

CRIMINAL LAW

Fall 2011 Final Exam
Professor Puller

MSL ID# _____

“Experience teaches us to be most on our guard to protect liberty when the government's purposes are beneficent.” Louis D. Brandeis

Please identify your exam only by writing your MSL ID on this examination and on the Blue Book. You are to respond to Part One in no more than six handwritten pages in the Blue Book. Review the question in Part One, reflect on it and consider solutions to the problem. Evaluation of your answer will be based on your knowledge of the law; your ability to recognize issues; and your analysis, rules of law applied to the given facts. Your writing is expected to be legible and your analysis coherent.

PART ONE

Zengella Britain (Zengie), Conolli Karloff (Connie) and Michelle Michaels all from the same neighborhood, have been friends since grade school and called “the Vipers” by some girls. They remained friends into adulthood. Zengie from a well to do family managed to get a few years of college and manages several of her dad’s hardware stores, but never abandoned the Vipers. Connie and Michelle were cat burglars and had done prison time. Even then Zengie was their contact in the outside world.

Urged by Zengie to go straight, Connie and Michelle had given Damien Sulo and Phillip Adamo \$100K. The men approached them to invest in property in Red Rock to build Red Rock Bowling and Pool Hall. Conolli and Michelle were given documents making them 40% owner of the Sulamo Recreation center in Red Rock. Damien and Phil had learned that the proposed railroad was coming through Red Road from a friend in the state Dept of Transportation, and wanted the land because it was a perfect site for the new station. The three men had set up a shadow corporation and made a killing selling the land to the railroad. Connie and Michelle had gone to Sulo and asked about their share of the Sulo Rec Center with the agreement in hand. Sulo and Adamo, smoking Cuban cigars and sipping Napoleon brandy laughed and told Connie, “There was never any recreation center or any plans for one. We know how you make your money; you’re both lucky you are not in jail. Mess with us and you will be...or worse.” Adamo gave them each a free pass for a train ride and told them to “Take a hike.” Both men laughed. Michelle is infuriated. Connie urges her to leave.

When Connie and Michelle shared the tale of woe with Zengie, Zengie told her friends about the “state-of-the-art” home safes installed in both men’s homes. They had been installed by one of the family businesses. Zengie told her Vipers that she could get the equipment they needed to breach the safes. Michelle suggested that she and Connie should crack both safes and get what is due them. They were sure that there was plenty of

cash from the illegal businesses Adamo and Sulo ran. Zengie stated, "Now is a good time Adamo and Sulo are golfing in Bermuda."

Connie and Michelle went to Adamo's place first. Evading the roving neighborhood security patrol, the home alarm system and the gate that surrounded the two properties, they made quick work of breaking into the safe containing millions in cash, but took only \$75K. They then went cautiously through the woods to Sulo's place. In minutes, they were in the safe and again took out \$75K, their money plus interest. Sulo's safe not only had cash, but bearer jewels and bearer bonds as well. Michelle said, "Oh hell," and took a stack of bonds worth millions and placed them in her back pack. A voice yelled, "Heather, I'm home," It was Sulo's voice. He had left Bermuda early. Entering the master bedroom, Sulo seeing the masked black clad twosome yelled, "you witches, you're dead meat." As Sulo pulled a gun from his bag he said, "I'm going to kill both you witches." Connie said, "We're unarmed." Sulo responded, "I'll take care of that before the cops get here."

Michelle suddenly leaped into the air, expertly delivering a karate kick to Sulo's trachea. Sulo went to the floor convulsing. Michelle kicked away the gun and went to help him. Fearing a silent alarm, Connie grabbed her saying, "We've gotta get the hell outta here now!"

At that moment the Vipers heard Heather, Sulo's wife call out and they quickly exited via the window. Heather entered the bedroom and found the safe open, Sulo cyanotic and twitching on the floor. Softly she said, "It looks like someone else you've been screwing got to you first." She took a pillow from the bed and pressed it on his face until there was no movement. She called 911 and then Adamo. Sulo was DOA.

Adamo returned home immediately after hearing about Sulo. Finding that his own home had been broken into, he was furious. Adamo called an associate, Mel Delnaldeau. He told Delnaldeau that he wanted the "Vipers dead and soon", offered \$25K for each and a \$25K bonus if done within three weeks. Adamo told Delnaldeau where Zengie worked.

Denaldeau with his associate Crazy Marc Quepeck went to Zengie's store late one evening. She was given a brutal beating, but denied knowing where Michelle and Connie were. Quepeck shot her once in the head. Delnaldeau rigged a timed explosive and left Zengie for dead. Zengie was able to drag herself into the basement before the explosion.

