

CRIMINAL LAW
PROFESSOR DUNCAN
SPRING 2021
OPEN BOOK EXAM

The final exam is scheduled for the April 28. It is self-scheduled on the day but must be completed within 3 hours once opened. (180 minutes) Keep in mind the 11:59pm is the final submission deadline.

The Exam is an **open book** exam, you may refer to your materials, i.e., **your** books, notes and outlines. You may **not** refer to commercial outlines, your hard drive, **(except to access your notes and outlines)** or the internet. Remember to read the question carefully and answer only the question posed. Most points are allocated for analysis, so organize carefully to show this analysis. Please set aside time to organize yourself and make your answers precise and concise.

1. ***THIS EXAM HAS WORD LIMITS.*** PLEASE KEEP YOUR ANSWERS WITHIN THE MAXIMUM WORD COUNT.
2. PLEASE WRITE IN COMPLETE SENTENCES, NOT FRAGMENTS. **(Do not simply outline your answer.)**
3. **THERE ARE 21 PAGES ON THIS EXAM. YOU HAVE 6 SHORT QUESTIONS AND 50 MULTIPLE CHOICE QUESTIONS**
4. PUT YOUR EXAM NUMBER ON THE TOP OF THIS 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:

EXAM #: _____

IT WAS A REAL PLEASURE HAVING YOU ALL IN CLASS.

I LOOK FORWARD TO SEEING YOU IN PERSON IN THE FALL.

ESSAY QUESTIONS

1. Eve Kramer was driving her car late at night when she struck another car and fatally injured the passenger. Kramer was driving at an excessive speed through an unlit residential neighborhood. Her blood alcohol level was two times the legal limit, and she stated that she was rushing so as not to miss her favorite Spanish soap opera.

The victim, who was also inebriated, had stopped his car in the middle of the street without his lights on; however, experts testified that a person driving within the speed limit and with all her faculties would not have hit the car.

Kramer's victim is not dead, but only unconscious. However, Kramer believes it is about 70% likely that the victim is dead and – afraid of the legal consequences of her accident – decides to sober up before alerting the authorities. She lifts the victim into the car and drives to a coffee shop, where she spends the next half hour drinking coffee. While she is in the coffee shop, the victim recovers sufficiently to call the police on his cell phone, but by the time the police arrive, he has bled to death. Experts testify that the victim would have lived if Kramer had immediately called an

ambulance. Kramer is convicted of murder in this **Common Law jurisdiction.**

You are clerking for Judge Merriweather, who will be hearing the case on appeal. She asks you to write an organized memo about 2 issues: First, based only on her behavior *after* the collision, did Kramer make out the *actus reus* for murder? **(55 words).**

2. Considering just her mental state *after* the collision, did she make out the *mens rea* for depraved heart murder? Please limit your discussion to murder and do *not* go into other forms of homicide such as manslaughter. **(100 words).**

3. Assume the same facts as in previous question except that when Kramer hits the victim, the victim dies immediately. This time, Kramer believes the victim to be alive but goes to get coffee to appear sober before taking the victim to the hospital. In the coffee shop, she runs into a friend and confides what she has done.

Kramer is charged with attempted murder. What is the defense she might be able to raise in a Common Law state? **(3 words).**

4. Explain why the defense you wrote down in answer to the previous question could apply to these facts. **(50 words)**.
5. In a common Law jurisdiction that allows this defense, what would be the prosecutor's best legal argument against it? **(25 words)**.
6. You are a law clerk for Judge Margaria, who has requested that you finish writing the following opinion:

MARGARIA, J

Defendant Blakely Flowers appeals from a judgment convicting him of possession of a concealable firearm by a convicted felon (Pen. Code, § 12021), based upon his 1973 conviction for altering a public record, a felony. Defendant contends that the trial court erred in excluding evidence of his mistaken belief that his prior conviction was only a misdemeanor. We will conclude that because of the defendant's asserted mistake regarding his legal status as a convicted felon, the prosecutor has not met her burden of proof as to the firearm possession charge. Accordingly, we will reverse the judgment.

