

CRIMINAL LAW

PROFESSOR DUNCAN

SPRING 2010

CLOSED BOOK, THREE-HOUR EXAM

1. IF YOU CHOOSE TO HAND-WRITE YOUR EXAM, PLEASE WRITE ON ONE SIDE OF THE PAGE ONLY ON THE LINES PROVIDED, AND WRITE LEGIBLY IN BLACK OR BLUE INK. REMEMBER: I CAN GRADE ONLY WHAT I CAN READ!
2. WHETHER YOU HAND-WRITE OR USE THE COMPUTER, ***THIS EXAM HAS WORD LIMITS.*** THEREFORE, I STRONGLY RECOMMEND THAT YOU TAKE SOME TIME TO THINK OF THE BEST WAY TO FRAME YOUR ANSWERS BEFORE BEGINNING TO WRITE.
3. THERE ARE **20 PAGES** AND **10 QUESTIONS** ON THIS EXAM. **SOME QUESTIONS HAVE SUB-PARTS.** BE SURE TO ANSWER ALL QUESTIONS.
4. PUT YOUR EXAM NUMBER ON THE TOP OF EACH PAGE.
5. TAKE THE HONOR CODE PLEDGE:

**I ACKNOWLEDGE THAT IN THIS, AS IN ALL OTHER LAW SCHOOL
ACTIVITIES, I AM BOUND BY THE HONOR CODE:**

IT WAS A REAL PLEASURE HAVING YOU ALL IN CLASS.
GOOD LUCK, AND HAVE A GREAT SUMMER!

QUESTION ONE
(10 Minutes)

This is a true case from the 1970s:

Shortly after midnight, a guard heard an alarm which indicated that someone was attempting an escape from a prison recreation area. The alarm could not be heard in the recreation area. Guards immediately checked the prison population, but found no one missing. In the recreation area, they found that a piece of barbed wire had been cut. They also found a prison laundry bag filled with civilian clothing. The next morning, without prompting, the defendant voluntarily told a guard: "I was gonna make a break last night, but I changed my mind because I thought of my family, and I got scared of the consequences." The defendant testified that he was depressed prior to his decision to escape because he had been denied a Christmas furlough. The defendant was charged and convicted with attempted prison break. On appeal, the sole issue is whether his abandonment of the crime constitutes an affirmative defense such that his conviction should be reversed. Should he prevail on this issue? Explain:

1. In a Common law jurisdiction? (50 words)

2. In an M.P.C. jurisdiction? (50 words).

QUESTION TWO
(10 Minutes)

The MPC allows a defendant to argue for reduction of murder to manslaughter whether the person he killed was his provoker or an innocent third party. Given this rule, did the drafters of the MPC regard Extreme Emotional Disturbance provocation as a partial *justification* or a partial *excuse*? Explain your answer in 100 words or less.

QUESTION THREE
(20 Minutes)

David Bryden writes: “If a [rape] defendant mistakenly believed that he had consent, then (however unreasonable the mistake) he did not have the *mens rea* for rape.” Imagine that you are talking with a relative who has never studied Criminal Law and who thus has a naïve, layperson’s view of crimes. The relative asks you how the quoted statement can possibly be true. Explain Bryden’s statement in light of common law jurisprudence on intent standards. (200 words)

QUESTION FOUR
(45 Minutes)

UNITED STATES v. SANCHEZ

United States Court of Appeals, 3rd Circuit

Defendant engaged in a peace demonstration on a naval base after receiving from its commander a “bar letter” which prohibited him from entering the base. His entry constituted a violation of 18 U.S.C. §1832, and he was convicted under that provision. On appeal, the 3rd Circuit (*Sanchez I*) reversed the conviction on the ground that the First Amendment protected his right to demonstrate at the base. Thereupon, after consulting with counsel, he demonstrated several more times, in defiance of another bar order, and was again prosecuted. The government petitioned for certiorari from *Sanchez I* about this time, but the Supreme Court did not accept review until after the second group of demonstrations. The Supreme Court eventually reversed the 3rd Circuit’s decision in *Sanchez I* and held that the First Amendment did not preclude convicting him for demonstrating in defiance of a bar order. Thereupon the government pressed its prosecution for the second group of demonstrations (those which occurred after *Sanchez I* but before the Supreme Court granted certiorari) and obtained a conviction. Sanchez appealed, raising two issues: mistake of law, and legality.

