

**Fall 2021**

**CRIMINAL LAW FINAL EXAM**

**PROFESSOR HETU**

**YOUR STUDENT ID NUMBER\_\_\_\_\_**

**THIS IS A CLOSED BOOK EXAM. YOU ARE NOT TO HAVE ANY DOCUMENT, CELL PHONE, SCRAP PAPER OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.**

**YOU ARE ONLY ALLOWED TO USE THE TOOLS THAT EXAMSOFT PROVIDES FOR YOU. THIS IS THE SAME SOFTWARE AND RULES USED FOR THE BAR EXAM. IF YOU ARE HANDWRITING THE EXAM YOU WILL BE GIVEN A SCRAP BLUEBOOK FOR OUTLINE, THOUGHTS, ETC. THE SCRAP BLUEBOOK MUST BE TURNED WITH YOUR EXAM! YOU MUST HAVE YOUR STUDENT ID# ON BOTH BLUEBOOKS, YOUR EXAM ANSWER BLUEBOOK AND YOUR SCRAP BLUEBOOK. FAILURE TO TURN IN THE SCRAP BLUEBOOK WILL RESULT IN A F ON YOUR MIDTERM. ONLY USE YOUR STUDENT ID, DO NOT WRITE YOUR NAME ANYWHERE!!**

**INSTRUCTIONS:**

1. Your answers must be typed in the Examsoft software. Your answers are limited to the provided pages. If handwriting, your answers are limited to the space provided for the definitions and for the short fact patterns. I will not read anything beyond the space provided.
2. Do not identify yourself in your answer in any way other than by student ID. Do not write any information that might reveal who you are.
3. This is a closed book examination. The AI in examsoft is very sophisticated and will flag when it feels you are "cheating." If flagged I will review your exam and make a decision.

This exam consists of THREE parts for a total of 258 points and will count towards your final semester grade. The total time for the exam is 3 hours unless you have an accommodation. Those who have an accommodation will get the appropriate extended time. I will give a 15-minute warning, 5

minute warning and finally a 1-minute warning. Once the 15-minute warning is given you must remain in your seats until the exam is finished. If you finish before the 15-minute warning you are free to leave. Leave as quietly as possible. Have respect for your fellow classmates. If you're phone goes off during the exam you will receive an F.

Part one consists of 9 definitions worth 5 points each.

Part two consists of 14 short fact patterns worth 7-20 points each.

Part three consists of 15 multiple choice questions worth 3 points each.

**IF ANY OF THE INSTRUCTIONS ARE NOT FOLLOWED YOU WILL  
RECEIVE A ZERO ON THE EXAM.**

**GOOD LUCK.**

**PART ONE: DEFINITION/FILL IN THE BLANK. WRITE THE COMPLETE RULE OF LAW. BE SURE TO READ THE QUESTION CAREFULLY AND ANSWER APPROPRIATELY.**

**1. What is the Model Penal Code rule of law for Kidnapping?**

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**2. Write the M'Naughten Test**

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**3. What is the Common Law rule for Robbery?**

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**4. Write the Model Penal Code test for insanity.**

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**5. What is the rule of law Entrapment?**

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**6. Write the M'Naughten Test.**

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**7. What elements must be established for the defense of Duress?**

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**8. What is the common law rule for Conspiracy?**

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**9. What is the common law rule for Solicitation?**

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## **PART II: SHORT ANSWER FACT PATTERNS**

**PART II CONSISTS OF QUESTIONS IN THE FORM OF HYPOTHETICALS, EACH OF WHICH DESCRIBES A SITUATION FROM WHICH A PARTICULAR CRIMINAL CHARGE(S) IS LIKELY TO BE BROUGHT AND WHICH IS, THEREFORE, GOVERNED BY A SPECIFIC RULE OF LAW. EACH QUESTION REQUIRES THAT YOU IDENTIFY THE RULE OF LAW OR LAWS THAT WILL CONTROL THE RESULT AND WILL REQUIRES A SHORT ANSWER WRITTEN IN THE FOLLOWING FORMAT:**

**IRAC! STATE THE ISSUE, THEN WRITE THE RULE OF LAW, FOLLOWED BY A FULL ANALYSIS, AND FINALLY YOUR CONCLUSION. ANSWER IN PARAGRAPH FORM!**

**READ THE CALL OF THE QUESTION AND ANSWER ACCORDINGLY! IF THE CALL DOES NOT STATE EITHER "COMMON LAW" OR "MODERN VIEW" YOU MUST ADDRESS BOTH.**

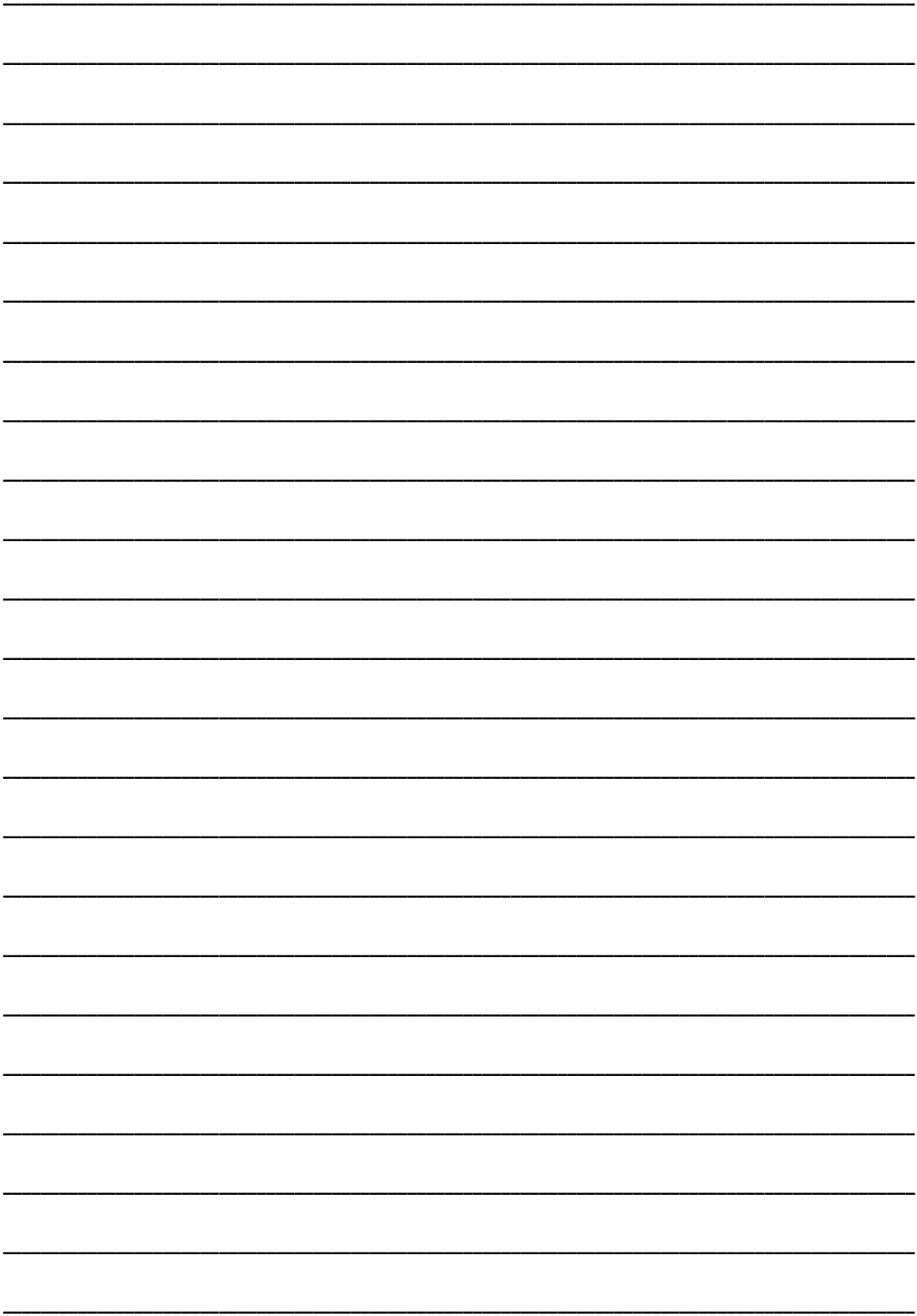
**IF YOU DO NOT ANSWER THE CALL OF THE QUESTION YOU WILL LOSE POINTS.**

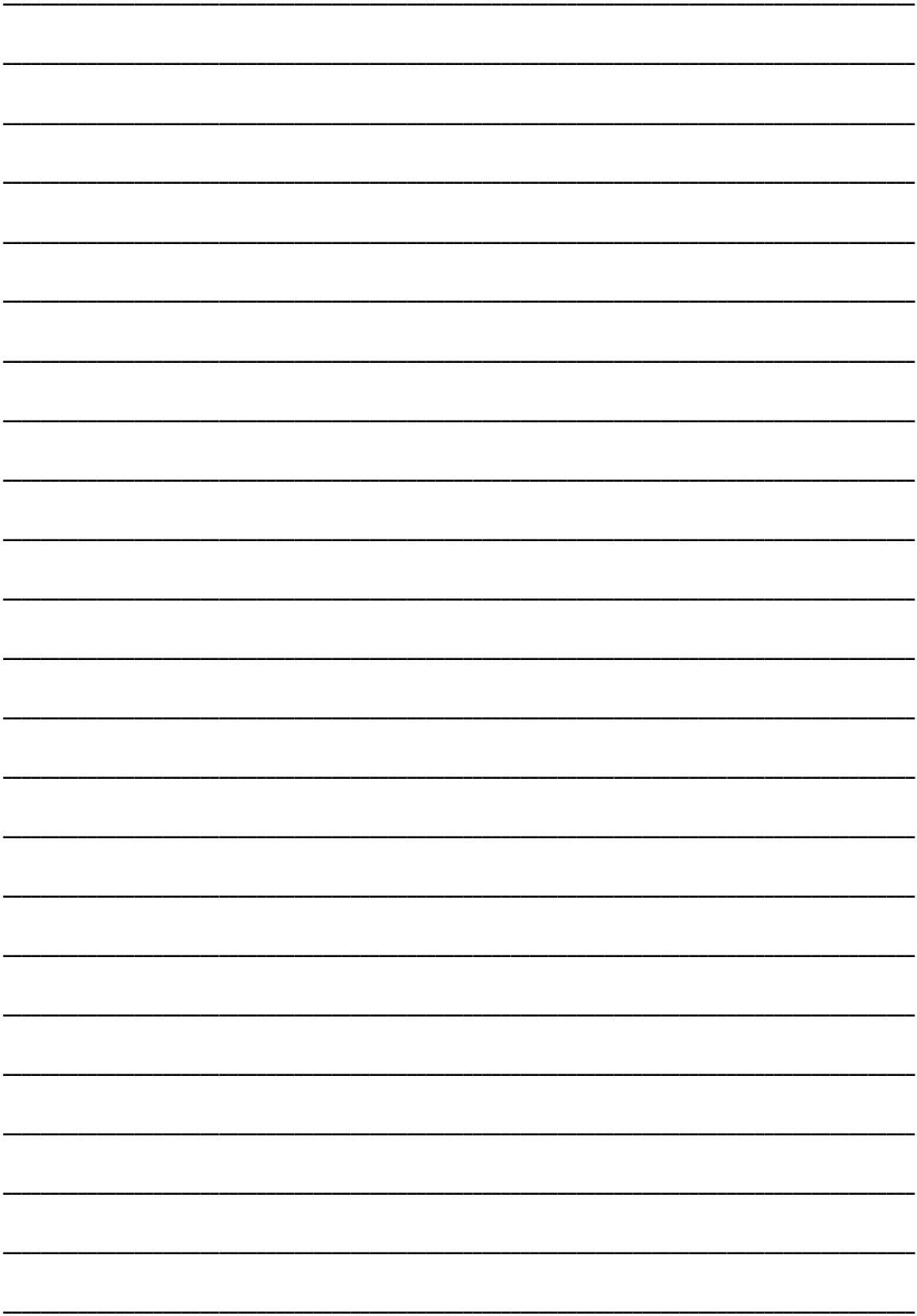
### **Question 1. 10 points**

**Tiny was Six Foot Five and weighed 300 pounds. One afternoon Tiny was wandering rather aimlessly and became lost in an unfamiliar part of the city. He reached into his pocket and discovered he only had a dollar and 50 cents. He wanted to take a bus back to the city center, but bus fare was \$3.00 per ride. Tiny was looking ragged with unkempt hair and had on dirty sweats. Tiny approached Howard, a short slightly built man who was standing alone at the bus stop. In a gruff voice, Tiny asked Howard, "Do you have any money?" When Howard replied, "Yes," Tiny said, "Give me five dollars!" Howard reached into his pocket and handed Tiny a five-dollar bill. Howard walked away from the bus and flagged down a passing patrol car. Howard told the police, "He took my bus fare," and pointed out Tiny, who was still standing at the bus stop. Tiny claimed he was just begging for money to get back home.**

**What crime(s) can Tiny be charged under common law with, if any and what defense(s) are available to Tiny if any?**

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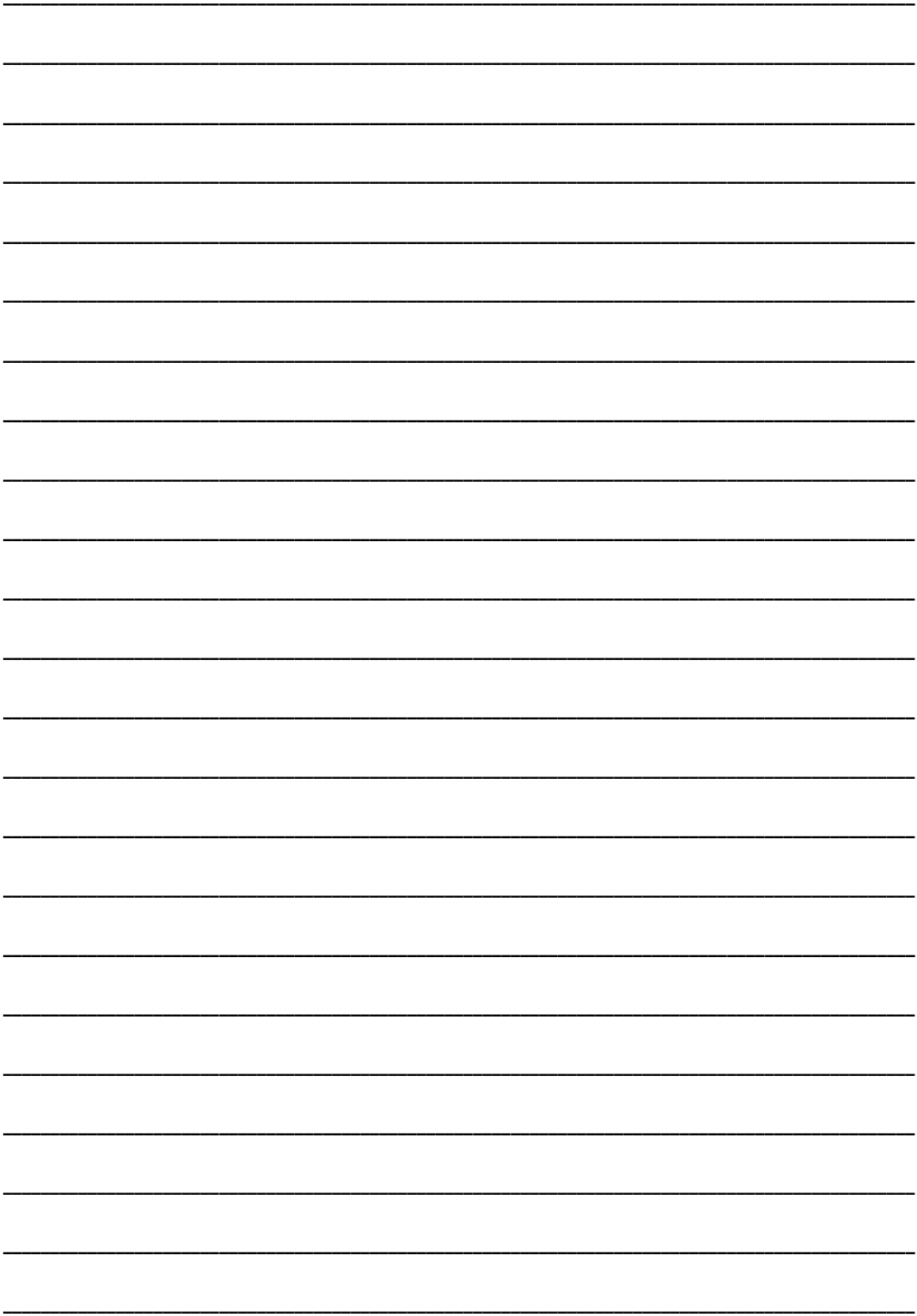