At trial, defendant offered to prove the following facts supporting the theory of mistake: The charge of altering a public record resulted from a

plea bargain not involving a jail or prison sentence. At the time the bargain was struck, defendant's attorney advised him that he was pleading guilty to a misdemeanor. Believing that he was not a felon, defendant thereafter had registered to vote, and had voted. On one prior occasion, police officers found a gun in his home but, after determining that it was registered to his wife, the officers filed no charges against the defendant. His wife had also been convicted in 1973 of the same charge of altering a public record.

The trial court refused to admit any evidence of defendant's mistaken belief that his prior conviction was a misdemeanor and that he was not a felon. The court also rejected proposed instructions requiring proof of defendant's prior knowledge of his felony conviction as an element of the offense charged.

Penal Code section 12021, subdivision (a), provides: "Any person who knowingly owns or has in her possession or under her custody or control any pistol, revolver, or other firearm capable of being concealed upon the person is guilty of a public offense, having previously been convicted of a felony under the laws of the state shall be guilty of a felony."

Please draft the rest of Judge Margaria's opinion assuming you are in a COMMON LAW JURISDICTION. (290 words).

MULTIPLE CHOICE

(50 Questions)

1. Which of the following statements is true of an intent-to-kill murder that is premeditated and deliberate:
 - a. It cannot be mitigated to heat-of-passion voluntary manslaughter.
 - b. In law, the words “premeditated and deliberate” are never used with their ordinary dictionary meanings.
 - c. In some jurisdictions, no appreciable space of time between formation of the intent and the act of killing is required to make out the premeditation and deliberation formula.
 - d. None of the above.

2. Which of the following is true of “Depraved Heart Murder”?
 - a. It is a term used in M.P.C.
 - b. It is usually an intentional homicide
 - c. One of its elements is “wanton disregard for human life.”
 - d. All of the above.

3. Which of the following is true of the M.P.C.?
 - a. It tends to adopt the mental framework of the defendant.
 - b. It tends to adopt the framework of the reasonable person.
 - c. It has done away with the abandonment defense to the crime of attempt.
 - d. To analyze “mistake” cases, it employs the adage “Ignorance of the law is no excuse.”

4. Which of the following is true of the Castle doctrine?
 - a. It is an MPC expression that describes an exception to the right of self-defense.
 - b. It is a Common Law term referring to the defender's obligation to retreat to her castle before resorting to deadly force.
 - c. In a jurisdiction that imposes a duty to retreat, the Castle doctrine means that one need not retreat from his home.
 - d. All of the above.

5. Which of the following might explain why a court would uphold a conviction of murder yet overturn convictions of attempted murder, when all charges are based on defendant's shooting into a thicket of trees to show off his prowess?
 - a. The requisite *mens rea* for attempt is harder to make out than the *mens rea* for the completed offense of some kinds of murder.
 - b. The defendant was only negligent in shooting into the thicket of trees. This suffices for murder but not attempt.
 - c. By making out the provocation formula, the defendant was able to mitigate *attempted* murder to manslaughter but could not mitigate murder.
 - d. All of the above.

6. The idea that criminals deserve to be punished "because and only because they deserve it" is an example of which of the following?
 - a. The consequentialist theory of punishment.
 - b. Jeremy Bentham's utilitarian's school of thought.
 - c. The pure retributivist theory of punishment.
 - d. The Marxist view of deterrence.

7. After a street fight in which a teenage gang member stabs another kid to death, the prosecutor states that she intends to seek the harshest punishment possible under the law. Asked why, she says "to show the older gang members they cannot use minors to commit crimes and get away with it." Which theory of punishment does this passage best illustrate?

