

FINAL EXAM
DECEMBER 13, 2002

Instructions:

Please write your social security number on the top of this page, on each of the blue books that you use, and on any piece of scrap paper that you use. Return **everything** to me (including the scrap paper) at the end of the three hours or when you finish, whichever comes first.

This exam consists of **three** questions; you will have three hours to complete it. Carefully read each question and respond to the question at the end of it. In responding, skip every other page and every other line in your blue book; this will allow you to insert information that you later decide is relevant, and it will make it much easier for me to read.

QUESTION 1: One Saturday night when Tom, Dick, Harry, and Jane were drinking beer and smoking marijuana at Tom's apartment in Mayberry, they decided to rob a bank to cure their financial woes. Tom, the only one with a car, offered it up, and Harry agreed to drive it. Dick offered to stand outside the bank and be a lookout. Jane volunteered to go into the bank with an unloaded gun and demand the money. They set the robbery's date for the following Saturday.

The Thursday before the robbery was supposed to take place, Tom got arrested for selling a large amount of cocaine to an undercover officer. No one could make the \$100,000 bail that was set for him, so he remained locked up. Jane promised that she and the others would get him out of jail with the proceeds of the robbery. Tom said they could still use his car for the job and told her where to find it and the keys.

That Saturday, they all met at Dick's; they drank some margaritas and snorted cocaine. Unbeknownst to his comrades, Harry took a healthy dose of LSD, a powerful hallucinogen. They all headed to the garage where Tom kept his car. Harry tried to start it, but it would not turn over. The battery had died. Harry was able to hot wire a nearby car; they climbed in and headed for the bank.

Harry dropped Dick and Jane off a few blocks from the bank and drove around the corner, where he parked. Starting to feel the effects of the LSD, he decided to take a drive and look at the Christmas lights.

Meanwhile, Dick stationed himself outside of the bank's front door and Jane headed inside. Upon entering, she told the three patrons, Larry, Mo, and Curly, to get onto the

ground and ordered the sole teller to give her the money. Curly happened to be an off-duty police officer. As Jane walked toward the teller's window, Curly fired a shot at her. He missed Jane, but struck and killed the teller. Jane turned and ran, firing as she ran. She killed one of the patrons and struck the other in the leg.

As she ran out of the bank, she grabbed Dick and they headed toward where Harry was supposed to be waiting for them. But Harry was not there. Instead, he was hallucinating and tooling around Mayberry in Tom's car, looking at the lights. Mistaking a red light for a large Christmas ornament, he ran it and crashed into an oncoming car. The driver, Ed, was taken to the hospital and surgery was performed by Dr. Jones. The surgery was successful, but Ed contracted a rare and fatal blood disease which Dr. Jones had contracted during his travels. Ed died two week later from the disease.

Discuss the criminal liability of Tom, Dick, Harry, and Jane, and any possible defenses they may have.

QUESTION 2: An aspiring actress, Winona was also a kleptomaniac. She couldn't seem to stop taking things, even though she made good money from her sizable trust fund, her job at a Beverly Hills movie theater, and her roles as an extra in several major films.

One night working behind the ticket counter at the movie theater, a couple approached and gave her \$20 for two tickets. She decided to keep the money; she took the money from the couple, gave them their tickets, and pocketed the bills. Another couple approached and gave her \$20 for two tickets. As she was about to place it into the drawer, she remembered she needed to buy some cat food on her way home, so she pocketed the money. She swore to herself that she would not do it again. The next customers arrived and also bought two tickets. She placed the money in the drawer. Remembering that she was supposed to meet a friend for drinks after work, she took the \$20.00, saying to herself, "Never again."

On her way home from the bar, she stopped at an all-night convenience store to buy some cat food. As she handed the clerk \$10.00, she flirted with the clerk, name-dropped incessantly, and blathered on about her acting career. When he handed her his change, she said, "On no, I gave you a twenty." Winona began shouting, and the clerk, confused, gave her change for a twenty.