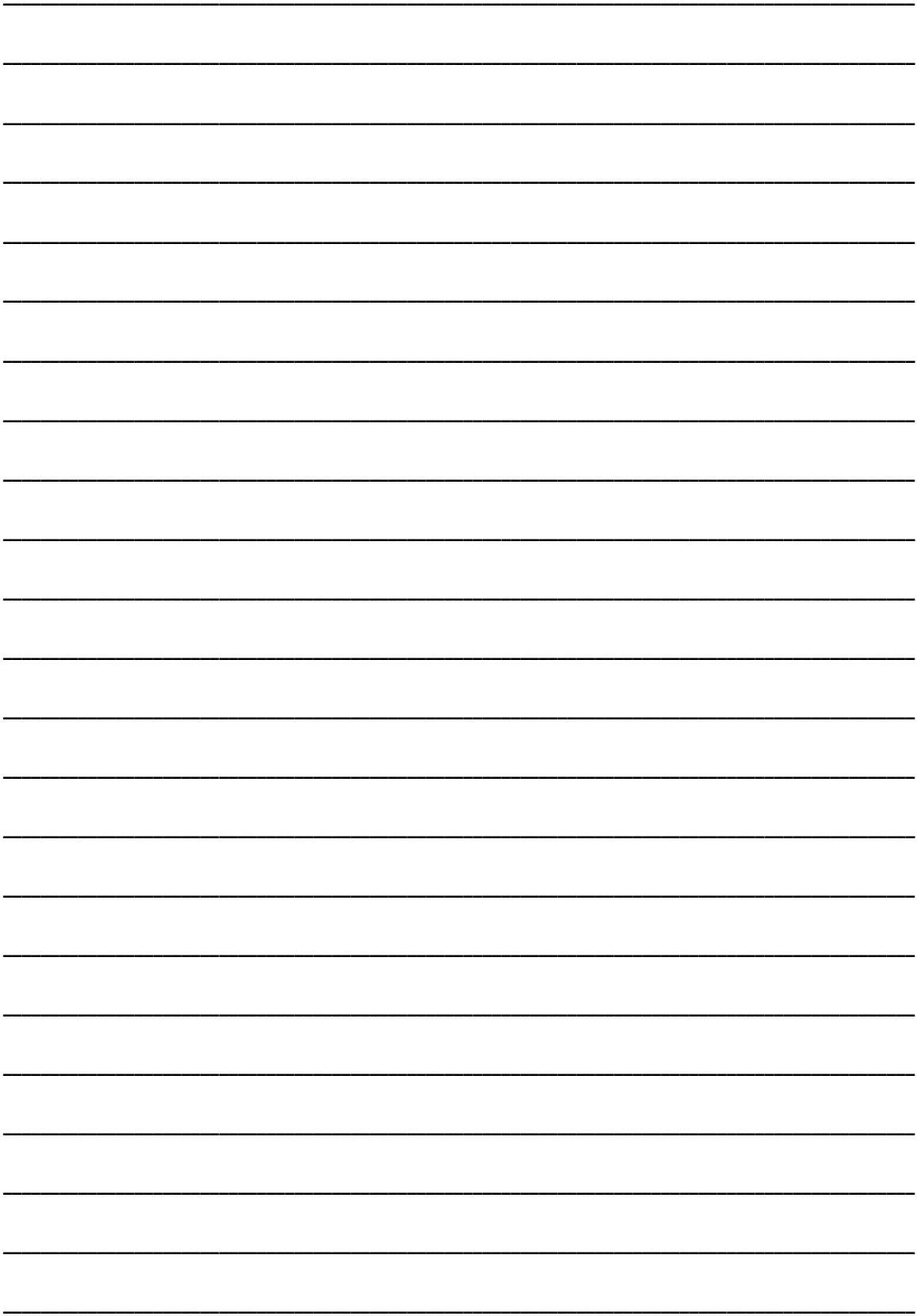




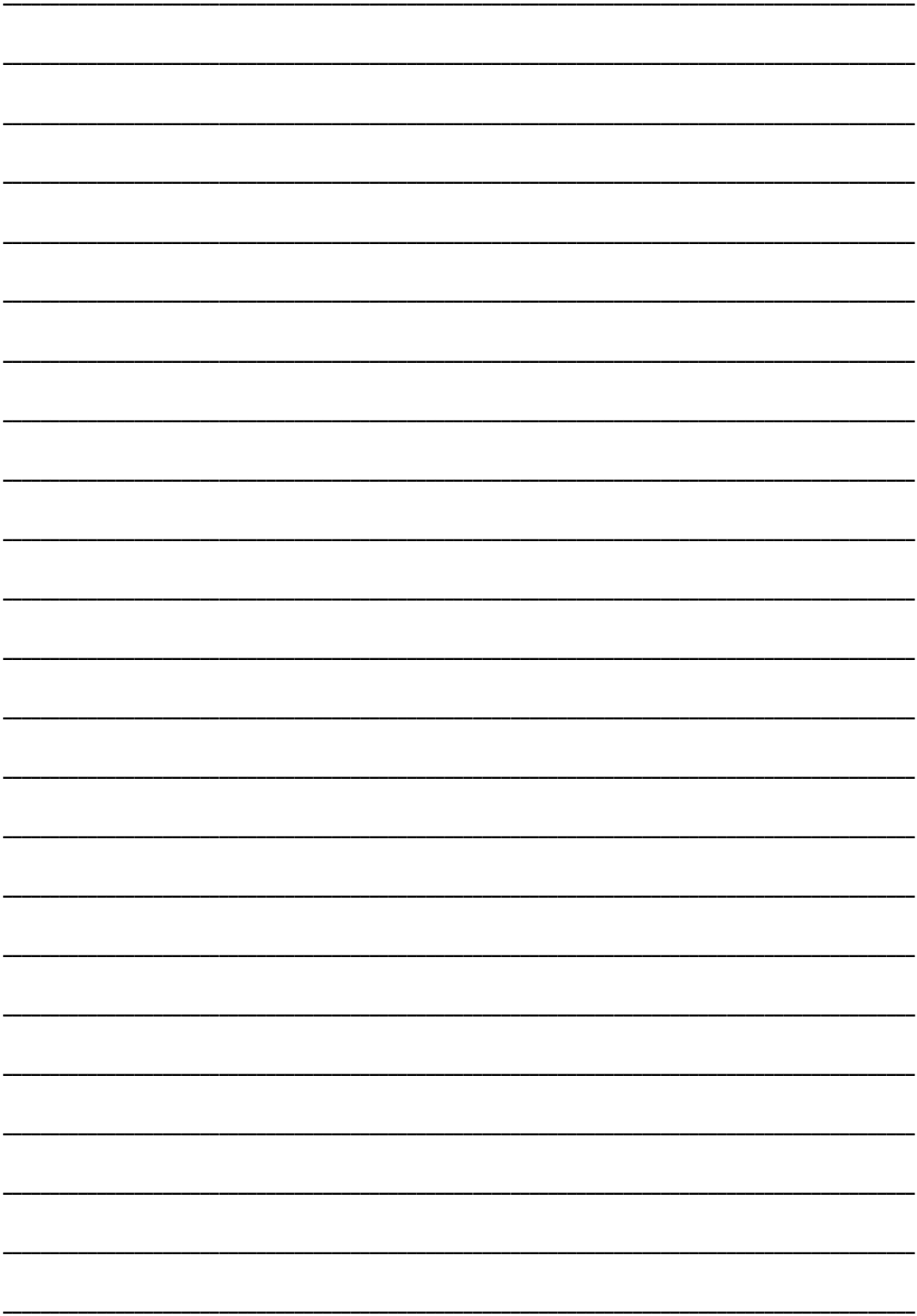


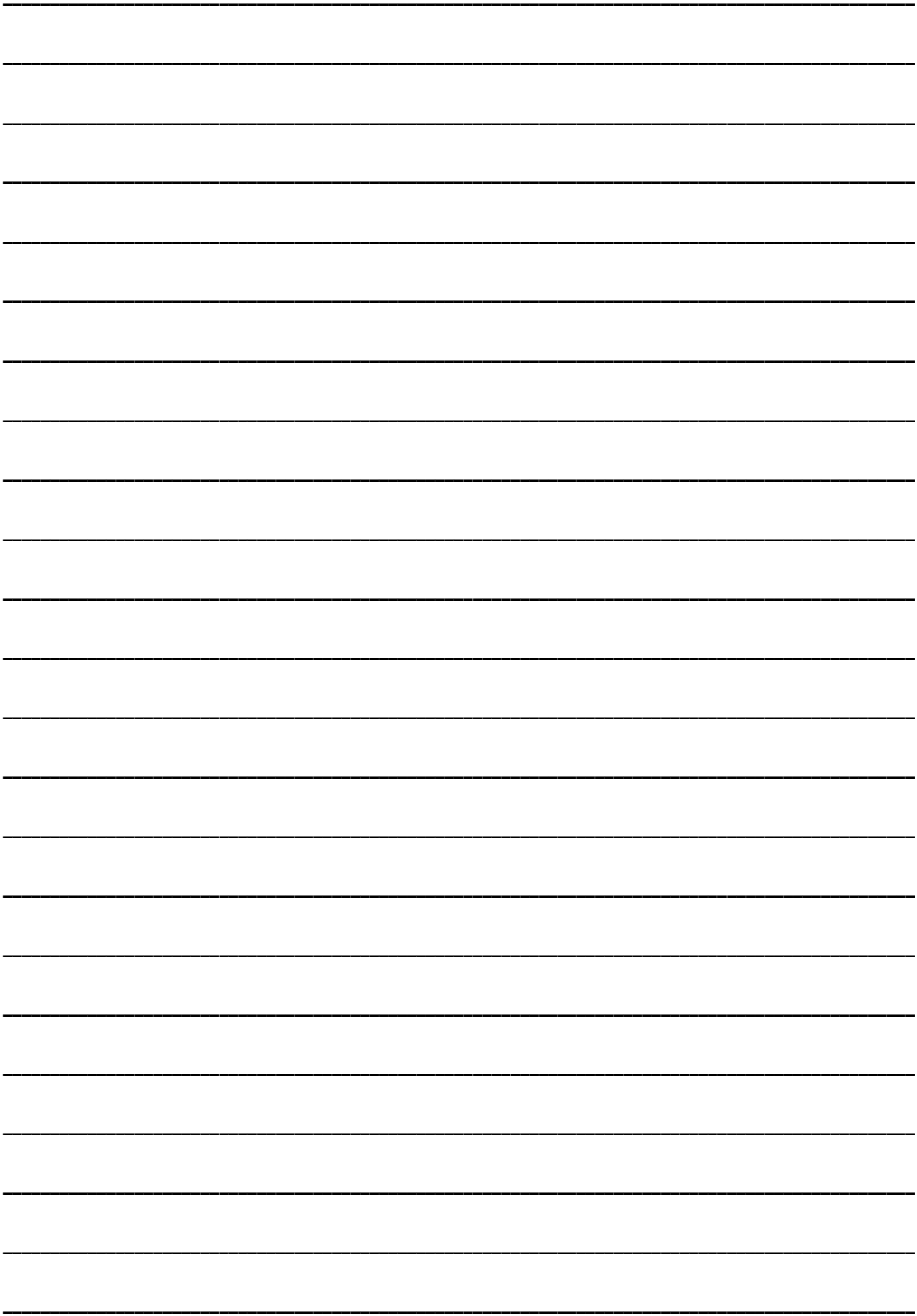












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**Question 4. 10 points**

**Kevin, James, and Kyrie, who were in need of money, approached their wealthy Boss's secretary and asked her to put poison in his coffee because they would take over the company upon his death. The secretary agreed upon the condition she would stay on as secretary for them and get a bonus of \$50,000.00. After Kevin, James, and Kyrie agreed to the secretary's demand the secretary placed arsenic in the boss's coffee. She handed the boss the coffee and went back to her desk. About fifteen minutes later she went into the boss's office and found him dead from the poison.**

**It was later learned that Kyrie as usual decided it wasn't a good idea to kill the boss. He left a note for Kevin and James telling them he had changed his mind.**

**Discuss which inchoate crimes under common law were committed and available defenses.**

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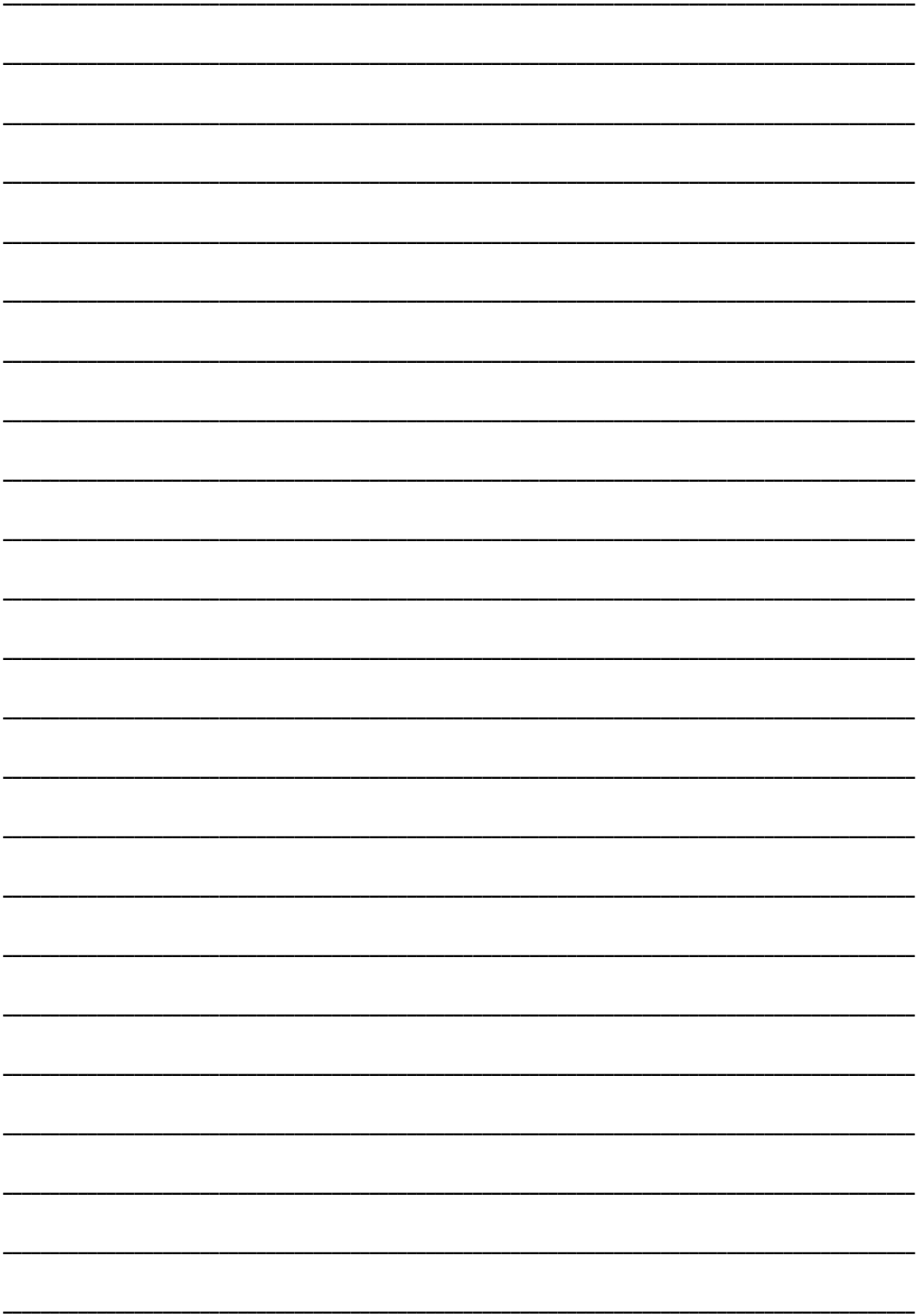
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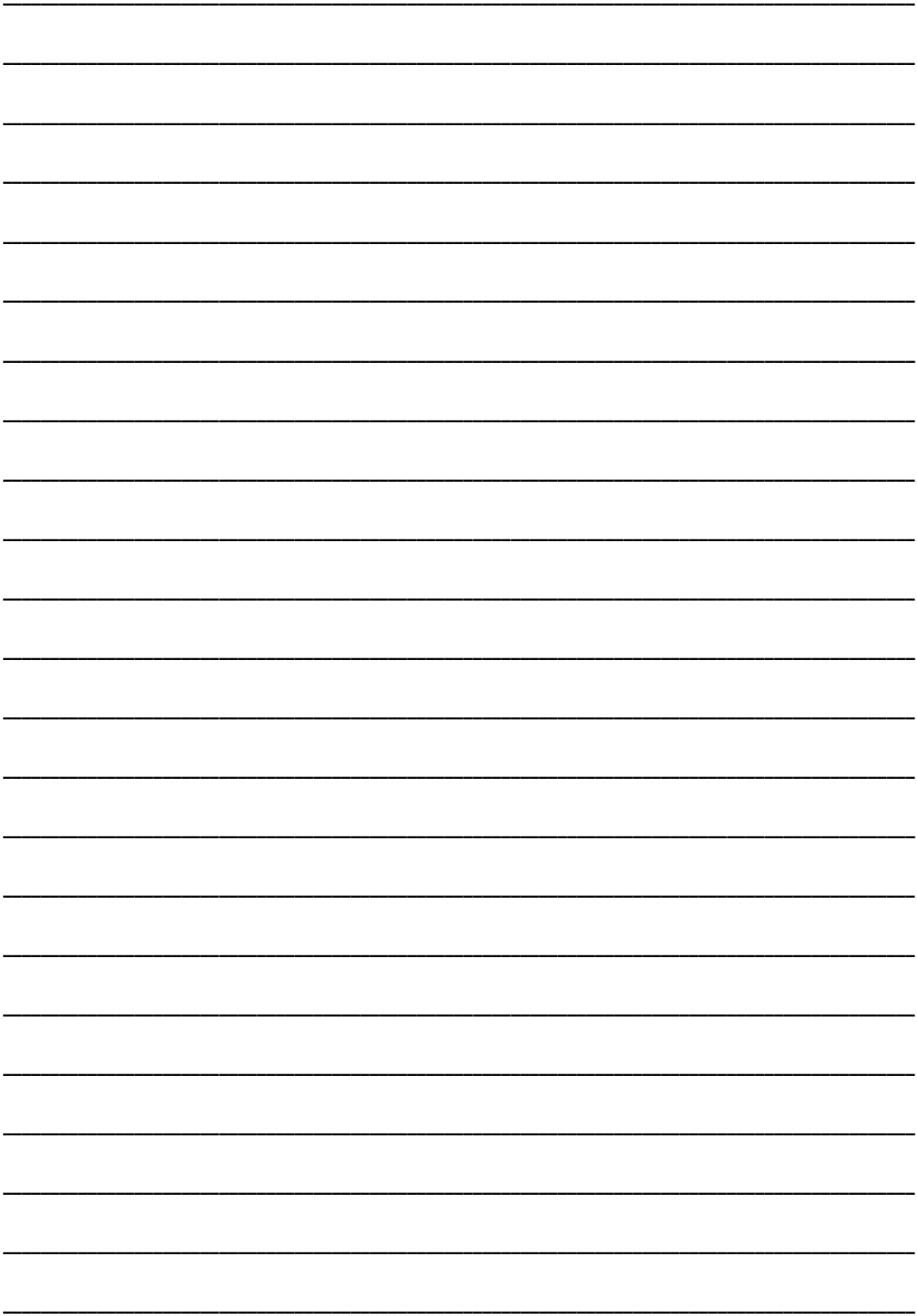
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**Question 5. 20 points**

**Kim learned that her boyfriend, Dave, had been cheating on her with Michelle, who was Kim's sister. Angry and upset with both Dave and Michelle, Kim decided to have her revenge by making both of them pay or humiliating her. Kim found out that Dave and Michelle would be out later that evening. At that time she snuck over to Michelle's house intending to break in to set the place on fire.**