- a. Kant's categorical imperative.
 - b. Durkheim's approach to retributivism.
 - c. Specific deterrence.
 - d. General deterrence.
8. Which of the following is a limitation on the felony murder rule?
- a. The dangerous proximity test.
 - b. The equivocality test.
 - c. The requirement that the predicate felony be inherently dangerous.
 - d. All of the above.
9. Which of the following statements is/are true of the Battered Wife Syndrome?
- a. It helps explain why the wife did not leave her husband long ago.
 - b. It explains why the wife would believe that a fatal assault was imminent at the time she killed.
 - c. It serves to correct the misconception that the beatings must not have been too bad.
 - d. All of the above.
10. Which statement is true of Heat of Passion Voluntary Manslaughter?
- a. It is murder committed under extenuating circumstances and therefore punished less than other kinds of murder.
 - b. It is usually an unintentional homicide committed under extenuating circumstances that mitigate the crime.
 - c. It is usually an intentional homicide committed recklessly, with an abandoned and malignant heart.

- d. It is typically an intentional homicide committed under circumstances that mitigate but do not completely excuse or justify the crime.
11. Which is true of omissions that cause a death?
- a. They are sometimes immoral but are not always culpable in the eyes of the law.
 - b. They only make out *actus reus* for a crime when the victim is related to the defendant who omitted to do the act.
 - c. They render a person culpable only where a statute or contract makes them so.
 - d. None of the above
12. Which statement accurately describes the felony murder doctrine?
- a. It has been abolished in Canada, England and at least one American state.
 - b. Judges have attempted to broaden the reach of the doctrine with the “inherently dangerous felony” rule.
 - c. The merger doctrine is a way to broaden the scope of the felony murder doctrine.
 - d. None of the above.
13. What is the meaning or implication of the old English saying “I’d as soon be hanged for a sheep as a lamb?” when used in Jurisprudence.
- a. People who abuse animals should be subject to capital punishment.
 - b. It is as heinous to steal a lamb as a sheep.
 - c. If punishments are not proportionate to the crime, then criminals may have no incentive to commit a lesser crime.
 - d. All of the above.
14. The Model Penal Code states that in self-defense the use of deadly force is justifiable in which of the following circumstances?
- a. The defender knows he can avoid the use of deadly force by surrendering possession of a thing to a person asserting a right to it.

- b. The defender knows he can retreat with complete safety and thus avoid the use of deadly force.
 - c. The defender is assailed in his own dwelling.
 - d. The defender is in his place of work, assailed by another person whose place of work the defender knows it to be.
15. Which statement is true of the duty to retreat?
- a. It exemplifies the philosophy “Don’t tread on me,” as Professor George Fletcher described it.
 - b. It is an American variation on the Common Law.
 - c. It originated in English Common Law.
 - d. It has no exceptions.
16. “There but for the grace of God go I” is a quotation often used by jurisprudential theorists to explain or justify legal decisions. Which of the following statements best conveys the meaning of the quote when used in legal theory?
- a. I have managed to live my life without committing a crime, and others should be able to as well. Therefore, we should not give the criminal a break.
 - b. Any of us might have done the same under similar circumstances, which argues for mitigating the crime.
 - c. The statement goes back to John Calvin’s idea of predestination; i.e., that some are destined to be criminals and others upright citizens; therefore, the assumption of free will in Criminal Law is problematic.
 - d. None of the above.
17. Which of the following is true of “imperfect self-defense?”
- a. It may lead to a verdict of voluntary manslaughter in some jurisdictions.
 - b. It means that the defendant makes out all the subjective, but not the objective, components of self-defense.
 - c. In some jurisdictions it may lead to a murder conviction.