The next day, while shopping at an exclusive department store, she saw a fabulous, \$3,000 blouse that she had to have. She surreptitiously placed another, less expensive (\$500) blouse, over it and headed for the dressing room. Sue, the dressing room attendant, realized what Winona had done and was about to call security when she recognized Winona from one of her films. Believing Winona had talent and not wanting to see her incarcerated, she let her into the dressing room with a ticket for one item of clothing. In the dressing room, Winona tried on the expensive blouse and then put her large sweater over.

She left the dressing room and approached the cashier, Johnny. He mistakenly thought the blouse was only \$50 and rung up that amount. Winona handed him a bad check and left the store. As she passed through the doors, someone yelled, "Stop, thief!"

Winona began to run, and Johnny pursued her. George, recently unemployed and in the mood to make someone pay, saw Johnny running in his direction and tripped him. When Johnny got up, he saw George laughing at him. He picked up a trash can and threw it at George, but missed.

The can rolled into the street, in front of Don's car. Don, who had been drinking, swerved to avoid the can and crashed into a car driven by Rick. Rick was thrown from the car and lay bleeding. Don, who was a nurse, got out to see how Rick was doing. Rick said he felt faint and thought he had broken some bones. Fearing that, if he remained on the scene, he would be arrested for drunk driving, Don got back into his car and sped off.

It turned out that Rick was George's nephew, and George realized this. Nevertheless, he watched the entire episode and did nothing. Rick later died at the hospital.

Meanwhile, Johnny apprehended Winona. At trial, she testified that that she had been rehearsing for a roll and had not intended to steal the blouse.

Discuss the criminal liability of Winona, Sue, Johnny, George, and Don and any defenses they might have.

Question 3: Married for twenty years, Edna and Steve appeared to have the ideal relationship: they had two children, a beautiful home, and all the trappings. But Steve, an alcoholic, had been beating Edna for most of those years. On several occasions Edna had attempted to leave, but for various reasons, financial, emotional, or from fear of reprisal, Edna returned to Steve.

One night, it appeared to Edna that Steve's violence had reached a new level. He returned home from work in a stupor. Edna was talking to Jim, a neighbor with whom both she and Steve were friendly. Steve became enraged. When Jim left, Steve accused her of having an affair and savagely beat her, for the first time, with his belt. As she cowered in a corner, he screamed that he had "known all along" that she had been sleeping with Jim, that he could not "take her lies anymore," and that he was going to have to do "something" about it in the morning. He warned her that if she tried to leave, others "dear to her" would suffer. Before he went to bed, he ceremoniously removed his revolver from the nightstand, cleaned it, loaded it, and placed it back inside the nightstand. He then passed out, face down, on the bed.

Edna stayed up, trying to think of what to do. She was convinced that, this time, Steve would kill her. At about 3:00 a.m., she snuck out of the house across the street to her friend Mary's. Edna had confided in Mary and the past, and Mary had always been a

sympathetic listener. Mary had always advised Edna to "take the matter into her own hands."

Mary finally came to the door, and invited Edna in. Edna told her what happened, that she did not know what to do, and that she thought that "this time was it." Mary went into her husband's gun cabinet and removed a small handgun. She checked to make sure it was loaded. She gave it to Edna, stating, "Only use it if you have to."

Edna returned home and on a chair beside the bed where Steve was asleep. At this point, the blankets entirely covered him, and she could not see his face. As the sun began to rise, her vision grew blurry. She focused on the mound of blankets, but found herself nodding off. All of a sudden, she thought she saw the lump move. She stood up and fired four shots at the mound in rapid succession. Still holding the gun, she removed the covers, beneath which were only pillows. When she looked up, Steve was standing in the doorway, holding a baseball bat. He shouted, "I knew you would try to kill me," and started to swing the bat. At that very moment, Jim struck Steve on the back of the head with a wrench he had borrowed from Edna and come to return. Steve fell to the ground and later died at the hospital.