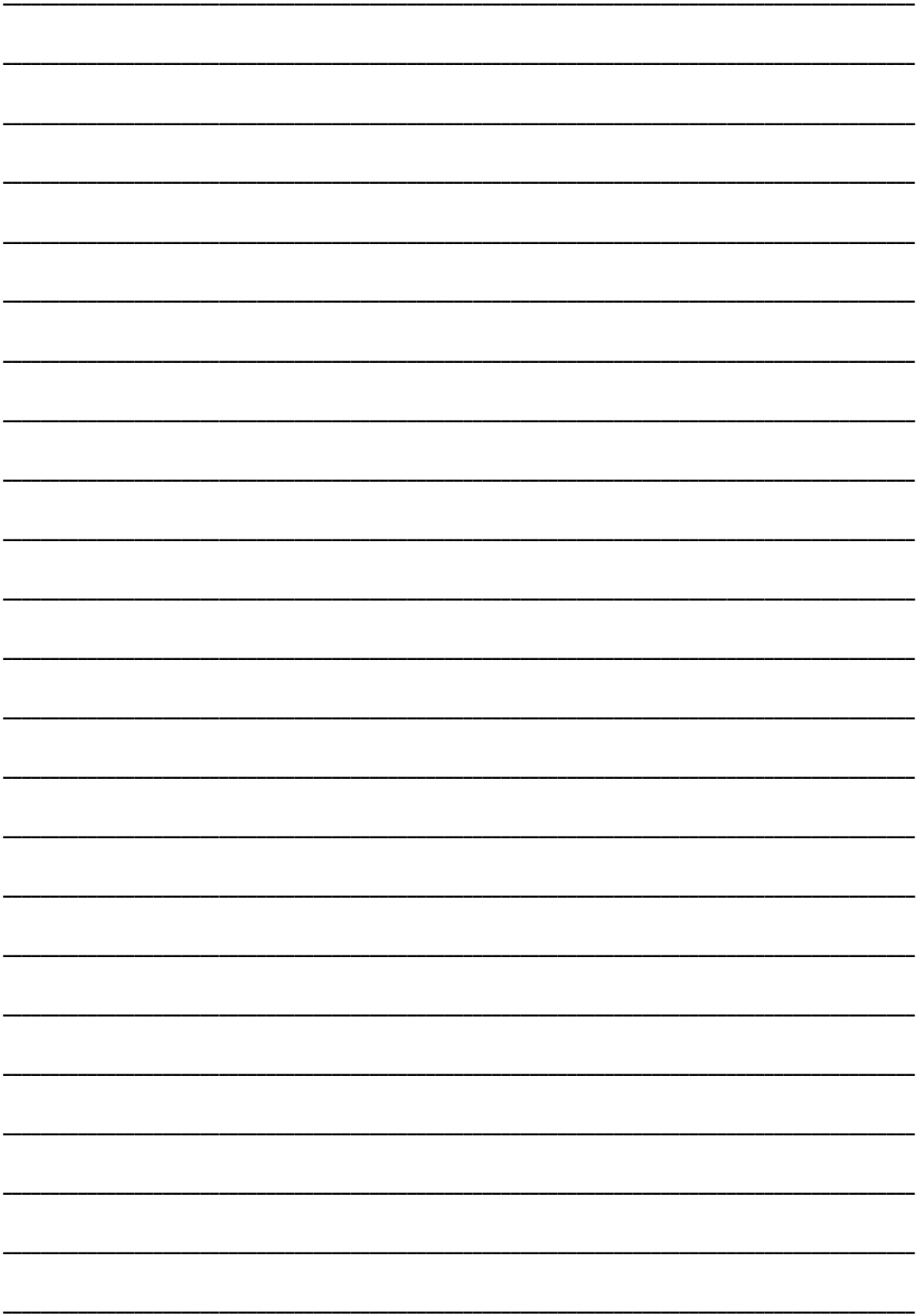
**Kim who had a spare key to Michelle's house (in case Michelle lost hers) used it to open the back door and gain access. Once inside she began splashing kerosene on the walls, the floor, the ceiling and the stairs leading up to Michelle's bedroom. Just before throwing a lit match she said, "I hope this house burns to the ground, you bitch!" With that Kim threw the lit match and within seconds the house was engulfed in flames.**

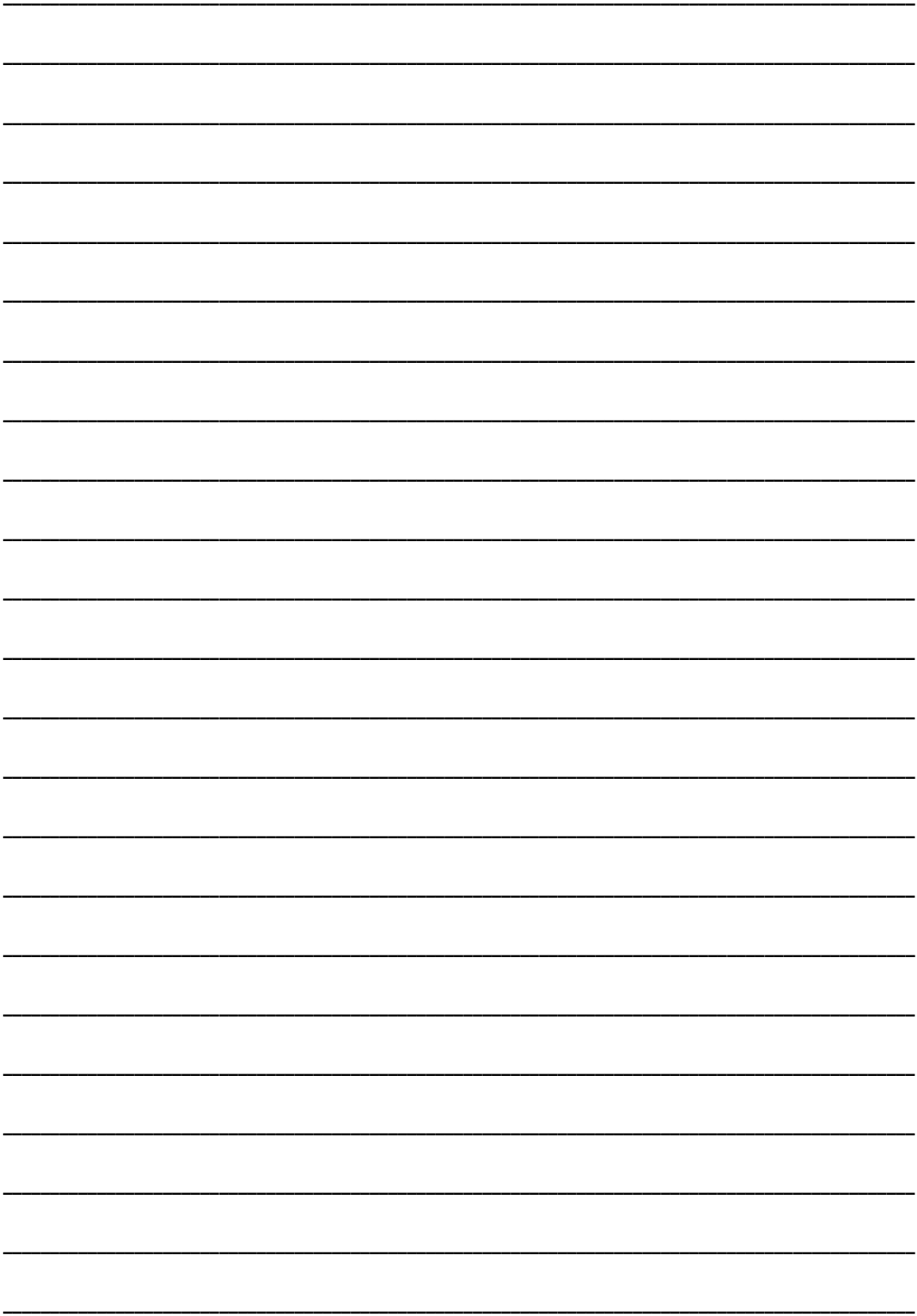
**(Before going to Michelle's house Kim drank a fifth of Peach Schnapps.)**

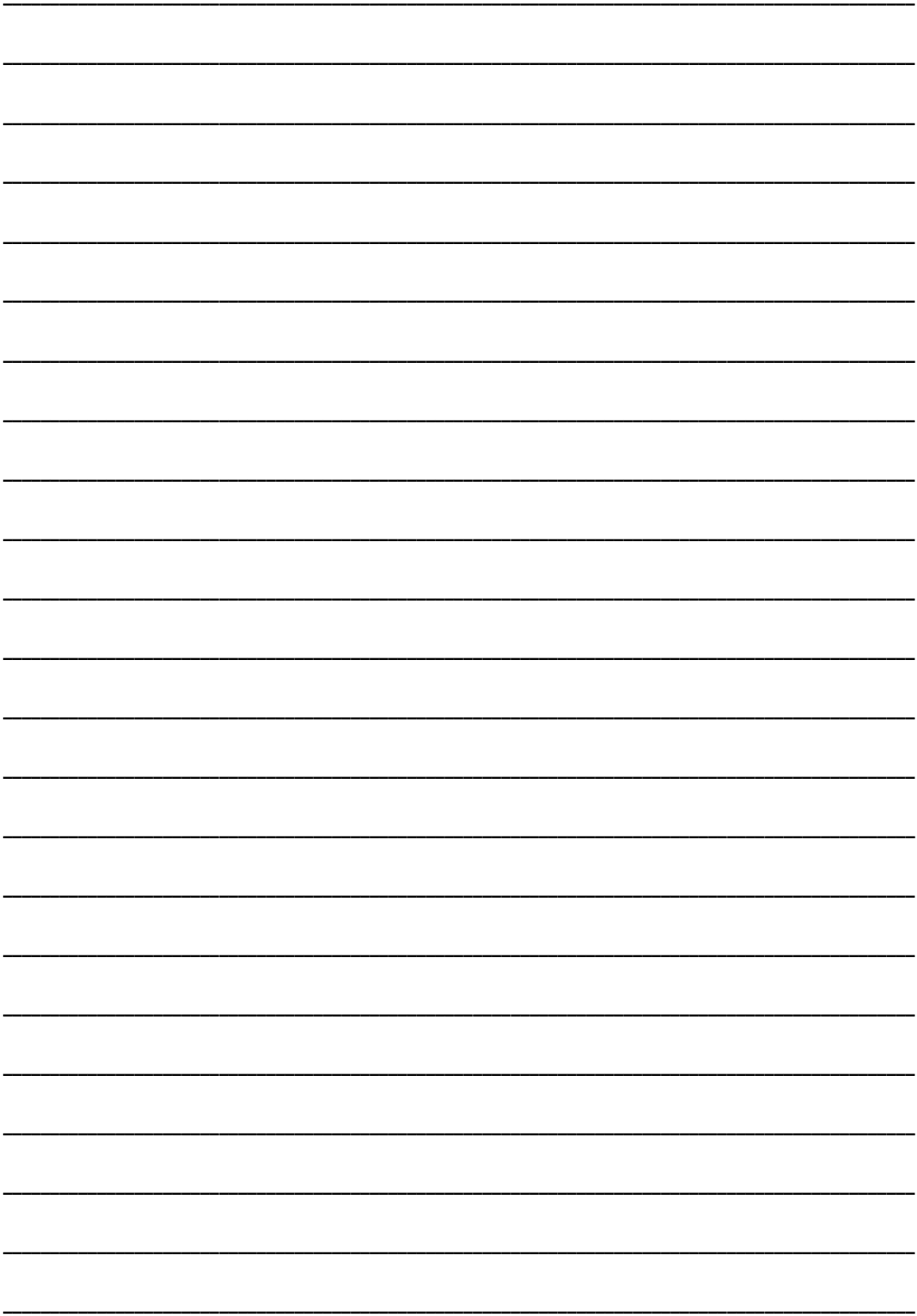
**Kim then drove to the restaurant at which Dave and Michelle were having dinner, where she waited outside for hours until Dave and Michelle came out. When they finally emerged from the restaurant holding hands and acting amorously. Kim became enraged and ran up to them and pointed an unloaded gun at them, which frightened the dickens out of them. Kim then forced Dave and Michelle into a nearby shipping container loaded onto a shipping vessel, which was scheduled to head out of country. Kim left and yelled, "Have a nice life in Panama, you cheating scumbags!"**

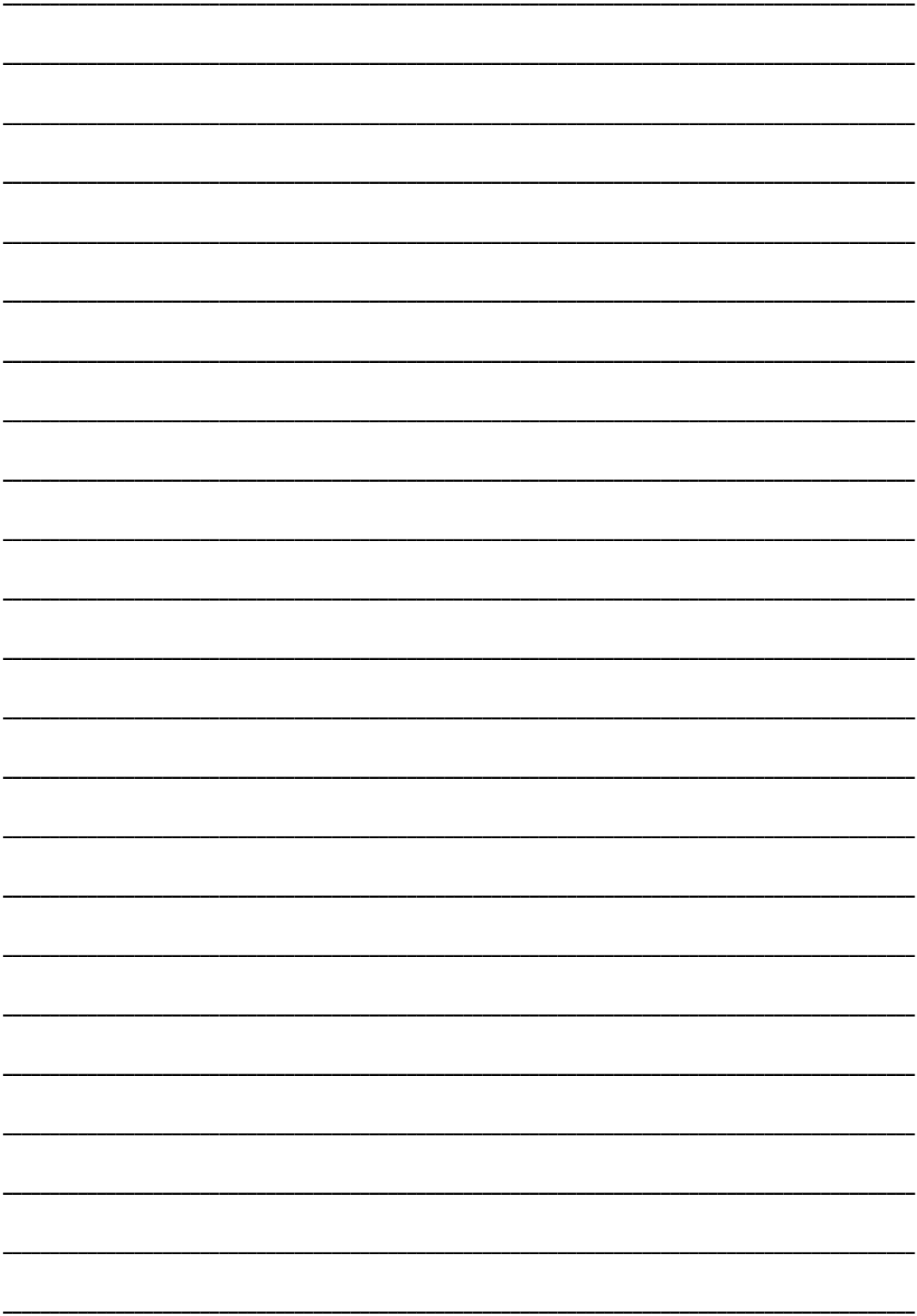
**(While waiting for Dave and Michelle to come out of the restaurant Kim had smoked a bag of weed.)**

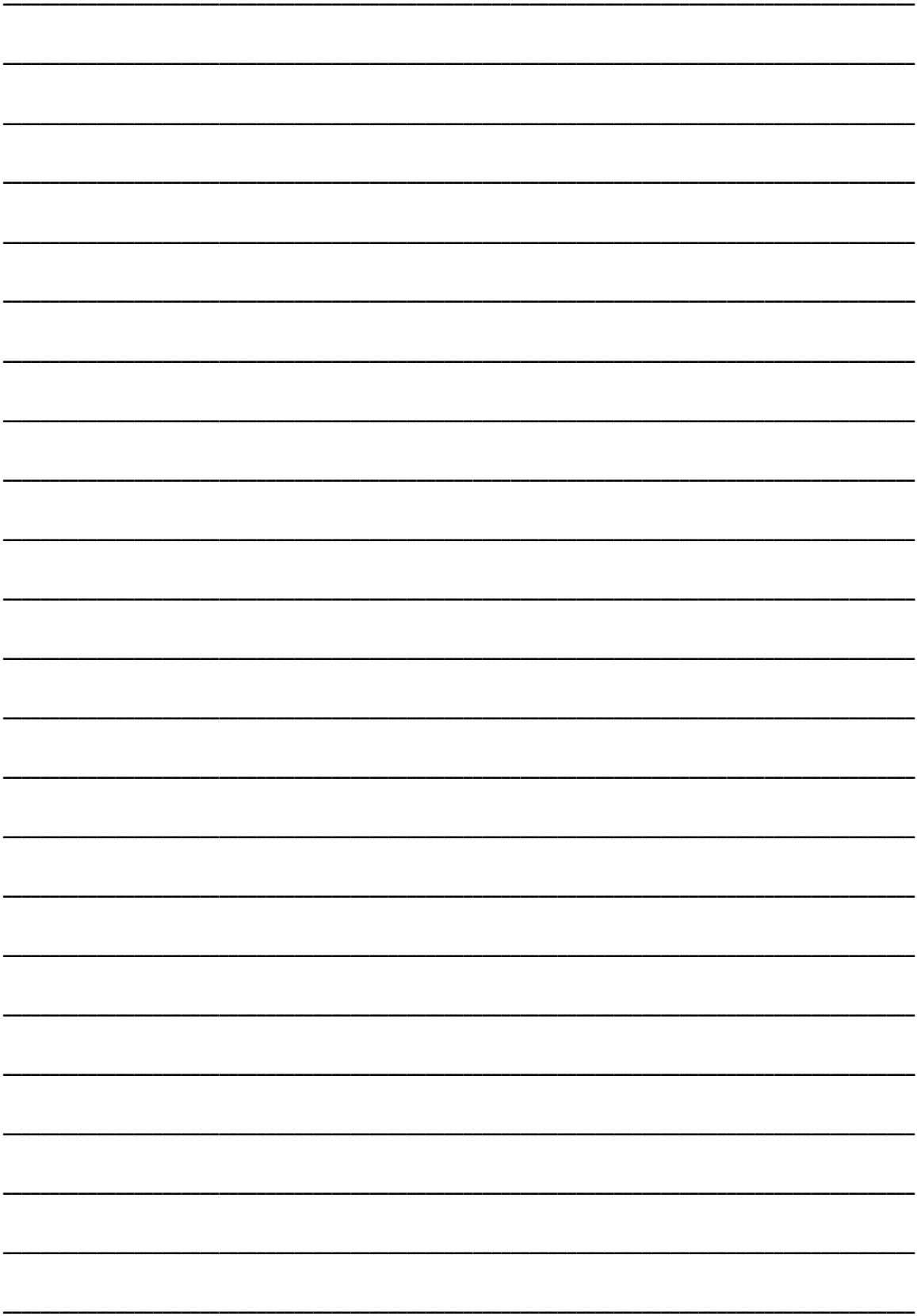
**Discuss what crime(s) Kim committed and her available defenses if any.**