You are a law clerk for the Judge on the 3rd Circuit who will be writing the opinion **reversing** the conviction. He asks that you provide him with a thoughtful draft of the opinion focusing on the two issues defense has raised.

YOU MAY ASSUME THAT THIS JURISDICTION FOLLOWS THE MODEL PENAL CODE. (450 words)

QUESTION FIVE
(10 Minutes)

Some American courts have held that felonious assaultive child abuse cannot serve as the predicate felony to bootstrap up to murder. On what basis would these courts most likely have reached this conclusion? Explain. (100 words)

QUESTION SIX
(20 Minutes)

CBS aired the following on “60 Minutes,” Aug. 2, 2009:

A 24-yr-old drunk driver killed a 7-yr-old girl and the driver of a limo taking a family home after a wedding. The family had hired a limo so they could party without endangering themselves or anyone else by driving drunk. The defense attorney says his client shouldn’t have been charged with murder. “Murder in our society . . . is relegated to the most dangerous, cold-blooded killers,” he argues. “Are we ready as a society to water down what murder is and turn our sons and daughters who go out and drink and drive and cause a fatal accident into murderers? It was an unintentional act caused by the alcohol.”

The driver was convicted of second-degree “Depraved Heart Murder” and sentenced to 18 years to life.

Explain why this verdict is defensible under Common Law. (200 words).

QUESTION SEVEN
(15 Minutes)

Sally Barcelona, a 15 year old girl, lived with her mother, Barbara, with whom she was constantly fighting. One day, after they had been arguing and screaming at each other for hours, both were in the kitchen, and Sally got a meat cleaver from a drawer and threatened her mother with it. Then Barbara grabbed a carving fork and defended herself by attacking Sally. Sally died from loss of blood, and Barbara was convicted of second-degree murder, premeditated and deliberate. You are clerking for the Trial Judge. The prosecutor has asked the judge to give an instruction saying that the defender was required to retreat (if she could do so in complete safety) before resorting to deadly force. Your jurisdiction has typically followed the retreat rule but the boundaries of that rule are still being defined. Write a memo discussing the sub-issues of retreat doctrine that are raised in this case. (150 words)

QUESTION EIGHT
(10 Minutes)

8a. Sharon Kramer, trying to show off in front of a friend, shot into a building that she knew might be inhabited. Her shots killed one person but missed 2 others. She was convicted of murder in the 1st case and convicted of attempted murder in the other two. On appeal, you are working for a judge who believes the convictions for attempted murder should be overturned. Write a lucid memo for your judge providing the strongest legal argument to reverse Ms. Kramer’s convictions for attempted murder.

NOTE: THIS IS A COMMON LAW JURISDICTION (50 words).

8b. The prosecution claims it is inconsistent to *convict* of murder where the victim died and *acquit* of attempted murder when the “victims” lived. What accounts for the inconsistency? (50 words).

QUESTION NINE
(20 Minutes)

Susan, Kelly and Cathy have smuggled cocaine into Florida from various Caribbean islands using the same modus operandi. They charter a small plane at rates well above market, use different disguises during each trip, fly at night, fly low to avoid detection, and depart from destinations known to be drug sources.

Recently, they chartered a small plane owned and piloted by Norm to fly them to the islands and then to fly them back to Florida. Although they did not explicitly tell Norm that they were using these trips to transport drugs into the USA, they told Norm all the other details of their previous trips. In addition, they paid Norm \$3,000 more than his normal fee and used obvious disguises for each trip. On the fifth flight Norm and the ladies were arrested in Florida and charged with a conspiracy to smuggle drugs into the USA.

Can Norm be convicted of conspiring with Susan, Kelly, and Cathy to illegally transport cocaine into the United States? If so, can Norm be convicted on the smuggling counts for the trips the ladies made prior to his involvement? (200 words)

QUESTION TEN
(20 Minutes)

While driving along the highway with Tara in the passenger seat, Jennifer spotted Bob, her fiancé, several car lengths ahead of her. She speeded up to wave at him. Bob, recognizing Jennifer in the car behind him, waited until she almost caught up to him and then sped away. Jennifer then increased her speed so she could catch up to Bob once more. Again, Bob, smiling, waited until Jennifer almost caught up to him and then increased his speed even more. This game of “cat and mouse” continued as each car increased their respective speeds. Bob and Jennifer were both laughing out loud when, suddenly, Jennifer, traveling well above the speed limit, lost control and hit a tree. Tara died instantly. Jennifer was charged with vehicular homicide. Is Bob liable as an accomplice? (200 words)