Discuss the liability of Edna, Mary, and Jim and any criminal defenses they might have.

THE END

CRIMINAL LAW-- FINAL EXAM CHECKLIST --DECEMBER 13, 2002

Student Student SSN: _____

Grade _____

General Comments:

I. **QUESTION 1**

A. State v. Jane

1. conspiracy to commit robbery ()
2. Harry's larceny of car () as an accomplice () and coconspirator ().
3. attempted robbery -- thwarted by Curly ().
4. felony murder of Gene ()
 - a. nonfelon kills nonfelon ()
 - (i) agency rule ()
 - (ii) proximate cause test ()
5. murder of Larry ()
 - a. intentional murder ()
 - b. felony murder ()
6. attempted murder of Mo or ABDW ()
7. Defenses
 - a. Voluntary Intoxication () (D:)
8. Comments:

B. State v. Dick

1. conspiracy to commit robbery ()
2. accomplice () and conspiratorial liability () for:
 - a. larceny of car ()
 - b. attempted robbery ()
 - c. felony murder of Gene ()
 - d. murder of Larry ()
 - e. attempted murder () and assault and battery () of Mo
3. Defense:
 - a. Voluntary Intoxication ().
4. Comments:

C. State v. Harry

1. conspiracy to commit robbery ()
2. larceny of car ()
3. Accomplice () and Conspiratorial () liability for:
 - a. attempted robbery ()
 - b. felony murder of Gene ()

- c. murder of Larry (____)
 - d. attempted murder (____) and assault and battery (____) of Mo
4. Murder of Ed (____)
 - a. felony murder (____)
 - b. reckless murder (____)
 - c. involuntary manslaughter (____)
 - d. Defenses:
 - (i) mistake of fact (____)
 - (ii) Not the Proximate Cause -- dependent intervening cause was unforeseeable and freakish (____)
 5. General Defenses
 - a. Voluntary Intoxication (____)
 - b. Diminished Capacity and/or Insanity (____)
 6. Comments:

D. State v. Tom

1. conspirator or accomplice (Pinkerton)? (____)
2. conspiracy to commit robbery (____)
3. Accomplice (____) or Conspiratorial (____) Liability for:
 - a. larceny of car (____)
 - b. attempted robbery (____)
 - c. felony murder of Gene (____)
 - d. murder of Larry (____)
 - e. attempted murder (____) or ABDW (____) of Mo
4. General Defenses (____)
 - a. Voluntary Intoxication (____)
5. Comments:

E. State v. Curly

1. Murder of Gene/Transferred Intent (____)
2. Defense -- crime prevention (____)

II. **QUESTION 2**

A. State v. Winona

1. Embezzlement (\$20) (____)
2. Embezzlement (\$20) (____)
3. Larceny from bank (\$20) (____)
4. False Pretenses (\$10) from convenience store (____)
5. Larceny -- \$3,000 blouse (____)
6. False Pretenses (\$500) blouse/\$50 check (____)
7. Defenses
 - a. lack of intent to steal (rehearsing) (____)
 - b. diminished capacity -- kleptomania (____)

8. Comments:

B. State v. Sue

1. larceny of \$3,000 blouse as an accomplice (____)

2. Comments:

C. State v. Johnny

1. assault of George (throws trash can) (____)

2. Murder of Rick/Actual and Proximate Cause (____)

3. Comments:

D. State v. George

1. battery of Johnny (trip) (____)

2. Murder of Rick (____)

a. Direct/Proximate cause of death: taunted Johnny, leading to throwing of can, leading to Rick's death (____)

b. Omission/Duty based on relationship (____)

3. Comments:

E. State v. Don

1. OUI (____)

2. murder of Rick (____)

a. reckless (____)

b. involuntary manslaughter (____)

c. omission -- failure to assist after causing injuries and starting to help (____)