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**Question 6. 10 points**

**Bautista after a hard day at work went to his favorite pub for a couple of beers. Bautista had one beer and realized it was his girlfriend's sister's birthday and they were all going out to dinner. As he walked outside the bar he saw two guys severely beating up another guy with their fists. Bautista a formidable foe and not one to back down from a confrontation sprang into action and gave the two guys a beat down. The stranger who had a broken nose and other facial injures thanked Bautista and left.**

**If Bautista is criminally charged with the common law crime of battery are there any affirmative defenses he can successfully raise?**

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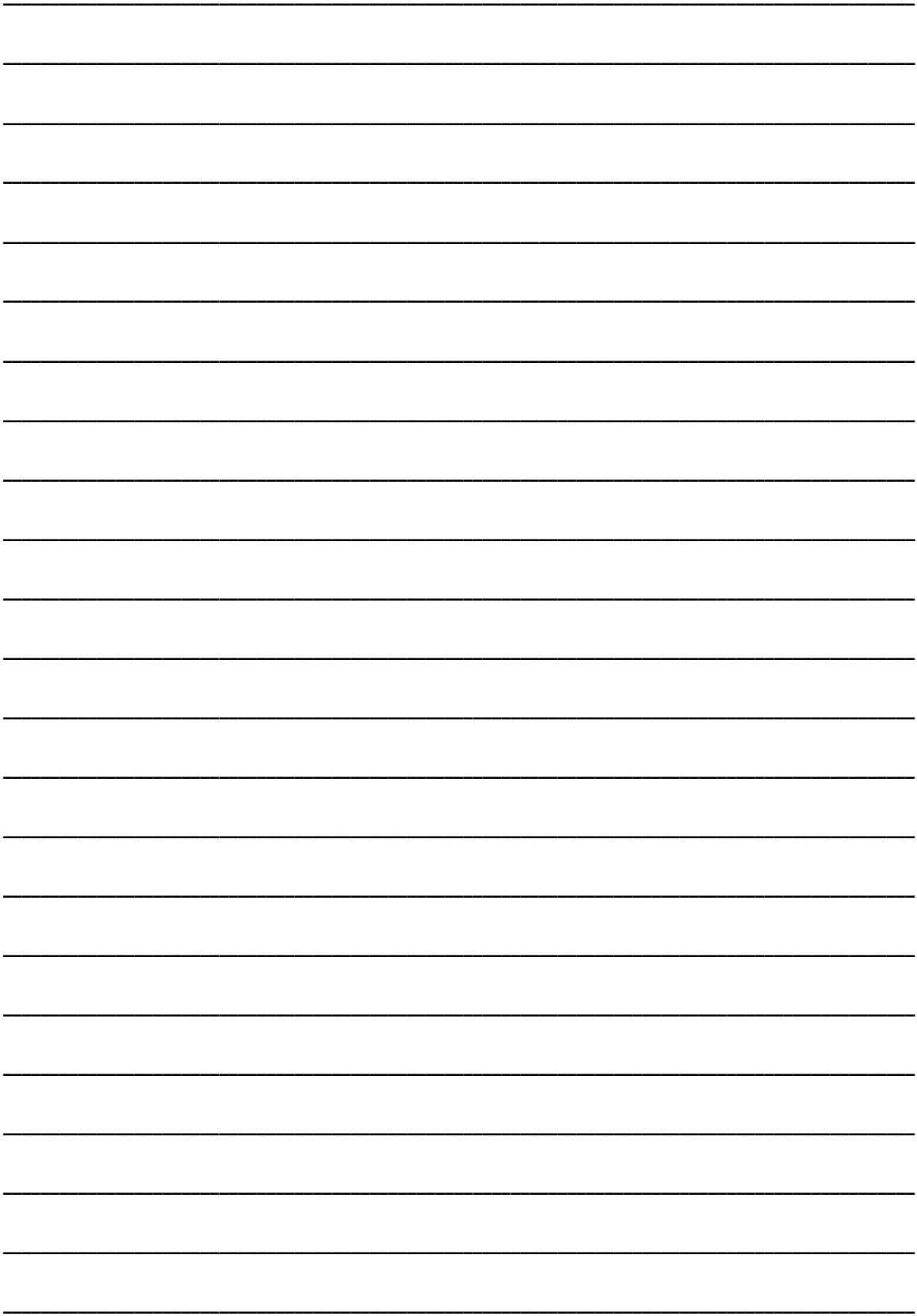
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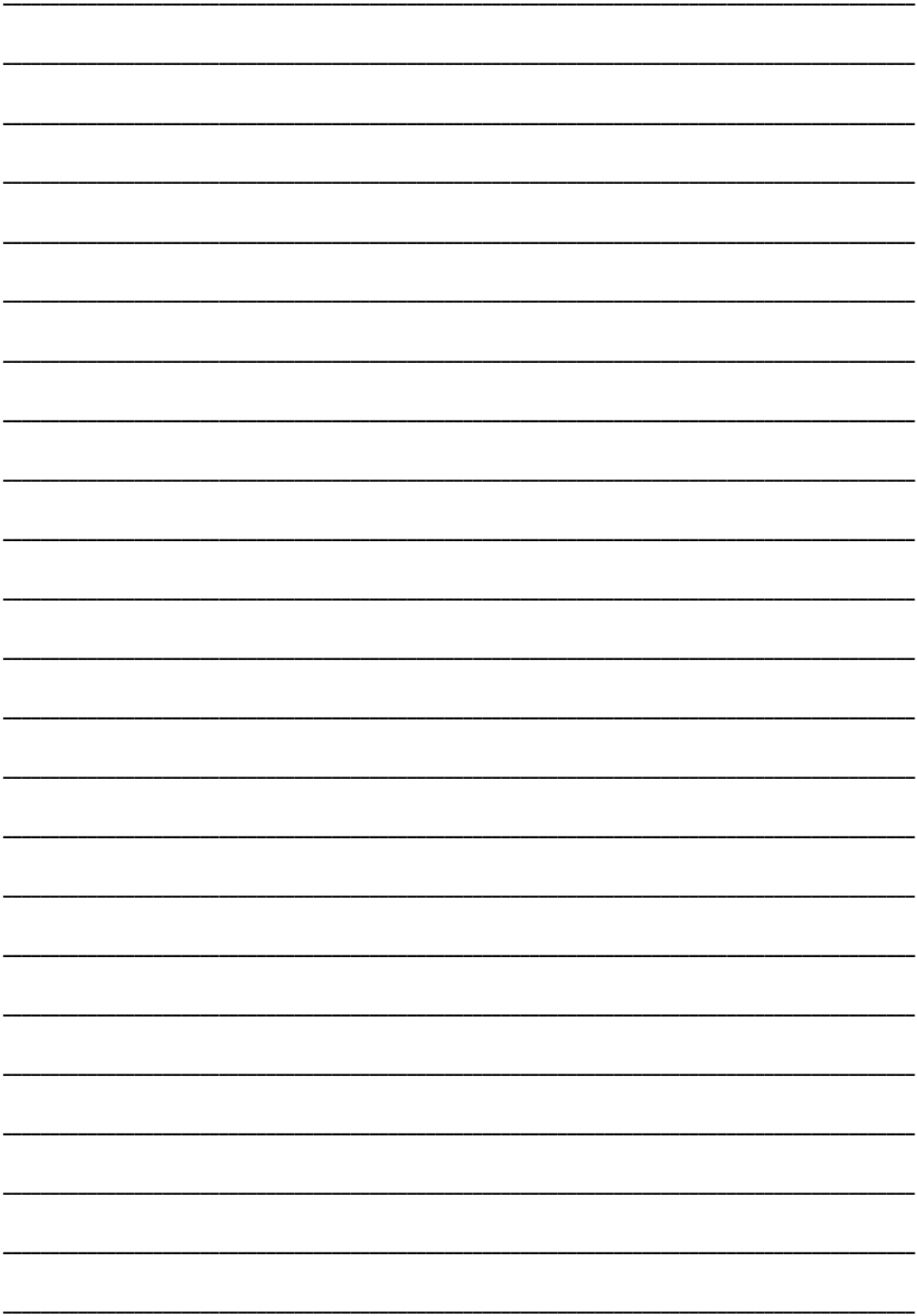
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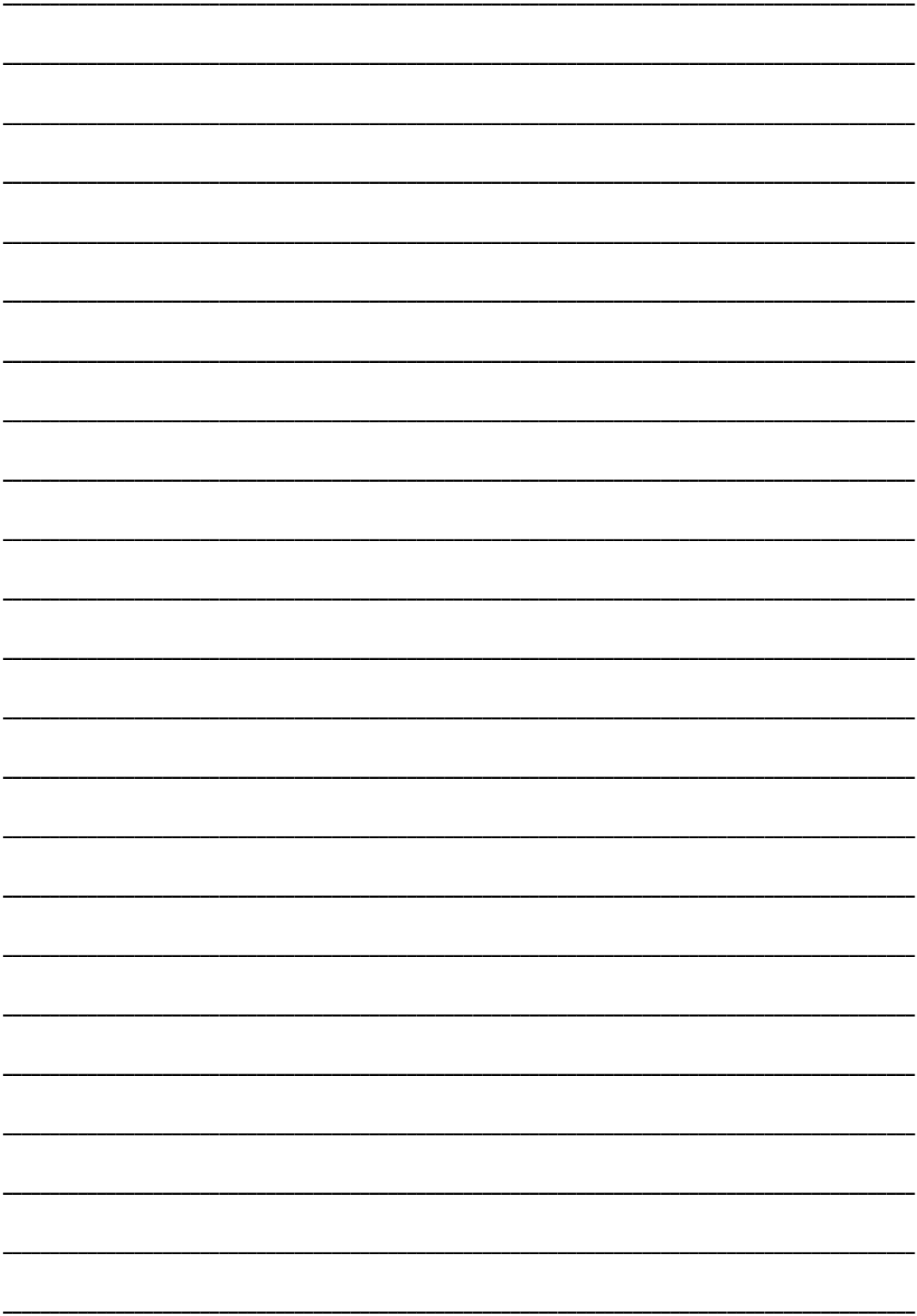
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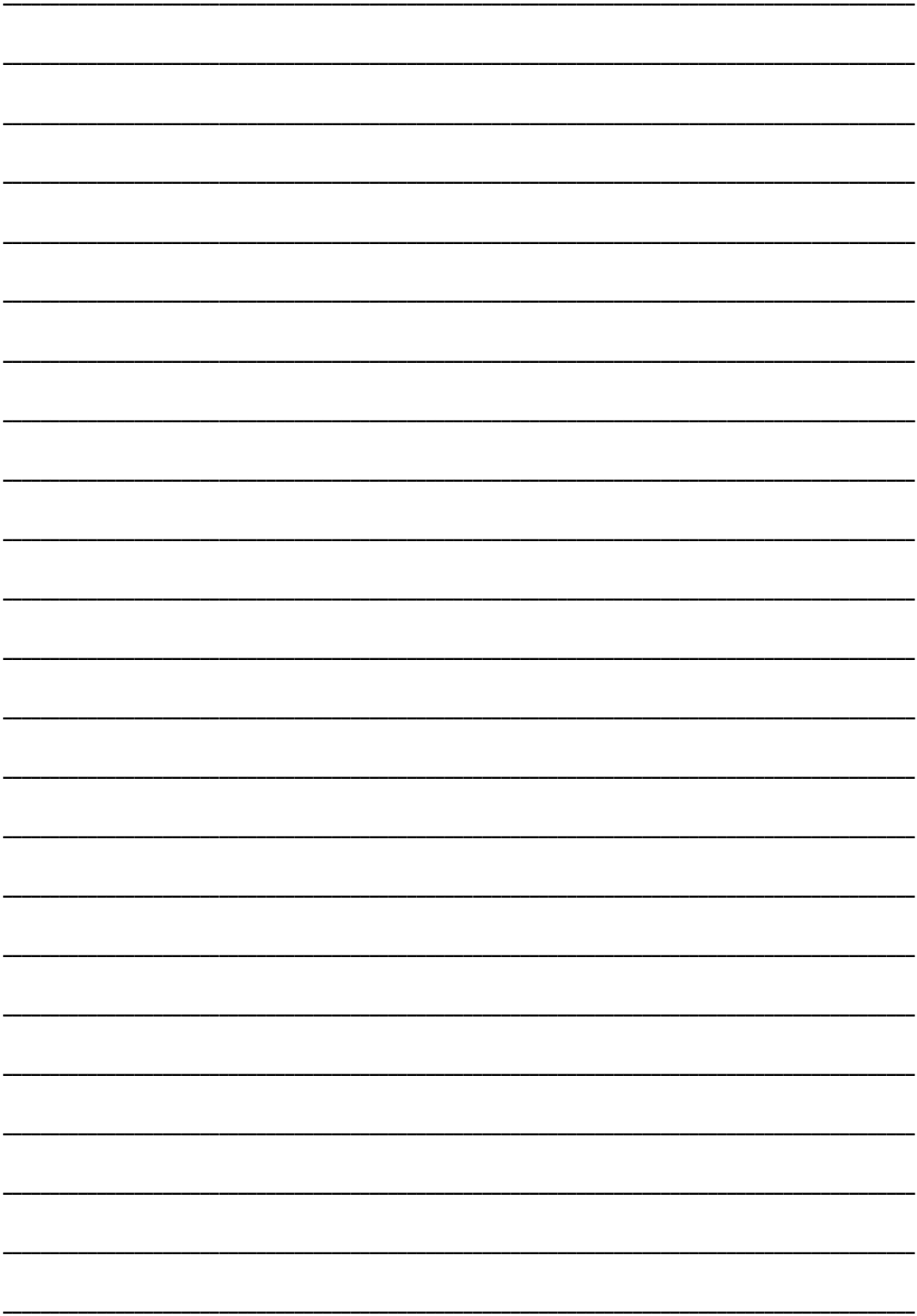
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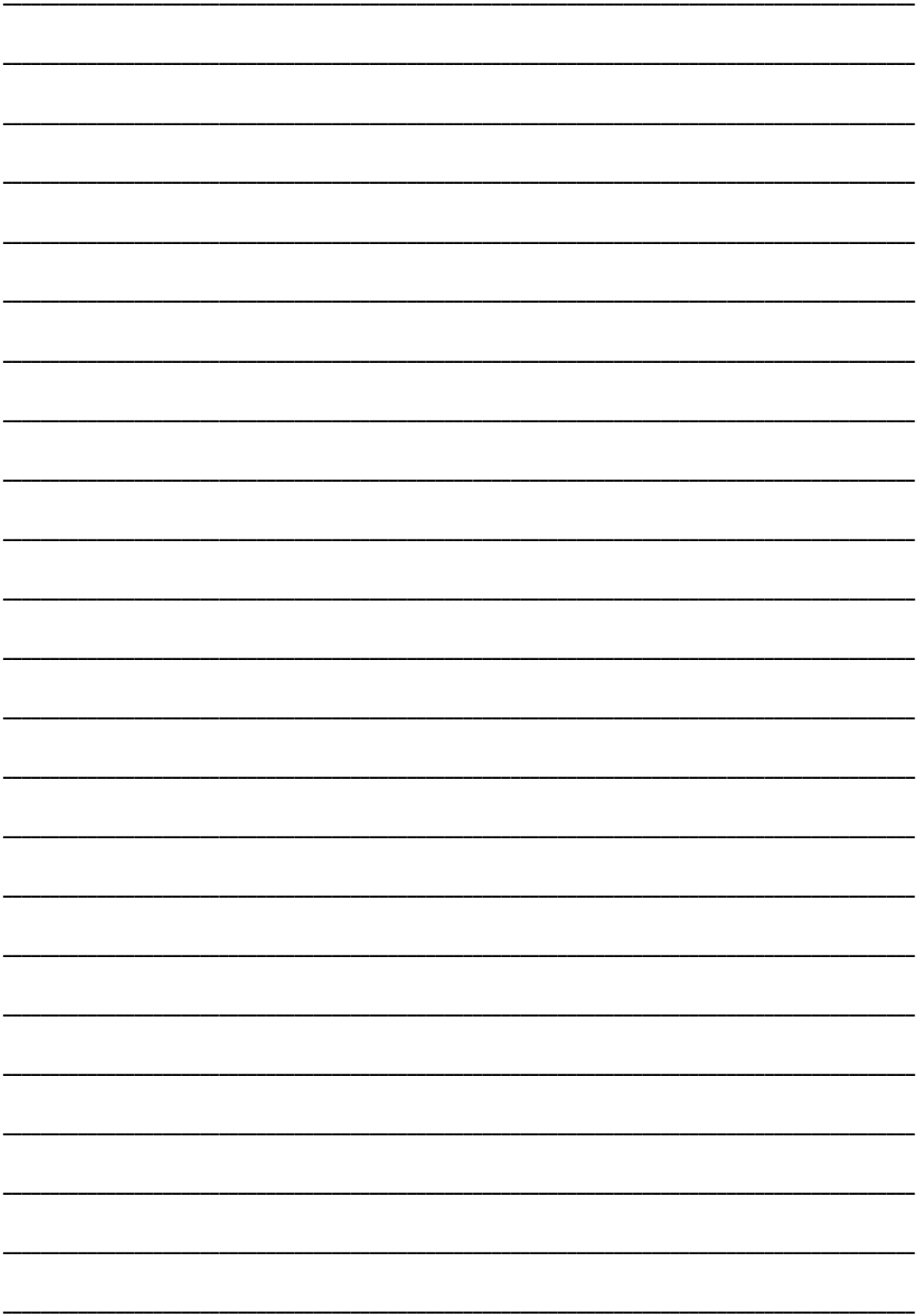