- d. All of the above.
18. Which of the following is true of murder?
- a. Malice aforethought is the “grand criterion” of murder.
 - b. It must involve an intentional killing.
 - c. One can never be convicted of murder for an omission but only for a commission.
 - d. None of the above.
19. Melanie Worth was extremely distressed when a local politician she idolized announced his engagement to a beautiful singer. Melanie waited for the couple at a stadium where the politician and his fiancé were expected to put in an appearance. When they arrived, Melanie raised a gun and fired at the beautiful singer, but as she fired, the politician’s bodyguard, seeing the gun, knocked it to one side. The bullet, which grazed the bodyguard’s hand, caused slight injuries to the bodyguard. The bullet penetrated the politician’s upper body, but he survived. Melanie may be charged with attempted murder of:
- a. The politician, singer and bodyguard.
 - b. The politician and singer
 - c. The politician.
 - d. The beautiful singer.
20. Which of the following statements is true of the merger doctrine?
- a. It allows the prosecution to use the felony-murder doctrine for crimes that merge.
 - b. In some states, it may prevent the prosecution from using the felony-murder doctrine if the predicate felony is assault with a deadly weapon.
 - c. It prevents the state from using the felony-murder doctrine if the predicate felony has an independent felonious purpose.
 - d. All of the above.

21. During the armed robbery of a jewelry store, a police officer, meaning to shoot the robber, fatally injures Ted Gibson, the store owner. The prosecutor charges the robber with murder, based on the felony murder theory. The jury finds the robber guilty of murder in the death of Gibson, and the robber appeals. Which of the following is a true statement that should be taken into account on appeal?
- If the state has adopted the proximate cause approach to felony murder, the robber's guilt could be affirmed.
 - If the state has adopted the agency limitation on felony murder, the felony murder doctrine may not serve as the basis for the homicide charge.
 - The crime of armed robbery does not merge with homicide and thus may serve as the predicate felony.
 - All of the above.
22. Which statement describes the relationship between burglary and attempt?
- Burglary is a substantive crime of attempt.
 - Burglary, some legal historians believe, came into being to compensate for the weakness of the Common Law of attempt.
 - Burglary and attempt are both inchoate crimes and both require specific intent at Common Law.
 - All of the above.
23. What is the relationship between the defense of abandonment and the test for making out the *actus reus* of attempt?
- At old common Law, it is harder than under the M.P.C. for the prosecution to make out the *actus reus* of attempt, but there is a defense of abandonment.
 - Under the MPC, there is no abandonment defense and it is easier than at old Common Law to make out the *actus reus* of attempt.
 - At old Common Law, it is very hard for the state to make out the *actus reus* of attempt; to compensate, the Common Law allows no abandonment defense. Under the M.P.C., the state has an easier time making out the *actus reus* of attempt; to compensate, the MPC allows a defense of abandonment.
 - None of the above.

24. Which of the following is a true statement?
- At Common Law, impossibility of fact is a defense. Impossibility of law is not a defense.
 - At Common Law, the impossibility defense exculpates if it is an impossibility of law and inculpates if it is an impossibility of fact.
 - Under the Common Law, there is no longer an impossibility defense, except for “true legal” and “intrinsic” impossibility.
 - None of the above.
25. Suppose Allen, knowing that his wife Marie was having an affair with Carl, and knowing that their amorous rendezvous usually occurred in Carl’s house on Wednesdays at 2 pm, set off for Carl’s place on Wednesday, April 27th, at 2 pm to catch the couple in *flagrante delicto*. He intends to kill them both. When he reaches Carl’s house, he breaks and enters illegally, ascends the stairs and, finding the couple in bed making love, he shoots them dead. Unfortunately, Carl’s son Ron enters the bedroom precisely at the moment. One bullet from Allen’s gun passes through Carl and pierces the son’s heart, killing him too.
- The prosecution charges Allen with murder for 3 deaths. Focusing only on the death of Carl’s son, what would be the best legal argument against allowing use of the felony-murder theory:
- The predicate felony is not inherently dangerous in the abstract.
 - The predicate felony should merge, because the unlawful entry does not differentiate this kind of burglary very much from assault with a deadly weapon, which merges.
 - The predicate felony is not typically a named felony, nor is it *mala in se*.
 - The defendant could successfully argue that he made out the Heat-of-Passion provocation formula.
26. Which of the following is a test used at old Common Law to determine whether the *actus reus* of attempt has been made out?
- Locus poenitentiae