3. Defense:

a. necessity (to death of Rick) (____)

b. voluntary intoxication (____)

4. Comments:

III. **QUESTION III:**

A. State v. Edna

1. conspiracy to murder Steve (____)

2. attempted murder of Steve (____)

3. Defenses:

a. Self-Defense (____):

(i) rape (____)

(ii) Battered Women's Syndrome (____)

(A) expert testimony (____)

b. Impossibility

4. Comments:

B. State v. Mary

1. Solicitation to Murder Steve (____)
2. Conspiracy to Murder Steve (____)
3. Attempted murder of Steve as an Accomplice (____)
4. Defense of another (Edna) (____)
5. Comments:

C. State v. Jim

1. Murder of Steve
 - a. Second Degree Murder (no WPD) (____)
 - b. Voluntary Manslaughter (provocation) (____)
2. Defense of another (Edna) (____)
3. Comments:

FINAL EXAM
December 17, 2004

Instructions: This exam consists of 3 questions and will last 3 hours. Write your social security number on the front of the blue books provided, on this exam sheet, and on your scrap paper. In responding to the questions, write on every other line and every other page. You may use as many blue books as you wish. When you finish, return the blue books, the exam sheet, and your scrap paper to me.

QUESTION 1 (approximately 1 1/2 hours)

Once a month on a Friday, Art, Bob, Charles, and Dale got together to smoke cigars, drink beer, and play poker for pennies. One night while playing in Dale's basement, Art suggested that they play for "higher stakes." What the others did not know was that Art had developed a bad gambling habit. He was in debt to a loan shark for \$5000. Earlier that afternoon, the loan shark had called in the debt, telling Art that, if he did not have the cash by the following Sunday, Art and his family would pay dearly.

Starting with one-dollar bills, their bets soon escalated to twenties, and then to even higher denominations. Tensions were running high. By the end of the night, Art was drunk, angry, and had lost his shirt. It was the night's last game, and it was down to Art and Bob. Desperate to win back enough cash to repay the loan shark, Art wagered the very expensive set of golf clubs that were in the trunk of his car. As luck would have it, however, Art had a straight, and Bob had a full house. Bob, smirking, said, "Hand over the clubs."

Convinced that Bob had cheated, Art said, "You'll get those clubs over my dead body." Bob knocked Art off his chair, and the two struggled. During the struggle, Art's keys fell out of his pocket, and Bob grabbed them. Dale, believing Bob was entitled to the clubs, held down Art while Bob went to Art's car, removed the clubs from the trunk, and drove off with them. Art stormed out of Dale's basement, with Charles following close behind.

Charles said to Art, "You know, I saw Bob cheat." Art replied, "I knew it. I knew it." Then he said, "I've got to get those clubs back by Sunday." Sensing Art's desperation, Charles said, "I have an idea." Charles suggested that, for \$2000, he would break into Bob's house on Saturday night and take the clubs. Estimating that the clubs could be pawned for at least \$7000, Art said, "It's a deal." Art quickly drew a sketch of the layout of Bob's house and gave it to Charles.

Early Saturday morning, Charles contacted Earl, who had just been released from prison. They met at a coffee shop, and Charles asked Earl to commit the break-in for \$1000. Having been barely earning a living at a local hardware store since his release,

Earle eagerly accepted the job. Charles gave Earle the sketch, and Earle headed for the hardware store for work. When he arrived, he realized he needed some "tools" for the break-in. When no one was looking, he placed a screwdriver, a crow bar, and some other implements into his duffel bag, planning to return them after the break-in.

When Earle got home early that evening, he started to have second thoughts. He had only just gotten out of prison and didn't want to go back. But this was a good opportunity to make some quick cash. He decided that he needed some backup, and then thought of Fred. Earl and Fred had grown up together. Fred was a bit strange, and often naive, but he worshiped Earle, so Earle decided to ask him to act as a lookout and getaway driver.