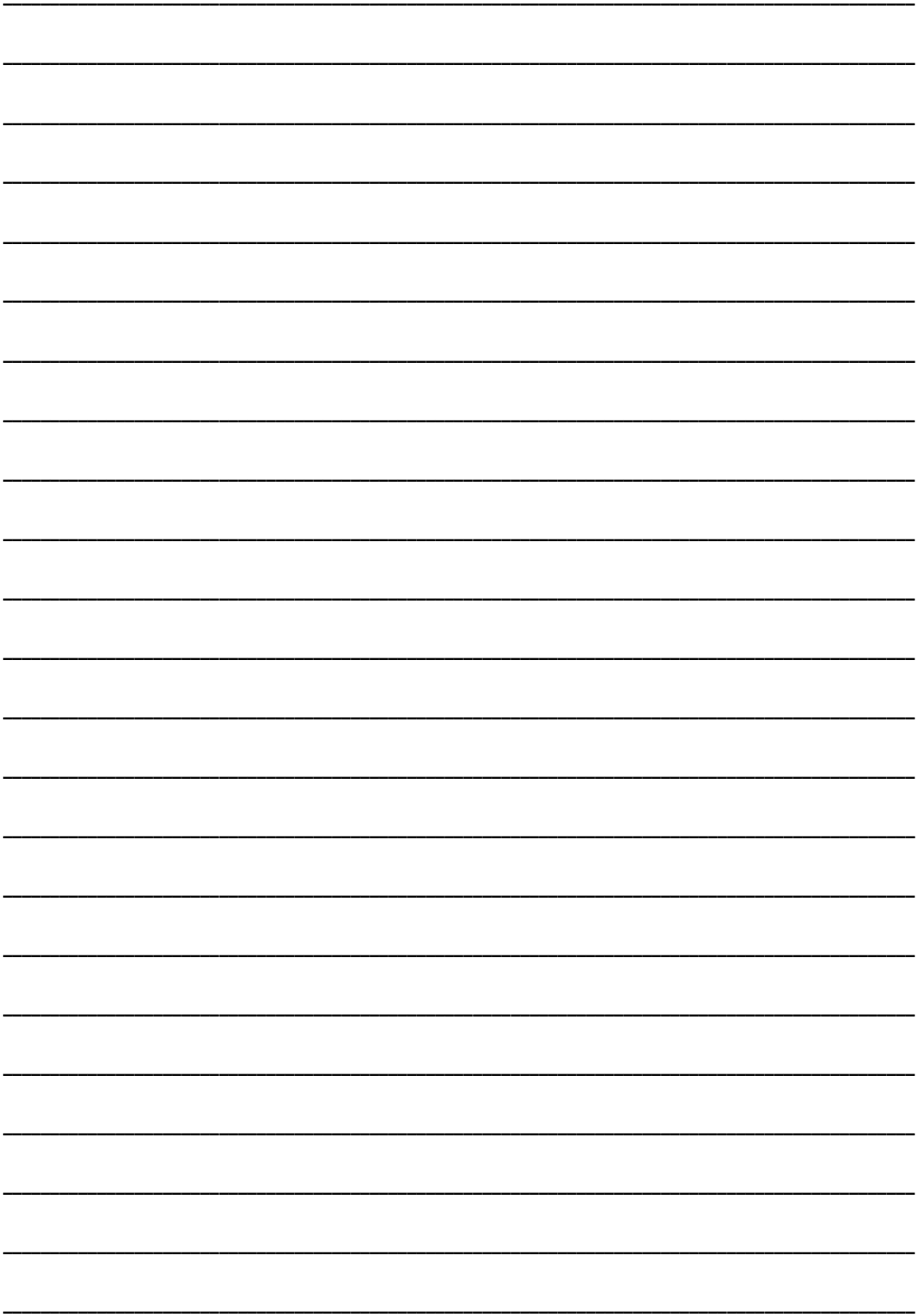






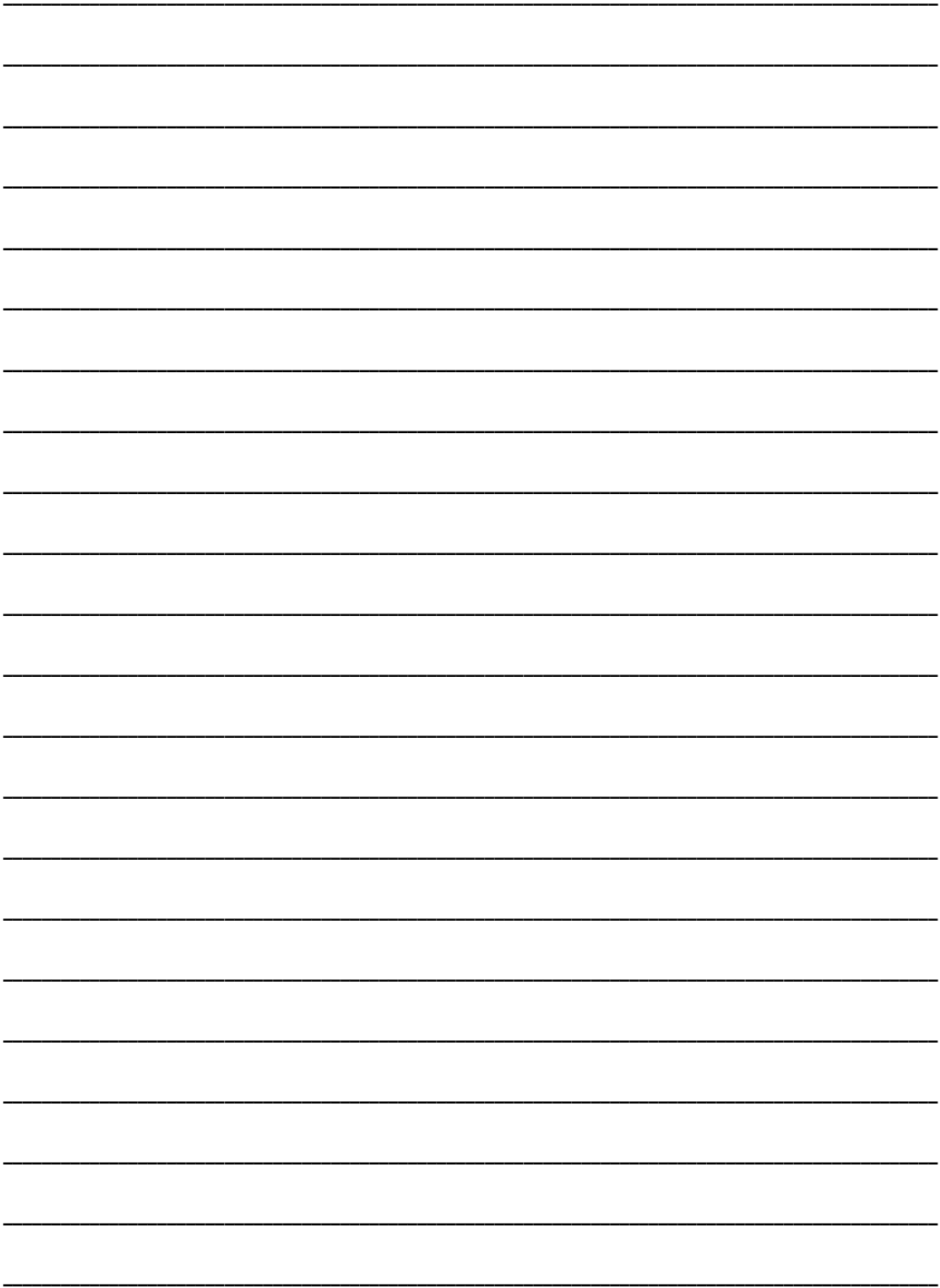












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**Question 10. 10 POINTS**

**Sandy left a bar extremely intoxicated and decided she only live a mile away so she would drive home. While driving home Sandy was driving with her hands at ten and two on the steering wheel, wearing her seatbelt, and staying within the speed limit. However, she did cross the double yellow line a couple of times. When she approached the only light in between the bar and her house the light turned red. She came to complete stop before the cross walk, when the light turned green she proceeded through the intersection in a safe and reasonable manner as she got about three quarters of the way through the intersection a car driven by Jerry was traveling at an excessive speed because he was late for his overnight shift. Jerry struck Sandy's vehicle and he was instantly killed. Sandy only suffered minor cuts. The officer on the scene noticed Sandy's intoxication and gave her the Breathalyzer test, in which she blew a .20, which is over two times the legal limit in this jurisdiction. Sandy was charged with involuntary manslaughter, she should be found:**

**Circle One or type the correct answer.**

**GUILTY or NOT GUILTY**

**In the space below, recite the applicable rule of law according to COMMON LAW and apply it to the facts to support the conclusion you reached in your answer above.**

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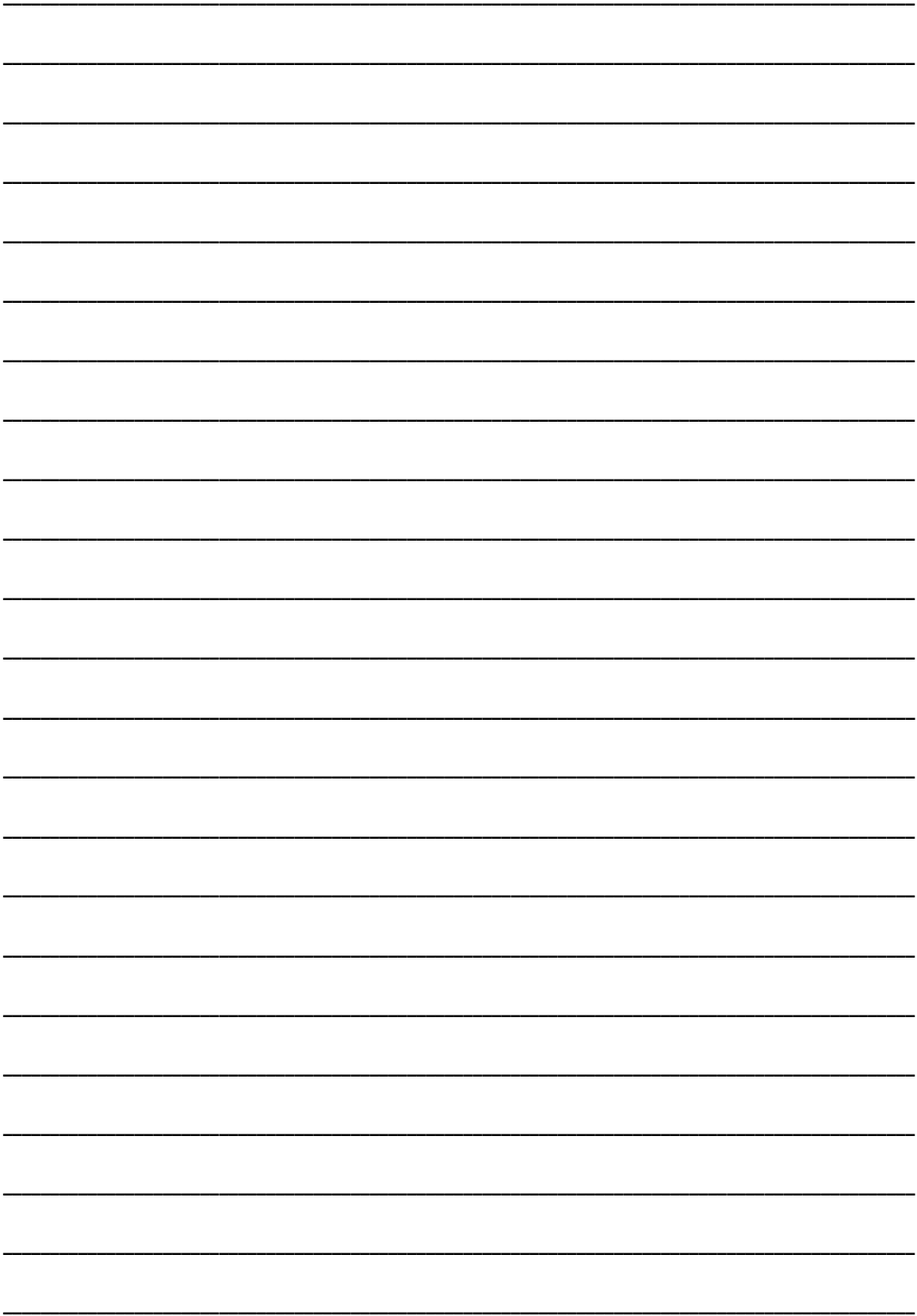
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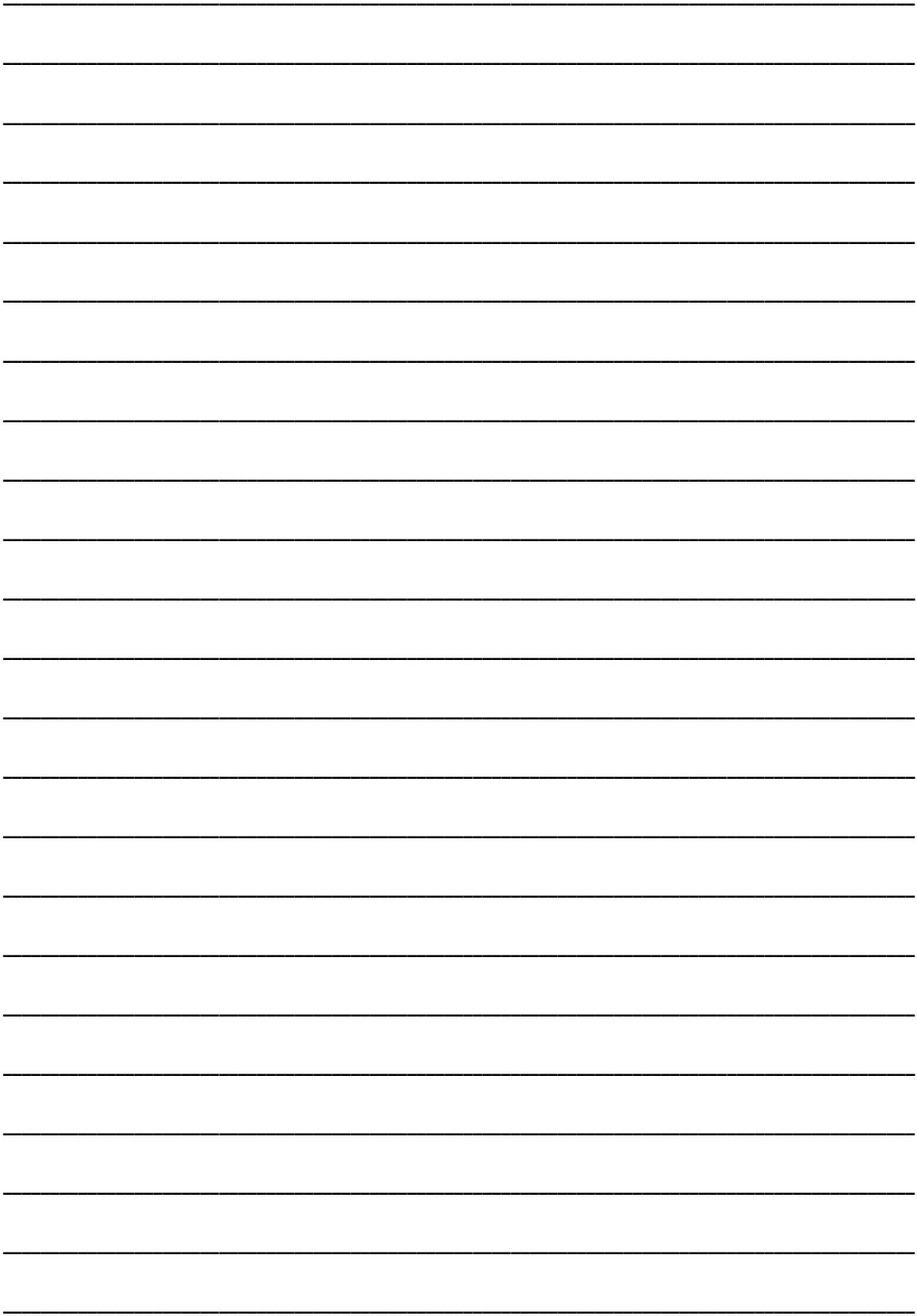
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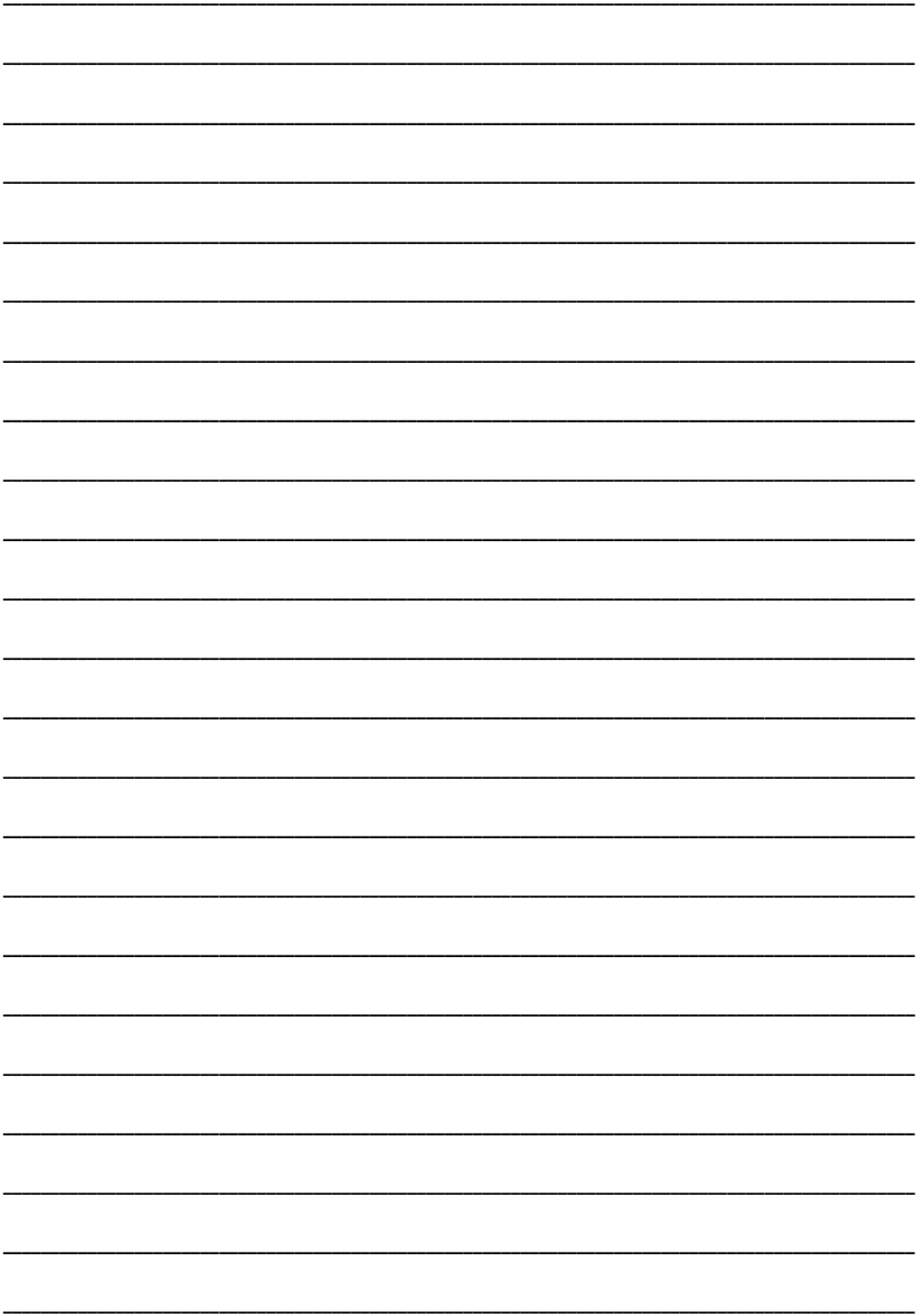


