for a few days and they signed up to do the Sweat Lodge. Five other guests also signed up.

Dr. Feelgood always runs the Sweat Lodge alone. Although he usually asks people about any health issues, he did not do so for this particular group. During the "treatment," Mr. and Mrs. X at first were really into the experience. However, two hours into the six-hour treatment, they both began to complain and say that they did not feel well. They asked Dr. Feelgood to let them leave the Lodge. Dr. Feelgood told them that it is therapeutic to tough it out and pressured them to stick it out. Another 30 minutes went by and both Mr. and Mrs. X pleaded with Dr. Feelgood to let them out. He continued to pressure them to stay.

Trusting that Dr. Feelgood knew what he was doing, the X's did not leave. In any event, it was so dark, it was almost impossible to see the small door. Fifteen minutes before the end of the "treatment" Mr. X passed out and Mrs. X started yelling that Dr. Feelgood should go call a doctor. After waiting another five minutes (to complete the final meditation), Dr. Feelgood opened the door to the Lodge. Once there was light, Dr. Feelgood realized that Mr. X had become very pale and his breathing was labored. Dr. Feelgood called an ambulance. Mr. X was taken to the hospital where he died within an hour of being admitted. The cause of death was heart failure caused by a drop in blood pressure due to exposure to extreme heat.

The news of the death hit the papers the next day. One reader - who recently went to the spa - went to the police and reported that she had had a recent similar experience with Dr. Feelgood's Sweat Lodge. She had been well

enough to get herself to a doctor but she was hospitalized for a week recovering from dehydration and heat stroke. She had complained to Dr. Feelgood and his wife. A search of the spa's website contained a quote from Dr. Feelgood that said, "Sometimes you have to almost die to be reborn."

What, if any, criminal charges could a prosecutor bring against

- Dr. Feelgood?
- Mrs. Feelgood?
- Joe?

What potential weaknesses should the prosecutor anticipate in the case against each defendant?

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