As it turns out, Fred was not just strange; he suffered from paranoid schizophrenia, which had worsened while Earle was in prison. One of Fred's many delusional beliefs now included one that evil forces threatened civilization's extinction and that only a wizard, whom he was destined to help, could save the world from these forces.

Earle called Fred. Fred became convinced that Earle was "the wizard." Earle said, "I got a job tonight—a break-in—and I need some backup. Can you help out?" Fred replied, "A break-in? But that would be wrong . . ." Annoyed, Earle responded, "Are you in or out?" Fred said, "I'll do anything to help you. We must do what is necessary to combat the forces of evil." "Whatever," Earle replied, "I'll pick you up at 10:00 o'clock."

Earle picked up Fred and drove to Bob's house, which was part of a development of identical houses. Earle got out of the car, and Fred slipped into the driver's seat. Earle told Fred, "If you see anything suspicious, beep the horn twice."

Earle broke into Bob's house through the back door. After searching the bedroom closets, he finally came upon a set of golf clubs. As he was about to leave the room with them, he noticed an expensive-looking watch on a dresser and decided to grab it as well. When he reached the street, he noticed that the neighboring houses also appeared to be unoccupied. Encouraged by the ease with which he broke into Bob's house, he decided to try to break into the house of Bob's neighbor, George.

Just as he started to get the back door open, Earle heard a horn honk twice. He ran back to the car, only to learn that Fred had seen a cat, which Fred described as very suspicious. Exasperated, Earle returned to what he thought was George's back door. The door finally opened, and, just after he entered the house, a shot rang out. Hal, Bob's other neighbor, stood about 20 feet away, holding a gun. Hal's seventeen-year-old son, Ian, fell to ground behind Earle. Ian had been attempting to sneak up behind and apprehend Earle when Hal fired the shot at Earle, but missed. Ian later died at the hospital as the result of the gun shot wound.

When Bob returned home to find the golf clubs and watch missing, he reported the losses to his insurance company. He was told that he could not collect for the clubs since he had not included them in the house's inventory. He made up the difference by falsely reporting that the watch was a more recent model than the one listed and collected four times its value from the insurance company.

Police subsequently arrested Art, Bob, Charles, Earle, Fred, and Hal. Discuss the common law crimes with which they can be charged, and any defenses they may have. If you decide that a murder charge is appropriate, indicate which degree of murder the charge would be.

QUESTION 2 (approximately 45 minutes)

At the end of the summer after graduating from high school, Amy discovered that she was three months pregnant. She was opposed to abortion, as were her deeply religious parents. She decided to tell neither them nor Bill, her high school sweetheart. Both she and Bill planned to go to different colleges in the fall and neither had planned to get married any time soon.

By November, Amy could no longer keep her pregnancy a secret. She called Bill from college and told him that she was pregnant. He stated, "We have to get rid of this baby." Amy responded that it was too late for an abortion and that she was opposed to it anyway. They agreed that Bill would visit her that weekend to discuss what they would do.

When Bill arrived, the two fought. Bill told Amy that he would not ruin his future by getting married. The argument escalated, and, in a fit of rage, Bill violently pushed Amy. She fell to the floor. As a result, she went into premature labor and delivered the baby in her dorm room. Panicked, Bill took the baby and wrapped it in a sheet. He told Amy that he was going to get rid of it. She asked him what he planned to do, and he replied, "Don't worry; I'll take care of everything."

Bill put the baby in a shopping bag, got into his two-day rental car, and drove to the rear parking lot of a large apartment building several miles away. He looked around nervously before putting the shopping bag into the dumpster.

Later that evening, one of the building's tenants heard small cries when he went to put his trash into the dumpster. He found the shopping bag and the baby, who was tiny, bruised, and sickly-looking.