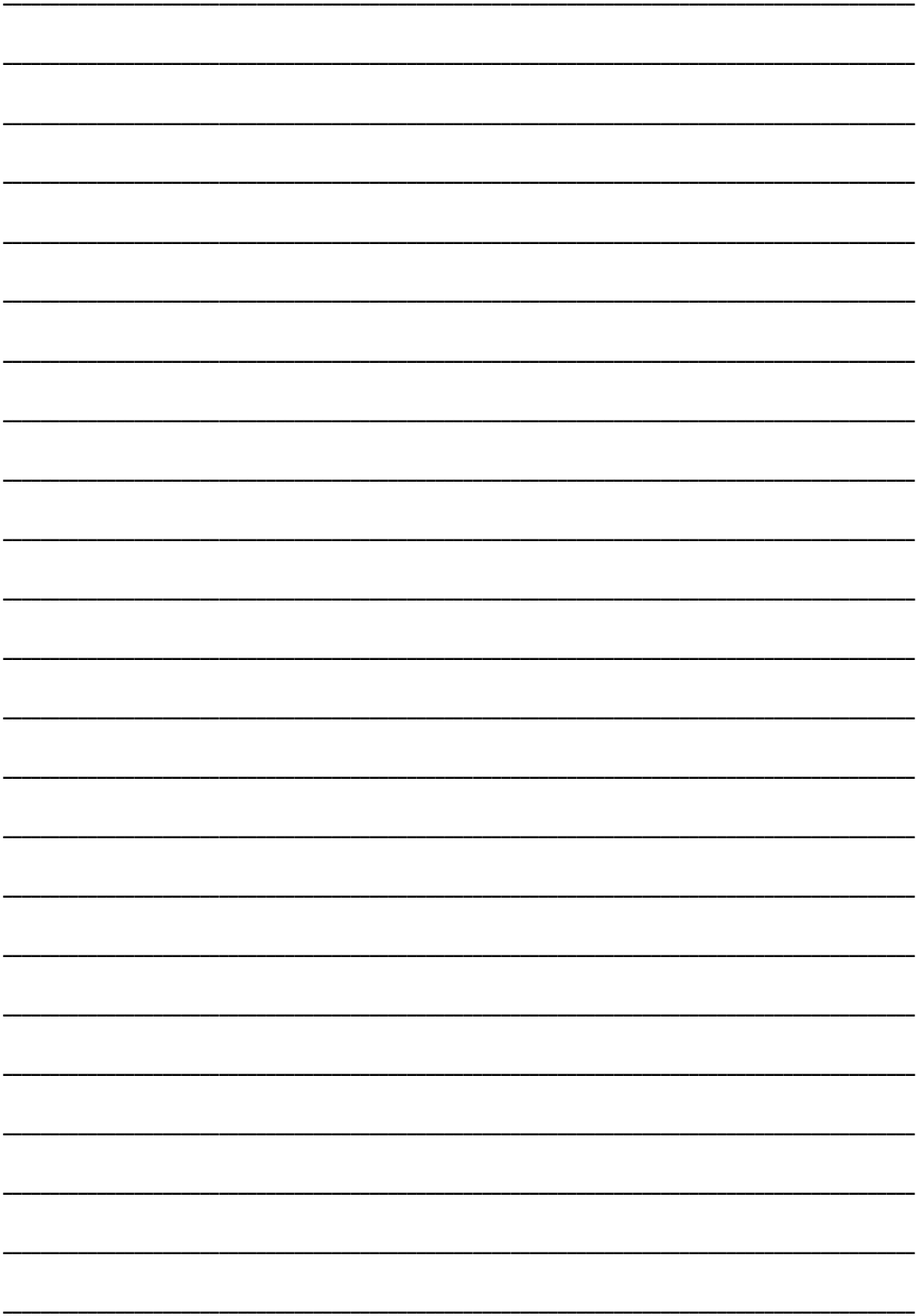




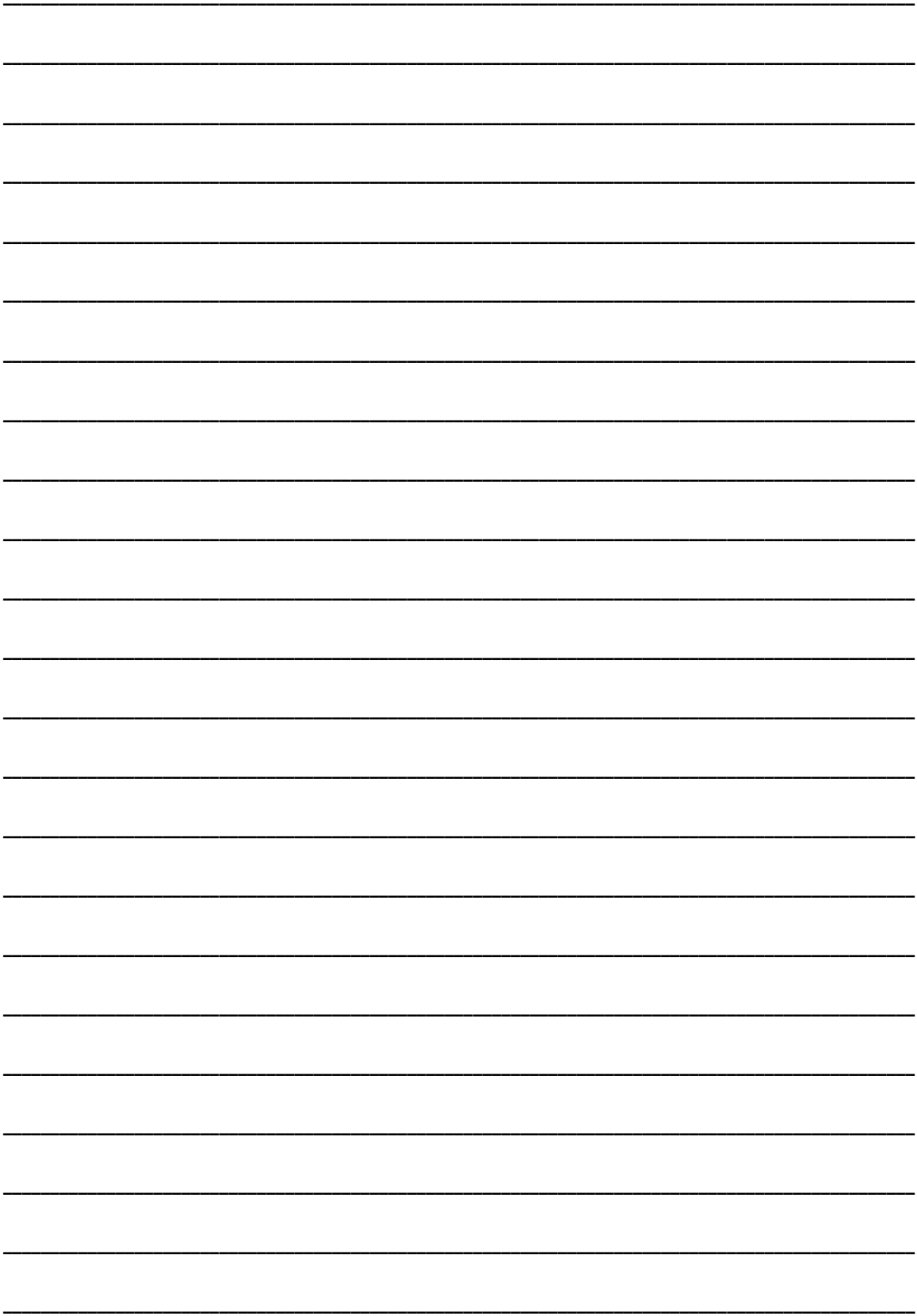


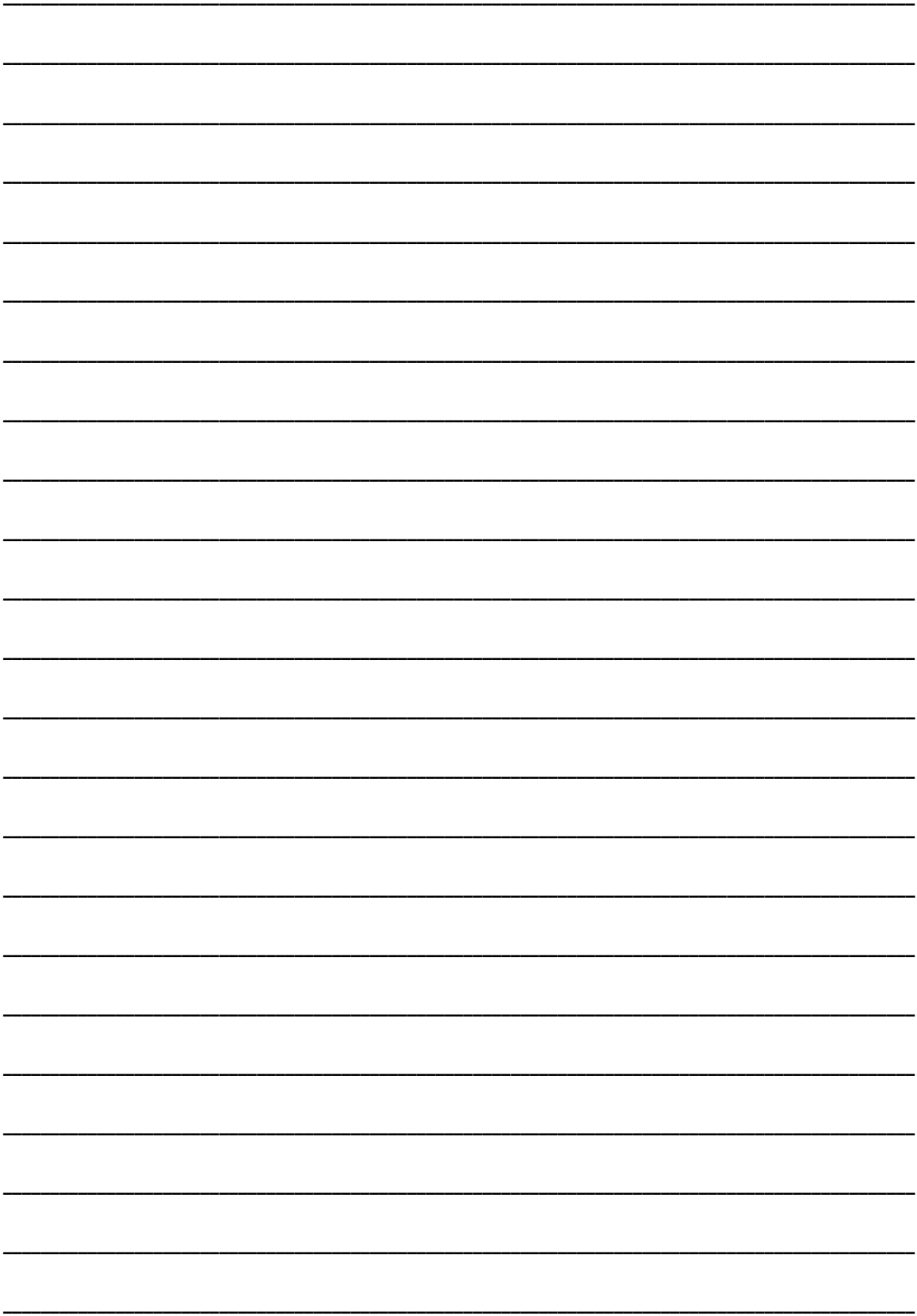








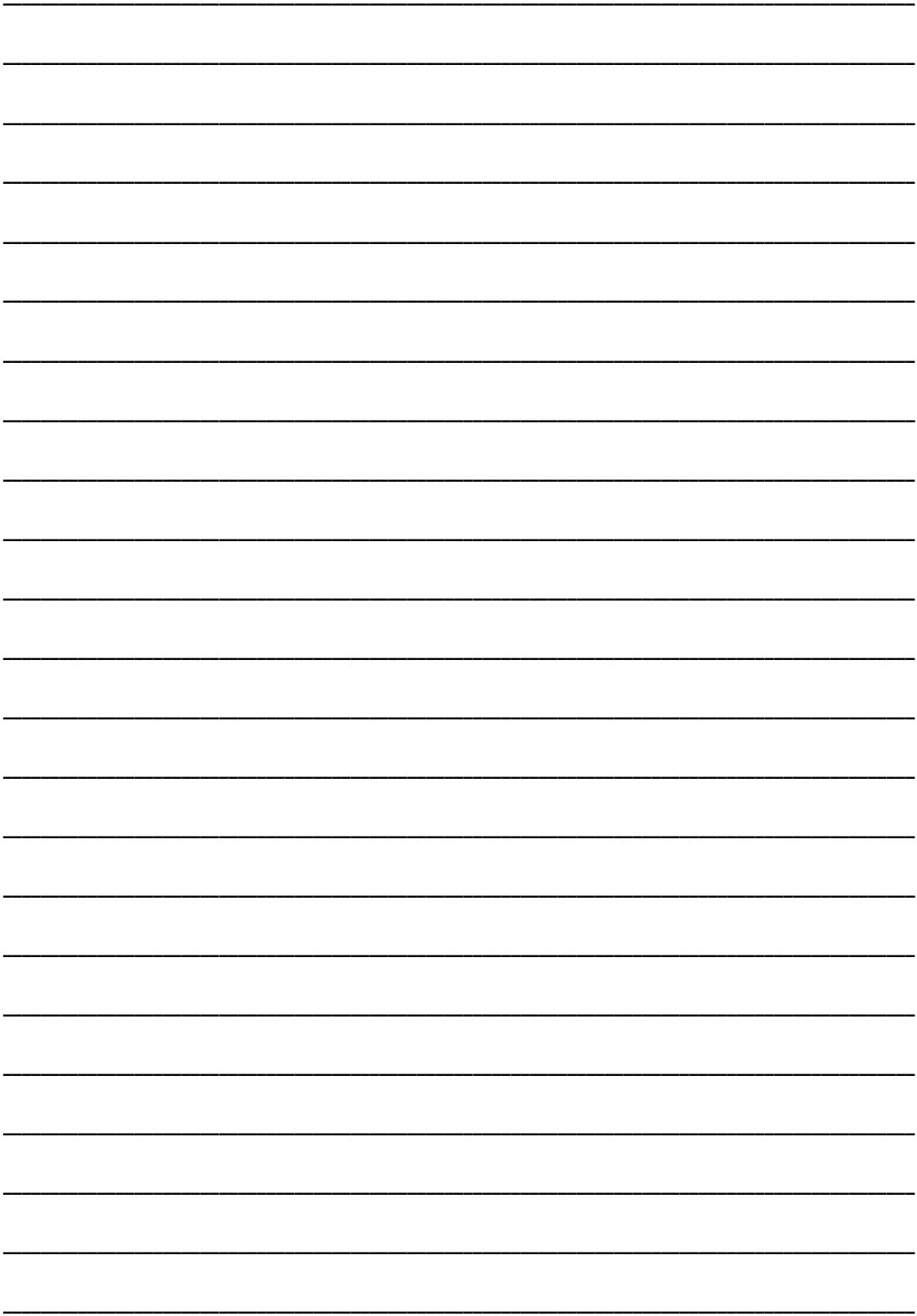


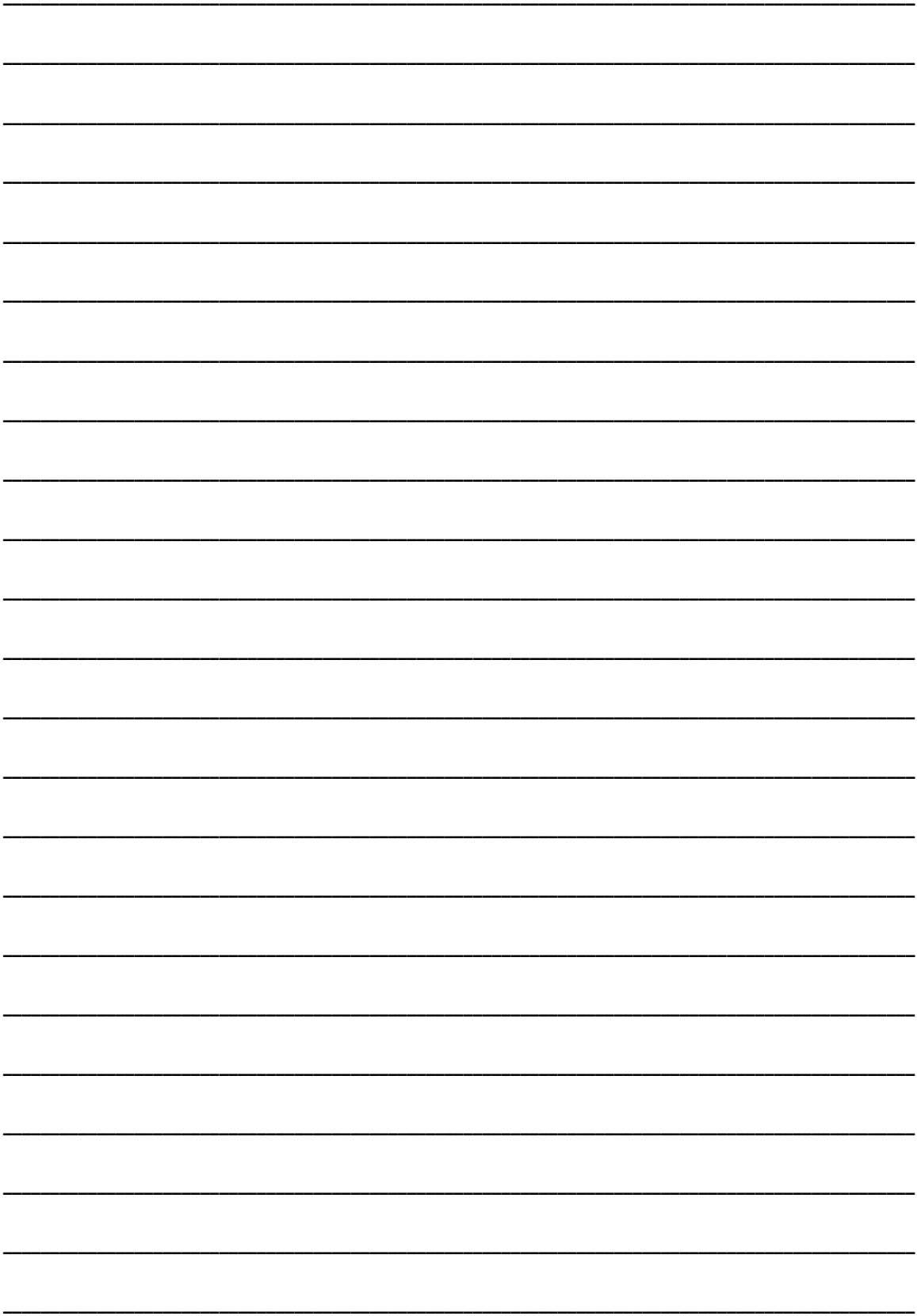


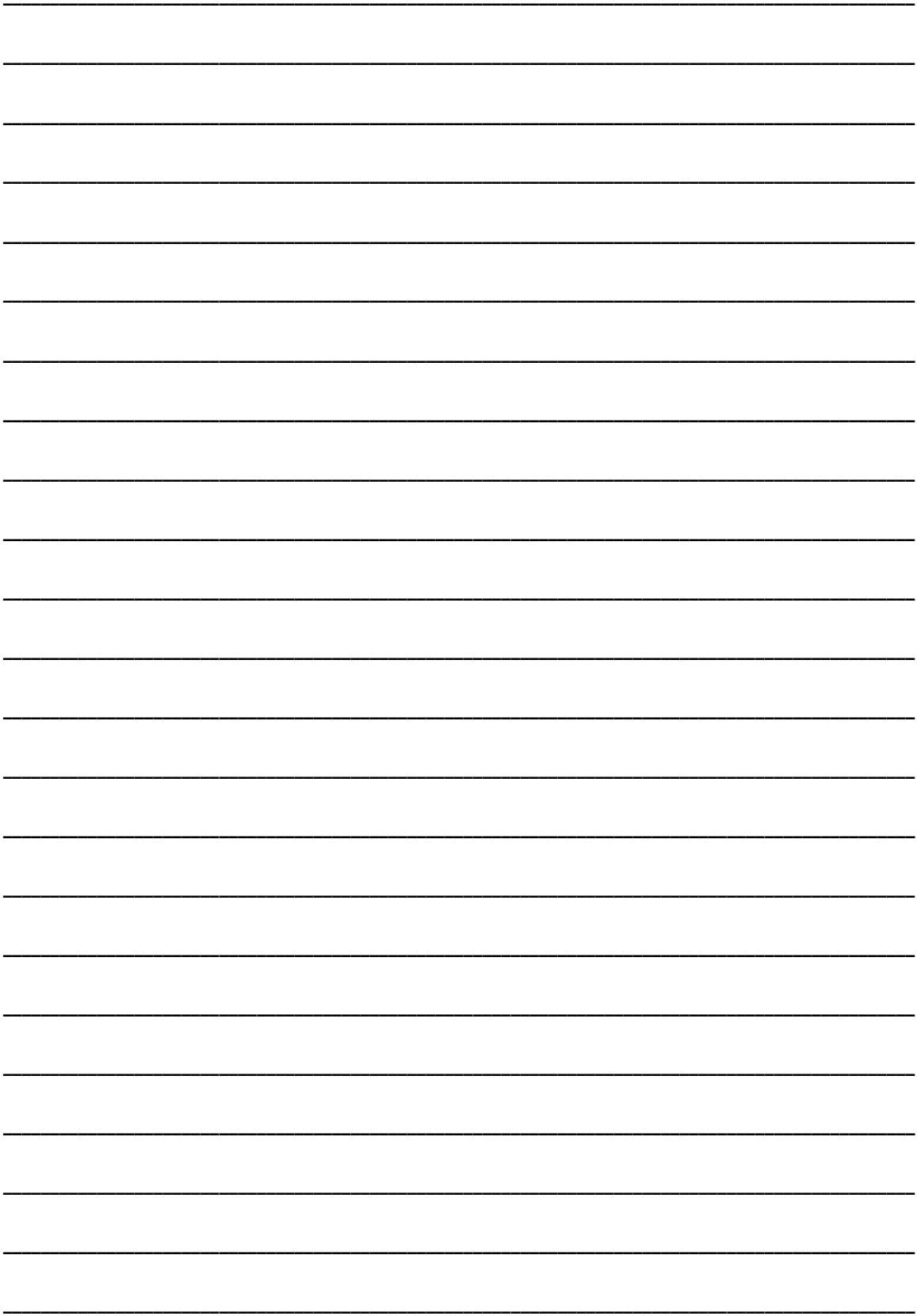












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**Multiple Choice. If you are handwriting your exam simply CIRCLE the correct answer. Examsoft follow those instructions.**

**1. While out in Las Vegas on a bachelor party in May, Dave, who is 21 and not married, is having the time of his life. Why wouldn't he, what happens in Vegas stays in Vegas. While sitting at a slot machine Dave hits a jackpot for \$25,000.00. He is approached by a "lady of the night, Summer," Summer tells Dave, "Let's go have a good time." They go up to Dave's room where they have consensual sex. The Lady of the night looks to be around 30 and Dave was excited to have sex with an older woman and an exotic beauty. However, Summer was in fact only 17 and the age of consent in this jurisdiction is 18. Summer was three weeks away from her 18<sup>th</sup> birthday. Dave is charged with statutory rape. What is the best defense available to Dave if any?**

- A. Consent. Summer, is a lady of the night and has sex for money.**
- B. Entrapment. Summer approached Dave and told him let's go have a good time.**
- C. Mistake of fact. Dave honestly and reasonably believed Summer to be around 30 years old.**
- D. No defense.**

**2. Howard was supposed to be out-of-town on a three-day business trip. Because he completed his business more quickly than expected, he flew home on Wednesday night instead of Thursday afternoon. Howard arrived home and let himself into the house. He heard noises from the bedroom and, upon investigation; Howard was shocked to find his wife, Chastity, in bed with Nick, his best friend. Nick dressed quickly and took off out the back the door. Howard screamed a number of epithets at Chastity and then told her, "Nick's going to pay for this! Get me a drink! It will give me the steadiness to do what I have to do to avenge my honor." A frightened Chastity brought Howard a bourbon and water. Howard drank it quickly and demanded yet another drink. After consuming several more drinks, Howard unlocked the closet, pulled out a rifle, and loaded it. He then set off for Nick's house.**

**Howard arrived at Nick's about 10 minutes later. Nick forgot to lock his front door, so Howard walked in. He found a trembling Nick in the living**

room, and Howard pointed the gun at him. Nick immediately began apologizing, blaming the affair on Chastity, and pleading for his life. Howard stood silently listening to Nick, but he kept the gun trained on his erstwhile friend. Suddenly, Nick pulled a switchblade knife from his pocket. As the metal flashed, Howard fired a single gun shot at Nick. The bullet struck him in the middle of the forehead and Nick died instantly. Howard set the gun down, fell to his knees, and began crying. A neighbor who heard the shot reported it to the police. They arrived a few minutes later and found a distraught Howard muttering about losing a friend and a marriage in one night.

Howard can be convicted of:

- A. Murder.
- B. Manslaughter, because Howard was still distraught over finding Nick in bed with Chastity.
- C. Manslaughter, because his intoxication prevented Howard from having the requisite intent for murder.
- D. No Homicide crime, because Nick was about to attack him with a knife. He had a right to self-defense.

Questions 3 and 4 are based on the following fact pattern:

3. Kuegler, who had a long list of petty crimes to his credit, cased the Jaymart Department Store for a week. He noticed that a display case containing very expensive watches was near one of the store's exit doors. He planned to steal the watches by setting a diversionary fire in a trash basket, hoping that this would distract the store security personnel long enough for Kuegler to break the glass covering the watch case, grab the watches, and run out the nearby exit. Kuegler knew that the store had an automatic sprinkler system that would promptly douse the fire, but his purpose was merely to create a distraction rather than to cause any damage to the building.

One afternoon at 2:30 p.m., Kuegler entered the Jaymart. He advanced to a trash barrel and poured some lighter fluid onto the trash. He threw the lighter fluid can into the barrel and tossed in a match after it. The lighter fluid immediately caused a long flame to rise. The flame quickly charred the wall next to the barrel and blistered the paint on the surrounding area. No serious damage was done to the structure, because the sprinklers operated as designed and quickly put out the fire before it could spread. Kuegler made a

**dash toward the case containing the watches, but just as he was breaking the glass case, one of the store's security guards apprehended Kuegler and called the police. Kuegler was read his Miranda rights and taken into police custody. A statute in the jurisdiction extends the crime of arson to buildings other than dwellings.**

**If Kuegler is tried for the crime of arson (modern view), the court should find him:**

- A. Not guilty, because Kruegler did not intend to burn the building.**
  - B. Not guilty, because Kuegler's act was sufficient only for attempted arson.**
  - C. Guilty, because Kuegler's conduct demonstrated the requisite state of mind for the crime.**
  - D. Guilty, because Kuegler started the fire during the act of perpetrating another felony.**
- 4. Which of the following best describes the crimes, if any, of which Kuegler could be properly convicted (modern view)?**
- A. Larceny only**
  - B. Larceny and attempted arson.**
  - C. Attempted Larceny and arson.**
  - D. None of the above.**

**5. Parafun, Inc. manufactured and sold parachutes for use by sport skydivers. The corporation's product development committee selected a design for a parachute submitted by Silk, one of Parafun's three professional designers. The chute was placed on the market, with the warning, "This parachute should be discarded after 150 jumps." Parafun's market researchers had established that the usual practice among sport skydivers was to discard a parachute after 100 jumps.**



After the design had been approved and the product was successfully manufactured and marketed, Silk took several of the parachutes to an independent stress analysis laboratory. The scientists tested the chutes and concluded that there was a 1% failure rate on the chutes for jumps 100 through 150, because the center of the parachute might tend to collapse because of a design defect. Silk did not report this problem to his superiors at Parafun, because he feared he would be fired.