- b. Substantial step
 - c. An abandonment that is voluntary and complete.
 - d. None of the above.
27. Many jurisdictions require that the use of deadly force be “necessary” to be justifiable under self-defense doctrine. Why?
- a. Because any other rule would require cowardice.
 - b. Because of what Prof. George Fletcher named the ethos of “Don’t tread on me!”
 - c. Because we believe in the sanctity of human life, even criminal lives.
 - d. All of the above.
28. What degree of murder is felony murder?
- a. Always first-degree.
 - b. Always second-degree.
 - c. It depends on the predicate felony, and the authorizing statute.
 - d. It depends on who does the shooting and who is shot.
29. Consider a defendant who is able to show that at the time he intentionally killed his victims, he was in a heat of passion and did not cool off, and that a reasonable person would also have been provoked into a heat of passion and not cooled off. Consider further that the provoking circumstances constitute reasonable provocation as a matter of law and that the victims sufficiently provoked him. Does the defendant meet the requirement of malice aforethought?
- a. Yes. It is an intentional heinous killing.
 - b. No because if defendant makes out the elements of voluntary manslaughter, then by definition, there is no malice aforethought.
 - c. No because people who are in a heat of passion are not malicious or wicked.

- d. No because people who are in a heat of passion are guilty of depraved heart murder.
30. A man is convicted of the murder of a co-felon at the hands of a co-felon, based on the felony-murder theory. The predicate felony is grand theft, like in the case we studied about chiropractor who said he could cure the girl of eye cancer. On appeal, what is the most likely reason for reversal?
- a. The felony of grand theft merges with the homicide.
- b. The felony of grand theft is not inherently dangerous in the abstract.
- c. This jurisdiction has adopted the agency theory limitation.
- d. None of the above.
31. According to the M.P.C., when the defendant asserts a mistake of fact,
- a. This does not excuse.
- b. This *does* excuse, but a mistake of law will not.
- c. This will excuse if it negatives the *mens rea* for the crime.
- d. It will always excuse if defendant's mistake resulted from reliance on her lawyer's advice.
32. In the M.P.C., the categories of Criminal Homicide are as follows:
- a. Murder, Voluntary Manslaughter, and Involuntary Manslaughter.
- b. Murder, Voluntary Manslaughter, and Negligent Homicide.
- c. Murder, Manslaughter, and Criminal Negligence.
- d. Murder, Manslaughter, and Negligent Homicide.
33. Have any courts explicitly rejected or ridiculed the fact/law distinction in dealing with a mistake or impossibility case?
- a. No, because this distinction is clear.
- b. Yes, because the distinction is nebulous.

- c. No, because this distinction is always helpful.
 - d. None of the above.
34. In the documentary film, *The Central Park Five*, we observe the following:
- a. The police lied to elicit false confessions.
 - b. The way young people's ignorance about police tactics and desire to be released to their homes caused them to make false confessions.
 - c. The way racism contributed to the conviction of the youths.
 - d. All of the above.
35. According to the film and class discussion, which of the following was *most* important in bringing about the final exoneration of the men in the *Central Park Five*?
- a. The mother of one of the five worked non-stop to prove their innocence.
 - b. One of the defense attorneys at the original trial continued to work on the case throughout his client's incarceration.
 - c. The criminal who had actually committed the crimes felt bad that someone else was being punished for what he had done so he came forward and took full responsibility.
 - d. The Innocence Project took the case and, using DNA evidence, cleared the five.
36. A man bought the clothes dryer he had long dreamed of giving his wife. He could hardly wait to see her surprised, happy face when he gave it to her. So he hurriedly fastened the clothes dryer on the back of his truck, using some rather frail, old, deteriorated rope. It crossed his mind that this rope might not do the job, but he decided to take a chance. During his drive home, the clothes dryer fell onto the highway, causing another driver to swerve to miss it. By swerving out of the way, the other driver caused his car to tumble over a steep cliff, and he died. What should the man with the dryer be convicted of? Why?
- a. Negligent murder under the M.P.C. because he did not make out the recklessness required for manslaughter.
 - b. Reckless manslaughter, under the M.P.C. because he manifested unjustifiable conscious risk creation resulting in a death.