The baby died soon thereafter at the hospital. In the meantime, Bill and Amy fled in the rental car to the mountains of another state. Two weeks later, they were apprehended.

What common law charges could a prosecutor bring against Amy and Bill, and what, if any, are their defenses? If you decide that a murder charge is appropriate, indicate which degree of murder the charge would be.

QUESTION 3 (approximately 45 minutes)

Andrea and Burt met one night at a party. They had both been drinking heavily. Andrea was dressed very provocatively, with a low cut blouse and short skirt. She appeared to be very attracted to Burt; she sat very close to him, touched his hand and his knee, and whispered in his ear. They danced a few slow dances and decide to go to Andrea's place.

When they arrived in her apartment, very intoxicated, they went directly to the bedroom. There they undressed and fondled one another.

- a. As Burt was about to have intercourse with Andrea, she began to make sounds that Burt believed were moans; Andrea would later testify that she was actually saying, "No." At that moment, Andrea's boyfriend, an off-duty cop, burst into the bedroom. He arrested Burt for assault with intent to rape.
- b. The same facts as (a) except that the off-duty cop did not burst in until after Burt had had intercourse with Andrea. The cop arrested Burt for rape.
- c. The same facts as (a) except that, when the off-duty cop burst in, Burt had passed out on the bed. The cop arrested Burt for attempting to rape Andrea. At his trial, Burt denied that he and Andrea had ever had intercourse because he had passed out.

Will the prosecutor succeed in prosecuting Burt in each of the above scenarios?

SS# _____

Professor Valerie DePalma
Criminal Law
Fall 2004

**FINAL EXAM
Checklist**

QUESTION 1

Earle's Crimes	Issue	Rule	Application
<i>Burglary</i> (B's House)			
<i>Larceny</i>			
--tools (employee)			
--clubs			
--watch			
<i>Att Burglary</i>			
-Actus Reus/Att Tests			
--G's House			
--H's House			
<i>Felony Murder</i> (Ian)			
-burg = inherently dangerously felony?			
-non-felon rule			
--agency			
--proximate cause			
<i>Conspiracy</i> with C			

Charles's Crimes	Issue	Rule	Application
<i>Solicitation of E</i>			
<i>Conspiracy with E</i>			
-sol merges			
<i>Liab as Accomplice for E's crimes</i>			
-for burg & L/clubs			
--map = aid			
--consp = encouragement			
-NP Consequences			
-for L of tools			
-for L of watch			
-for att burglaries			
-for FM			
<i>Liab as Co-Con for E's crimes</i>			
-NP Consequences			
<i>Conspiracy with A</i>			

Art's Crimes	Issue	Rule	Application
<i>Conspiracy w/ C</i>			
<i>Liab as Accomplice for E's crimes</i>			
-for burg & L/clubs			
--map = aid			
-NP Consequences			
-for L of tools			
-for L of watch			
-for att burglaries			
-for FM			
<i>Liab as Co-Con for E's crimes</i>			
-NP Consequences			
<i>Conspiracy/solicitation of E by C</i>			
<i>Conspiracy/solicitation of F by E</i>			
Defenses			
-Duress			
-Necessity			
-Claim of Right			

Fred's Crimes	Issue	Rule	Application
<i>Liab as Accomplice to E</i>			
-lookout/getaway driver = aid			
For burg/L of clubs			
For other Ls			
For att burgs			
For FM			
<i>Liab as Co-Con for E's crimes</i>			
Defense – Insanity			
M'Naghten Rule			
Irresistible Impulse			
Product Test			
MPC			

Bob's Crimes	Issue	Rule	Application
<i>Battery of A</i>			
<i>False Pretenses</i> (insurance money)			

Hal's Crimes	Issue	Rule	Application
<i>First-Degree Murder</i>			
-WPD			
-transferred intent			
<i>Second-Degree Murder</i>			
-intent to kill			
Defenses			
Habitation			
Self-Defense			