Several months after Silk received the testing report, Airborne, a sport skydiver, used one of the chutes designed by Silk and manufactured and sold by Parafun. Airborne's use was the 115<sup>th</sup> jump for the chute. When Airborne leaped from the plane, the chute opened properly, but halfway down, the center of the chute collapsed inward. Airborne hurtled to the ground to his death. An investigation established that Silk knew of the design defect.

If Parafun is charged with manslaughter, the verdict should be:

- A. Guilty, because Silk was Parafun's employee and he designed the instrumentality of death.
- B. Guilty, because Airborne died as a result of the failure of a product manufactured and sold by Parafun.
- C. Not guilty, because a corporation cannot be found guilty of manslaughter.
- D. Not guilty, because there was only a 1% chance of parachute failure.

6. A husband and wife took their 12-year-old son to a political rally to hear a controversial speaker. The speaker was late, and the wife stepped outside to smoke a cigarette. While there, she saw a man placing what she believed to be a bomb against a wall at the back of the building. She went back inside and told her husband what she had seen. Without alerting anyone, they took their son and left. Some 20 minutes later, the bomb exploded, killing eight persons and injuring 50. In the jurisdiction, murder in the first degree is defined as an intentional homicide committed with premeditation and deliberation; murder in the second degree is defined as all other murder at common law; and manslaughter is defined as either homicide in the heat of passion arising from adequate provocation or a homicide caused by gross negligence or reckless indifference to consequence.

**As to the deaths of the eight persons, what crime, if any, did the wife commit?**

- A. Manslaughter**
- B. Murder in the first degree**
- C. Murder in the second degree**
- D. No crime**

**7. During an altercation between two men at a company picnic, the victim suffered a knife wound in his abdomen and the defendant was charged with assault and attempted murder. At his trial, the defendant seeks to offer evidence that he had been drinking at the picnic and was highly intoxicated at the time of the altercation.**

**In a jurisdiction that follows the common-law rules concerning admissibility of evidence of intoxication, the evidence of the defendant's intoxication should be:**

- A. Admitted without limitation**
- B. Admitted subject to an instruction that it pertains only to the attempted murder charge.**
- C. Admitted subject to an instruction that it pertains only to the assault charge.**
- D. Excluded altogether.**

**8. The defendant, 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.**

**Which of the following is the best theory for finding the defendant 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 intent to kill but with disregard of the consequences.**

**9. Sarah and Jenny hated Doug and agreed to start a fight with Doug and, if the opportunity arose, to kill him. Sarah and Jenny met Doug in the street outside a bar and began pushing him around. Liz and Jesse, who also hated Doug, stopped to watch. Liz threw Jenny a knife. Jesse told Jenny, "Kill him." Sarah held Doug while Jenny stabbed and killed him.**

**On a charge of murdering Doug, Jesse is:**

- A. Not guilty, because her words did not create a "clear and present danger" not already existing.**
- B. Not guilty, because mere presence and oral encouragement, whether or not she has the requisite intent, will not make her guilty as an accomplice.**
- C. Guilty, because, with the intent to have Jenny kill Doug, she shouted encouragement to Jenny.**
- D. Guilty, because she aided and abetted the murder through her mere presence plus her intent to see Doug killed.**

**10. After three years of marital discord, a police officer left his wife and moved in with his best friend. A week later, the police officer discovered to his shock that his friend was having an affair with his wife. The police officer immediately moved out of his friend's house. Determined to get back at his**

friend for his betrayal, the police officer decided to steal his friend's valuable coin collection and anything else he could carry. On a night that he believed that his friend would be out with his wife, the police officer sneaked into his friend's house and snatched the coin collection from his friend's desk. However, the police officer then heard a noise from upstairs. Knowing that his friend had a gun, the police officer dropped the coin collection and ran into the garage. He knew that his friend kept the keys in the ignition of his car, so he jumped into the vehicle, intending to drive it to a more central location, park it, and then hail a taxi.

If the police officer is charged with stealing his friend's car, he will likely be found

- (A) Guilty, because he used the car to flee the scene of a felony.
- (B) Guilty, because he took the vehicle without permission.
- (C) Not guilty, because leaving the keys in the car is implied consent.
- (D) Not guilty, because he merely intended to use it to escape.

11. A defendant, in desperate need of money to pay for an operation for his daughter, decides he has no choice but to steal it. He goes to a very busy restaurant at closing time, opens his coat, and shows the restaurant owner a contraption that looks very much like a bomb but is actually just a bunch of tubes taped together with wires poking out. When the owner backs away in fear, the defendant grabs all the money in the cash register and leaves.

Of what common law offense is the defendant guilty?

- (A) False pretenses.
- (B) Larceny by trick.
- (C) Robbery.
- (D) Extortion.

12. A young man is a heroin addict and alcoholic. Not a day goes by that the young man doesn't use heroin and become completely intoxicated by noon. He supports his lifestyle through various criminal ventures. Sometimes, he sells heroin and keeps part of what he is supposed to sell. Normally, however, he makes runs from one state to another with large quantities of heroin and cocaine for the heads of a criminal cartel. One day, the young man is in dire

need of a heroin fix and is feeling extremely sick as a result. However, he cannot get any drugs because the Drug Enforcement Agency has just seized a large shipment from the young man's usual drug connection, and many of the higher-ups in the criminal organization that sold the drugs are now incarcerated and unable to make bail. Desperate for heroin, the young man goes to a bar that he knows opens early and usually has few, if any, customers in the early morning. The young man arrives at the bar at 10:45 a.m. The sign on the door says that the bar is open from 12 p.m. to 1 a.m., but the door is wide open, and the bartender is alone inside. The young man enters the bar, with his nephew's realistic-looking water pistol tucked into the back of his waistband, intending to commit robbery. However, when the bartender asks if he can help him, the young man chickens out and turns to leave.