Two firemen were killed in the hardware store fire when they went inside responding to neighbors' fears that Zengie was inside. Most of the store was destroyed in the explosion and fire. The next day, Zengie was found alive; she remains in a coma and doctors have been unable to remove the bullet from her head. The bodies of the firemen were recovered along with that of Ozzie Wade, the handy man who had a living space in the upstairs storage area of the hardware store.

Discuss the criminal liabilities of the parties, their crimes and any available defenses.

PART TWO

Define each concept fully and then state how, if at all, the concept applies to Part One.

1. Accomplice _____

2. Attempted Crime _____

3. Castle Doctrine _____

4. Claim of Right _____

5. Fraud in the factum re rape _____

6. Entrapment _____

7. Mistake of Fact _____

8. Solicitation _____

PART THREE

Consider and rely upon the cases from the casebook in responding to the following and select the best response.

1. Ana Moore is driving her high powered Saab down a country road, followed by a souped-up Lexis. The Lexis passes on a curve and continues on at high speed. A few miles later Moore sees what looks like the Lexis on its roof. Moore does not want to stop, because she will be late for class. What are the four situations, any one of which may require one to assist or to get help for an injured party, or face criminal liability?

- A. _____
- B. _____
- C. _____
- D. _____

2. Defendant, a Gulf War veteran is charged with assault with a dangerous weapon. Defendant is diagnosed with Post Traumatic Stress Syndrome. An event prior to his criminal action had triggered a flashback setting off an extreme emotional reaction to his state and resultant loss of control and reason that was over borne by extreme intense feelings. The defense put forth a defense of Extreme Emotional Distress. If successful, how would the defense bear on the criminal act?

- A. It would negate the requisite intent
- B. It would excuse the criminal act
- C. It would mitigate culpability
- D. It would require commitment to a State of Veteran Administration Mental Facility

3. In Massachusetts, three parties were playing Russian Roulette, in which a player shot himself to death. The survivors were found criminally liable under what theory?

- A. Duty to care
- B. Social host liability
- C. Duty not to play Russian Roulette
- D. Social Contract

4. A defendant who commits a non-homicide crime, puts forth a defense of compulsion. Which of the following is the defense's burden?

- A. Immediate threat of serious bodily injury or death; a reasonable objective fear that the threat will be carried out and; reasonable effort has been made to contact authorities.
- B. Immediate threat of serious bodily injury or death; well grounded fear that the threat will be carried out; and no reasonable opportunity to escape the threat.
- C. Immediate threat of serious bodily injury or death; objectively in fear that the threat will be carried out; and no opportunity to contact authorities.
- D. Immediate threat of serious bodily injury or death; reasonable grounds to fear that the threat will be carried out; no reasonable opportunity to escape the threat; and the matter is reported to the police as he reached a place of safety.

5. DEA and the Coast Guard have encountered drug running "rocket boats" that have been nearly impossible to catch on the Florida coast and intercostals waterways. One boat the police captured was jet powered and built by Lark Smythe a high speed boat builder in southern Florida. The police have long suspected that drug runners were his clientele. The police are working to include him as a player in a RICO type conspiracy. Which of the following elements of intent will **not** apply to governments attempt to show his complicity? Intent can be inferred from knowledge when:

- A. the purveyor has acquired a stake in the illegal venture;
- B. the purveyor has knowledge of the illegal use of the goods
- C. There is no legal use for the goods by buyer;
- D. the volume of the business with the buyer is grossly disproportionate to any legal demand.

MASSACHUSETTS SCHOOL OF LAW

CRIMINAL LAW
FINAL EXAM 2010

PROFESSOR PULLER

EXAM#: _____

It is the spirit and not the form of law that keeps justice alive.

Earl Warren

Use your social security number on the exam and blue book. Write legibly and coherently. You may have nothing on your person, or at, or near your desk area other than a writing instrument. Your knowledge of the law, ability to analyze the issues and your treatment of the issues will form the basis for your grade.

Please take the time to think about and organize your answer. Please do not just define the issue of law, but think about how it applies to the facts and what the ramifications of your conclusion are. Please limit your answer to six pages and write on only one side of each page.

Question 1.

Jamal refused to pay a gambling debt he owed to Sandy. Sandy told Jamal that she knew members of a gang and that she would have them kill both Jamal and Jamal's girlfriend Mia. Mia is a recovering heroin addict who has also received treatment for various mental disorders. Sandy then contacted Joe and Fred, both members of PINK, a local gang. Sandy asked them to give Jamal a severe beating but expressly told them not to use weapons.