- c. Depraved Heart Murder under the M.P.C. because he behaved with an abandoned and malignant heart.
 - d. Criminal negligence under the M.P.C. because his crime was negligent, not reckless or intentional.
37. Which of the following is true of the Model Penal Code?
- a. Its goal was to “dispel the obscurity of the Common Law.”
 - b. It considers a premeditated and deliberate murder more heinous than an *unpremeditated-and-undeliberate* murder.
 - c. It divides murder into 1st and 2nd degree.
 - d. All of the above.
38. Suppose Mr. Odench breaks into his ex-wife’s home at night with the intent to steal money. After the illegal entry, he shoots her dead. The prosecutor charges him with felony-murder. Relatives of the victim, watching the case unfold, wonder why the prosecutor didn’t simply charge with intent-to-kill murder. What would be a plausible reason?
- a. It is easier to posit malice than to prove it.
 - b. The ex-wife had physically abused her husband for many years, and the prosecutor was concerned that Mr. Odench could get off on self-defense.
 - c. The defendant was so inebriated that he could only legally be charged with involuntary manslaughter, not murder.
 - d. None of the above.
39. Joyce Seltzer knows that her boyfriend Jim wants to kill Alan. She, too, wants Alan dead, because Alan once rejected her offer of love. In an effort to help Jim, she buys a gun and gives it to him. Jim finds Alan and does kill him, but instead of using the gun, he stabs Alan to death with a knife. In an M.P.C jurisdiction, is Joyce liable as an accomplice to murder?
- a. No, because she did not actually help, as Jim didn’t use the gun.
 - b. No, because she did not share Jim’s motive for the killing.
 - c. No, because under the M.P.C., an *unsuccessful* attempt to aid is not liable.

- d. Yes, because in an M.P.C jurisdiction, even unsuccessful attempts to aid are culpable.
40. A woman, Deborah, is racing through the night to get her very sick baby to the hospital. She is going through red lights, and alas, she hits and kills a drunk pedestrian who is crossing Clifton Road at 3:00 a.m. after a party. The pedestrian is texting while crossing. In a Common Law jurisdiction, Deborah is charged with depraved heart murder. Which of the following is *legally relevant* to determining what crime, if any, she is guilty of?
- a. The pedestrian is contributorily negligent, by texting while crossing.
- b. Deborah’s reason for driving through red lights was that her baby was very sick and she was taking him to the hospital.
- c. The pedestrian was drunk.
- d. None of the above.
41. If a statute lacks any *mens rea* language, such as “purposely,” “recklessly,” or “knowingly”, can the common law court nonetheless read in a *mens rea* requirement? Choose the best answer from the following:
- a. No, because courts interpret the laws; they do not make them.
- b. No, because this would allow *ex post facto* laws, which are unconstitutional.
- c. Yes, if the crime in question is an old common law crime for which the stigma and punishment are high.
- d. Yes, if the crime is a new regulatory offense.
42. Why do many legal scholars and judges strive to limit the felony murder rule? In other words, why do they think the felony murder rule represents a departure from the basic principles of criminal law?
- a. Because it makes prosecutor’s job too easy.
- b. It makes the defense’s job too easy.
- c. It allows the prosecutor to posit malice instead of proving it.
- d. It punishes defendants who committed no crime.

43. A Judge writes: “Whatever may be taught in Torts, the foregoing rule [a rule making it easier to convict] is inappropriate in penal law. Why does he distinguish between torts and criminal law?”
- What is at stake differs dramatically.
 - Being guilty in criminal law carries more stigma than losing a civil case.
 - Negligence is much less important in criminal law.
 - All of the above.
44. The defendant, Doug Beachcomber, entered a liquor store, pulled a gun, and demanded money. The clerk opened the cash register and handed Beach all the money inside. It was just \$20.00. Beach then handed the money back saying, “Forget it. It isn’t worth it. I’ll never do this again.” In a Common Law jurisdiction, what would he be guilty of?”
- Nothing, because he could successfully interpose the affirmative defense of abandonment.
 - Attempted robbery because the *mens rea* and *actus reus* were already made out before changed his mind.
 - The completed offense of robbery.
 - Attempted robbery because his renunciation was not voluntary and complete.
45. In an 1887 jury instruction, an eminent judge warns the jury: “Gentlemen, it is now my duty to direct your attention to the law The definition of murder is unlawful homicide with malice aforethought and the words malice aforethought are technical. You must not, therefore, construe them or suppose that they can be construed by ordinary rules of language.”
- If *malice aforethought* doesn’t mean “what can be construed by ordinary rules of language,” what does it mean?
- It means wicked and premeditated.
 - It means what Parliament has codified.