Two days later, while looking for Jamal, Joe and Fred, who were unarmed, saw him getting into his car in a parking lot. They began to run toward Jamal. Jamal saw them running toward him and noticed they were wearing pink bandanas indicative of membership in PINK. Thinking that Sandy had sent them to kill him, Jamal reached in the glove compartment of his car for a handgun and shot at Joe and Fred, wounding both.

When Mia heard of this she decided to go to Sandy's mother's house with her friends Ashley and Jared to put a good scare into Sandy. Ashley drove as Mia was too high to drive. On the way there they stopped at Tisha's house to borrow her gun and her dog, Death Ray, who Tisha had rescued from the local junkyard. When they got to the house, Jared said he thought they were only kidding about all this, that they had to "stop this crap" and left to walk home. As he walked home, Jared decided to call the police.

Mia approached the doorway with the gun and Death Ray. When Sandy's mother opened the door Death Ray ran into the house grabbed Sandy's brother Jim by the throat

and killed him instantly. Mia pulled out the gun and shot Sandy's mother in the eye killing her and then shot herself in the head. Mia was wounded badly but is expected to live.

Discuss what crimes have been committed and by whom and what defenses may be available.

Question 2.

Please fully define each concept listed below and after fully defining the concept explain how that concept applies to Question 1.

1. Model Penal Code: _____

2. Specific Intent Crimes: _____

3. Conspiracy: _____

6. Attempt Crimes: _____

7. Kidnapping and False Imprisonment: _____

8. Rape: _____

outside to get his wife's opinion. His wife was out of town and Fred's intention, which he later admitted to police, was to take the hat without paying for it. The sales clerk said, "sure." Fred walked outside and was arrested just a few feet from the store.

If Fred were charged with theft, under modern penal codes he would likely be:

- A. Convicted, because he took the store's property with the intention of keeping it.
- B. Acquitted, because he removed the hat from the store with permission and therefore there was no trespassory taking.
- C. Convicted even if he was intending to just show his wife the hat and then bring it right back.
- D. Acquitted, if he offered to pay for the hat.

2. Chris and Miranda together severely beat Fred with a baseball bat in an attempt to eliminate him from a talent competition called MSL Idol. They are charged with conspiracy and aggravated assault. The elements of aggravated assault are "purposefully, knowingly, or recklessly causing severe physical injury to another."

If Miranda offers the defense of necessity, claiming that she had to eliminate Fred in order to advance her singing career, the best explanation for why this defense will fail is:

- A. It is never necessary to harm an innocent person.
- B. A reasonable person would know there were other ways to advance her career.
- C. The harm caused if Miranda were to lose the talent competition is not greater than the harm caused by the assault on Fred.
- D. Fred did nothing to provoke the attack.

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3. Section 5.06 (1) of the Model Penal Code provides that: “a person commits a misdemeanor if he possesses any instrument of crime with purpose to employ it criminally.” Fiona borrowed her friend’s car because hers was in the shop getting repaired. She had permission to use the car for as long as she needed it. On the first day, Fiona noticed a “slim jim” in the glove box. She knew right away that this was an instrument commonly used to break into cars. It made her wonder what her friend was up to. Nevertheless, Fiona left it in the glove box where it remained until it was discovered by the police four days later when they searched the car after Fiona was stopped for speeding. She was accused of possession of an instrument of crime pursuant to a code section that is the same as Section 5.06 (1) above.

Fiona’s best overall defense to this charge is:

- A. Lack of *mens rea*.
 - B. Lack of capacity to formulate *mens rea*.
 - C. Lack of *actus reus*.
 - D. Statute is unconstitutionally vague.
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4. Jennifer was accused of attempted murder after she shot Erin in the head. Erin survived the shooting and was kept alive in a coma by a life support system for three weeks. After three weeks, Erin’s family decided to have the doctors disconnect the life support. Erin died hours later. Jennifer is now charged with murder.

Jennifer has been examined by a psychiatrist who is of the opinion that Jennifer shot Erin because she thought she was a Martian who was about to take over the

earth and destroy it. Jennifer's lawyer would like to assert the defense of insanity. If the jurisdiction for this case uses the M'Naughton test for insanity then Jennifer could be found not guilty by reason of insanity if:

- A. Jennifer's delusion was a result of a mental disease or defect.
- B. Jennifer was unable to stop herself from killing.
- C. Jennifer's illness prevented her from formulating an intent to kill.
- D. Jennifer is unable to understand the charges against her.

5. If Erin's parents are accused of murder because they directed the doctor to turn off Erin's life support, they should be found:

- A. Not guilty because they did not turn off the machine, the doctor did.
- B. Not guilty because they believed it was in Erin's best interests to have her life support disconnected.
- C. Guilty because their *actus reus* was an omission.
- D. Guilty if they told the doctor to disconnect the machine because they wanted to cause Erin's death.