- c. It means what the Law Lords have held.
 - d. It means what judges have held in a long series of decided cases.
46. Four young women burglarize a home. They have the intent to assault with a deadly weapon and kill Fred, the ex-boyfriend of one of them, after learning that he was cheating on her. In fact, they do kill him. The woman who actually pulls the trigger is charged with intentional murder with premeditation and deliberation. The other 3 women are all charged with murder as well, based on the felony murder doctrine. You are the lawyer for one of the other 3 women. What is your strongest legal defense?
- a. Burglary is not an “inherently dangerous felony.”
 - b. Burglary is not a *mala in se* felony and thus cannot serve as a predicate felony for the felony-murder rule.
 - c. This unusual kind of burglary should merge with the homicide.
 - d. This kind of burglary shouldn’t merge because it has an “independent felonious purpose.”
47. Ginger Hapland, an aspiring actress, was waiting tables at a Cafe named The Cherry Blossom. A woman and her husband were having dinner at one of Ginger’s tables. The woman, who had a strong tendency to be jealous, imagined that her husband was flirting with Ginger. She shrieked at the top of her lungs, calling Ginger a slut for wearing a low-cut blouse. Ginger angrily denied any wrongdoing. Ginger’s boss came out and insisted that Ginger apologize to the patron saying, “The customer is always right.” When Ginger refused, he fired her.
- Extremely angry, Ginger left the restaurant and went down the street to wait until the patron and her husband came out. Unfortunately, Ginger’s facial recognition was not very good, and the sun was going down, making it hard to look toward the restaurant, which was west of Ginger. After 30 minutes, Ginger saw a couple exit the Cherry Blossom Cafe. Certain it was the same couple, Ginger pulled out a knife she always carried for protection and stabbed the woman in the carotid artery, killing her on the spot. It was the wrong woman!
- When the police arrived at the scene, they took her into custody and charged her with murder. She quickly hired a lawyer, who believed that she could avail herself of Heat of Passion even though it was not the same person who called her a slut and got her fired. Can Ginger possibly succeed in mitigating her crime to Heat of Passion Voluntary Manslaughter when she killed the wrong person?
- a. Probably not because she killed the non-provoker.

- b. Probably not because a rationale of the heat of passion doctrine is partial justification, and she is not justified in killing the wrong person.
 - c. Maybe, if the rationale for the heat of passion doctrine is partial excuse.
 - d. All of the above.
48. Which of the following is/are true of heavily mental crimes?
- a. They never involve much action.
 - b. The *mens rea* is usually recklessness.
 - c. Attempt, depraved heart murder, and loitering are examples.
 - d. None of the above.
49. Which of the following statements is true of negative retributivism?
- a. It is the belief that a criminal should never be punished *more* than she deserves.
 - b. It is the belief that a criminal *must* be punished as much as she deserves.
 - c. It is the belief that the purpose of punishment is to protect society from danger.
 - d. It is the belief that the purpose of punishment is to dissuade people from committing crimes.
50. Which of the following is true of Durkheim's view of punishment?
- a. Durkheim is a theorist who focuses on general and specific deterrence.
 - b. Durkheim believes that rehabilitation is the main purpose of punishment.
 - c. Durkheim is a retributivist; however, he believes that a side effect of retributivism is that to strengthen societal bonds.
 - d. None of the above.