What is the likely outcome if the young man is charged with burglary in a jurisdiction that follows the modern construction of the crime?

- (A) Guilty, because he entered before the bar was open for business.
- (B) Guilty, because he entered the bar with the intent to commit a felony therein.
- (C) Not guilty, because the bar was not a "dwelling place."
- (D) Not guilty, because the bar was open to the public.

13. An engineer lived near the college campus of his alma mater. He had been a member of a fraternity in his days as an undergraduate student, and he often went back to the house to party with the fraternity brothers. The engineer remembered what it was like to be a broke college student, and he got in the habit of lending money to the brothers. One night after a social at the house, a pledge of the fraternity approached the engineer and asked him if he could borrow \$500 for textbooks. The engineer was reluctant to lend this much money, but agreed if the pledge could provide some collateral. The pledge gave the engineer his diamond-encrusted money clip, which was inherited from his great-uncle. The engineer accepted and told the pledge he had to repay the loan with 60 days. The engineer did not see the pledge at all for the next 50 days and learned that he had failed out and had left campus. The engineer figured he would never see the pledge again, so he sold the money clip on the Internet for \$5,000. On the 58th day after borrowing the money, the pledge returned with the \$500 and asked for his money clip. The engineer told him he had been robbed, and the money clip was taken in the robbery. He told the pledge to keep the \$500 and offered him an additional \$500 in restitution for the money clip.

Of which crime could the engineer rightfully be convicted?

**(A) Embezzlement.**

**(B) Larceny.**

**(C) Larceny, but only if the money clip was worth more than \$1,000.**

**(D) Embezzlement, but only if the pledge did not accept the engineer's offer of restitution.**

**14. For the past three weeks, a shopkeeper has been actively protesting the construction of a major overpass in his small town. Every day, he blocks traffic and yells disparaging remarks at the drivers who are "sacrificing their hometown just so they get to work quicker." A driver and a passenger who regularly carpool to work have grown frustrated with the shopkeeper and at having to leave for work 30 minutes early because of the traffic delays he has caused. One morning as they are driving past the shopkeeper's regular location, the shopkeeper spits at them through the open window of the car. The passenger manages to duck, but the driver is spattered with the shopkeeper's saliva.**

**If the shopkeeper is charged with the assault of the passenger, he will likely be found**

**(A) Guilty, because the shopkeeper committed battery.**

**(B) Guilty, because the shopkeeper tried to spit on the passenger.**

**(C) Not guilty, because the shopkeeper was exercising his right to protest.**

**(D) Not guilty, because the shopkeeper did not physically threaten the passenger.**

**15. The State of Madison has enacted a statute providing that (1) first degree murder is "a deliberate and premeditated killing"; (2) second degree murder is "an unlawful killing with malice aforethought"; and (3) manslaughter is "either an unlawful killing committed with adequate provocation or an unlawful killing committed through criminal negligence." A worker, a resident of the State of Madison, is distraught over his recent dismissal from his job, which he had held for 20 years. The day following his dismissal, the worker returns to his former employer's place of business with two loaded handguns. The worker enters the building and confronts the owner of the business. Waving the two handguns around indiscriminately, the worker shouts, "You'd better give me my job back, or I'm going to start shooting!" Concerned for the safety of her employees and customers, the owner dives at the worker in an attempt to disarm him. As the owner tackles**

**the worker, one of the handguns hits the ground and discharges. A customer is shot and killed.**

**The worker is guilty of**

**(A) First degree murder.**

**(B) Second degree murder.**

**(C) Manslaughter.**

**(D) No crime.**

**Enjoy your Winter break and Holidays!!**







## Crim Law Hetu Fall 2022

Question #: 1

Fall 2022

**CRIMINAL LAW FINAL EXAM**

**PROFESSOR HETU**

**YOUR STUDENT ID NUMBER \_\_\_\_\_**

**THIS IS A CLOSED BOOK EXAM. YOU ARE NOT TO HAVE ANY DOCUMENT, CELL PHONE, SCRAP PAPER OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.**

**YOU ARE ONLY ALLOWED TO USE THE TOOLS THAT EXAMSOFT PROVIDES FOR YOU. THIS IS THE SAME SOFTWARE AND RULES USED FOR THE BAR EXAM. IF YOU ARE HANDWRITING THE EXAM YOU WILL BE GIVEN A SCRAP BLUEBOOK FOR OUTLINE, THOUGHTS, ETC. THE SCRAP BLUEBOOK MUST BE TURNED WITH YOUR EXAM!**

**IF YOU ARE HANDWRITING YOUR EXAM, ALL ANSWERS MUST BE IN THE BLUE BOOK.**

**YOU MUST HAVE YOUR STUDENT ID# ON BOTH BLUEBOOKS, YOUR EXAM ANSWER BLUEBOOK AND YOUR SCRAP BLUEBOOK. FAILURE TO TURN IN THE SCRAP BLUEBOOK WILL RESULT IN A F ON YOUR MIDTERM. ONLY USE YOUR STUDENT ID, DO NOT WRITE YOUR NAME ANYWHERE!!**

**INSTRUCTIONS:**

1. Your answers must be typed in the Examssoft software. Your answers are limited to the provided pages. If handwriting, your answers are limited to the space provided for the definitions and for the short fact patterns. I will not read anything beyond the space provided.

2. Do not identify yourself in your answer in any way other than by student ID. Do not write any information that might reveal who you are.
3. This is a closed book examination. The AI in examsoft is very sophisticated and will flag when it feels you are “cheating.” If flagged I will review your exam and make a decision.

This exam consists of THREE parts for a total of 263 points and will count towards your final semester grade. The total time for the exam is 3 hours unless you have an accommodation. Those who have an accommodation will get the appropriate extended time. I will give a 15-minute warning, 5 minute warning and finally a 1-minute warning. Once the 15-minute warning is given you must remain in your seats until the exam is finished. If you finish before the 15-minute warning you are free to leave. Leave as quietly as possible. Have respect for your fellow classmates. If you're phone goes off during the exam you will receive an F.

Part one consists of 10 definitions worth 5 points each.

Part two consists of 14 short fact patterns worth 7-20 points each.

Part three consists of 15 multiple choice questions worth 3 points each.

IF ANY OF THE INSTRUCTIONS ARE NOT FOLLOWED YOU WILL RECEIVE A ZERO ON THE EXAM.

GOOD LUCK.

**PART ONE: DEFINITION/FILL IN THE BLANK. WRITE THE COMPLETE RULE OF LAW. BE SURE TO READ THE QUESTION CAREFULLY AND ANSWER**

**APPROPRIATELY.**

**1.What is the Model Penal Code rule of law for Kidnapping?**

**2.Write the M'Naughten Test**

**3.What is the Common Law rule for Robbery?**

**4.Write the Insanity Test.**

**5.What is the rule Entrapment?**

**6.What is Common Law Rule Conspiracy?**

**7.What is the Substantial Step Test?**

**8.What is the Common Law Rule Involuntary Manslaughter?**

**9.What is the Self Defense Rule?**

**10.What is the defense of Duress?**

**Question #: 2**

**PART II: SHORT ANSWER FACT PATTERNS**

**PART II CONSISTS OF QUESTIONS IN THE FORM OF HYPOTHETICALS, EACH OF WHICH DESCRIBES A SITUATION FROM WHICH A PARTICULAR CRIMINAL CHARGE(S) IS LIKELY TO BE BROUGHT AND WHICH IS, THEREFORE, GOVERNED BY A SPECIFIC RULE OF LAW. EACH QUESTION REQUIRES THAT YOU IDENTIFY THE RULE OF LAW OR LAWS THAT WILL CONTROL THE RESULT AND WILL REQUIRES A SHORT ANSWER WRITTEN IN THE FOLLOWING FORMAT:**

**IRAC! STATE THE ISSUE, THEN WRITE THE RULE OF LAW, FOLLOWED BY A FULL ANALYSIS, AND FINALLY YOUR CONCLUSION. ANSWER IN PARAGRAPH FORM!**

**READ THE CALL OF THE QUESTION AND ANSWER ACCORDINGLY! IF THE CALL DOES NOT STATE EITHER “COMMON LAW” OR “MODERN VIEW” YOU MUST ADDRESS BOTH.**

**IF YOU DO NOT ANSWER THE CALL OF THE QUESTION YOU WILL LOSE POINTS.**

**Question 1. 10 points**

**Tiny was Six Foot Five and weighed 300 pounds. One afternoon Tiny was wandering rather aimlessly and became lost in an unfamiliar part of the city. He reached into his pocket and discovered he only had a dollar and 50 cents. He wanted to take a bus back to the city center, but bus fare was \$3.00 per ride. Tiny was looking ragged with unkempt hair and had on dirty sweats. Tiny approached Howard, a short slightly built man who was standing alone at the bus stop. In a gruff voice, Tiny asked Howard, “Do you have any money?” When Howard replied, “Yes,” Tiny said, “Give me five dollars!” Howard reached into his pocket and handed Tiny a five-dollar bill. Howard walked away from the bus and flagged down a passing patrol car. Howard told the police, “He took my bus fare,” and pointed out Tiny, who**

**was still standing at the bus stop. Tiny claimed he was just begging for money to get back home.**

**What crime(s) can Tiny be charged under common law with, if any and what defense(s) are available to Tiny if any?**



**Question #: 3**

**Question 2. 8 points**

**Tony Tomatoes after being fired from his produce job drank a quart of Makers Mark and decided to ride the bus home. While on the bus, he saw a travel bag he mistakenly thought was his own, and began struggling with the passenger carrying the travel bag. Tony Tomatoes knocked the passenger to the floor, took the travel bag and fled.**

**What is the most serious crime under common law that Tony Tomatoes could be charged with and what available defense(s) does Tony Tomatoes have?**

**Question #: 4**

**Question 3. 15 points**

**Mike had his friend Trevor over to his apartment to watch a football game. During the game they began arguing over whether it was Brady or Belichick who was more important. Mike had enough of Trevor and told him in no uncertain terms to, “Get the f.....out, you are a f.....moron!!” Trevor incensed by Mike’s tone and language refused to leave and fearing Mike was going to punch him, walked into the kitchen, and grabbed a knife. Trevor stated, You keep talking to me like that I’ll slash you.” Mike pulled a gun from under his recliner, walked carefully to the front door, opened it, and again told Trevor to leave. Trevor again refused to leave. Instead, Trevor walked slowly towards Mike, brandishing the knife in a threatening manner. Mike, rather than running out the door ( he could have escaped easily as he is in much better shape than Trevor) shot in Trevor’s direction, intending only to scare him. However, the bullet ricocheted and struck Trevor killing him instantly.**

**What is the most serious crime Mike could be charged with and what defense(s) does Mike have available?**

**Question #: 5**

**Question 4. 10 points**

**Kevin, James, and Kyrie, who were in need of money, approached their wealthy Boss's secretary and asked her to put poison in his coffee because they would take over the company upon his death. The secretary agreed upon the condition she would stay on as secretary for them and get a bonus of \$50,000.00. After Kevin, James, and Kyrie agreed to the secretary's demand the secretary placed arsenic in the boss's coffee. She handed the boss the coffee and went back to her desk. About fifteen minutes later she went into the boss's office and found him dead from the poison.**

**It was later learned that Kyrie as usual decided it wasn't a good idea to kill the boss. He left a note for Kevin and James telling them he had changed his mind.**

**Discuss which inchoate crimes under common law were committed and available defenses if any.**

**Question #: 6**

**Question 5. 20 points**

**Kim learned that her boyfriend, Dave, had been cheating on her with Michelle, who was Kim's sister. Angry and upset with both Dave and Michelle, Kim decided to have her revenge by making both of them pay or humiliating her.**

**Kim found out that Dave and Michelle would be out later that evening. At that time she snuck over to Michelle's house intending to break in to set the place on fire.**

**Kim who had a spare key to Michelle's house (in case Michelle lost hers) used it to open the back door and gain access. Once inside she began splashing kerosene on the walls, the floor, the ceiling and the stairs leading up to Michelle's bedroom. Just before throwing a lit match she said, "I hope this house burns to the ground, you bitch!" With that Kim threw the lit match and within seconds the house was engulfed in flames.**

**(Before going to Michelle's house Kim drank a fifth of Peach Schnapps.)**

**Kim then drove to the restaurant at which Dave and Michelle were having dinner, where she waited outside for hours until Dave and Michelle came out. When they finally emerged from the restaurant holding hands and acting amorously. Kim became enraged and ran up to them and pointed an unloaded gun at them, which frightened the dickens out of them. Kim then forced Dave and Michelle into a nearby shipping container loaded onto a shipping vessel, which was scheduled to head out of country. Kim left and yelled, "Have a nice life in Panama, you cheating scumbags!"**

**(While waiting for Dave and Michelle to come out of the restaurant Kim had smoked a bag of weed.)**

**Discuss what crime(s) Kim committed and her available defenses if any.**



**Question #: 7**

**Question 6. 10 points**

**Bautista after a hard day at work went to his favorite pub for a couple of beers. Bautista had one beer and realized it was his girlfriend's sister's birthday and they were all going out to dinner. As he walked outside the bar he saw two guys severely beating up another guy with their fists. Bautista a formidable foe and not one to back down from a confrontation sprang into action and gave the two guys a beat down. The stranger who had a broken nose and other facial injuries thanked Bautista and left.**

**If Bautista is criminally charged with the common law crime of battery are there any affirmative defenses he can successfully raise?**

**Question #: 8**

**Question 7. 15 points**

**Flounder and Pinto are fraternity brothers. One Saturday afternoon the two begin arguing over whose turn it is to make the beer run. Pinto is enraged because Flounder always finds a way of backing out. After a few minutes they are in each other's face screaming obscenities when Pinto tells Flounder, "The only reason your in this fraternity is because you're a legacy and no one wanted you in the fraternity, you useless fat slob!!" Enraged Flounder pushes Pinto who falls backward hitting his head on the bumper of the car opening up a huge gash.**

**Flounder scared takes off and hides. Luckily, D-Day was outside and saw what happened, D-Day rushes Pinto to the campus doctor who stitches Pinto up and releases him. However, the doctor did not check Pinto's records because if he had he would've seen that Pinto is a hemophiliac and would have kept him under observation. Pinto winds up bleeding out and dies.**

**(Assume that common law principles are applicable in this jurisdiction.)**

**What common law crime(s) has Flounder committed if any and any defenses available.**

**Question #: 9**

**Question 8. 10 points**

**Humpty who spent all of his Humpty Dance money is being evicted out of his East New York Penthouse apartment along with his wife and son (little humpty.) Strapped for cash Humpty decides the only way not to have his family be homeless is to sell crack cocaine. However, East New York's crack is run by Tone Loc who has a propensity for violence and kidnapping family members of anyone infringing on his turf.**

**Humpty thinks it's worth the risk and sells crack on Tone's turf. Well Tone finds out, kidnaps Little Humpty and tells Humpty, "If you want your kid back, you need to make reparations. You're going to rob Tiffany's tomorrow or I'm going to start cutting off Little Humpty's fingers." Humpty petrified for his son's safety does in fact rob Tiffany's and is caught in the act and charged with robbery.**

**Humpty spills his guts to the NYPD about selling drugs on Tone Loc's turf. To his dismay the NYPD also charge Humpty with distribution of narcotics.**

**Discuss fully FIRST any defense(s) that Humpty can use for the robbery charge and will it be successful (full analysis on why or why not) and THEN discuss any defense(s) to the distribution of narcotics charge and will it be successful why or why not. Discuss the modern view.**



Question #: 10

**Question 9. 10 points**

**A gangster and two of his friends were members of a teenage street gang. While they were returning from a dance late one evening, their car collided with a car driven by an elderly woman. After an argument, the gangster attacked the elderly woman with his fists and beat her to death. The two friends watched, and when they saw the woman fall to the ground they urged the gangster to flee. The gangster was eventually apprehended and tried for manslaughter but the jury could not decide on a verdict.**

**If the gangster's companions are subsequently tried as accomplices to manslaughter, they should be found: Circle One or type the correct answer.**

**GUILTY or NOT GUILTY**

**Recite the applicable rule of law according to the MODERN VIEW and apply it to the facts to support the conclusion you reached in your answer above.**

**Question 10. 10 POINTS**

**Sandy left a bar extremely intoxicated and decided she only live a mile away so she would drive home. While driving home Sandy was driving with her hands at ten and two on the steering wheel, wearing her seatbelt, and staying within the speed limit. However, she did cross the double yellow line a couple of times. When she approached the only light in between the bar and her house the light turned red. She came to complete stop before the cross walk, when the light turned green she proceeded through the intersection in a safe and reasonable manner as she got about three quarters of the way through the intersection a car driven by Jerry was traveling at an excessive speed because he was late for his overnight shift. Jerry struck Sandy's vehicle and he was instantly killed. Sandy only suffered minor cuts. The officer on the scene noticed Sandy's intoxication and gave her the Breathalyzer test, in which she blew a .20, which is over two times the legal limit in this jurisdiction.**

**Sandy was charged with involuntary manslaughter, she should be found: Circle One or type the correct answer.**

**GUILTY or NOT GUILTY**

**Recite the applicable rule of law according to COMMON LAW and apply it to the facts to support the conclusion you reached in your answer above.**

**Question #: 12**

**Question 11. 15 points**

El Chapo on his release from prison is approached by Michael Corleone ( who is now a Boston detective,) about getting back in the “game.” El Chapo knows of Corleone’s connections and knows he can make good money and regain his seat as head of the Cartel. However, El Chapo is cautious and passes on the offer as he just got his freedom back.

About a month later Corleone again reaches out to El Chapo. This time Corleone tells him they need someone with El Chapo’s connections and know how to expand the business. El Chapo now tired of living off McDonald’s and living in a one-bedroom cockroach infested apartment agrees. He knows he can take the business to the next level.

Corleone sets up the sting and El Chapo is arrested for intent to distribute narcotics.

What defense(s) does El Chapo have available if any and explain if the defense(s) will be successful or unsuccessful.

Question #: 13

**Question 12. 10 points**

**Mrs. Jones was suffering from ALS, which made her incapable of caring for herself. Mrs. Jones was living with her daughter Pam, who as her durable power of attorney was receiving Mrs. Jones Social Security benefits, retirement benefits, and had access to Mrs. Jones Checking and savings account. They were also living in Mrs. Jones house.**

**Pam, however, could barely take care of herself and neglected her mother. She hadn't bathed Mrs. Jones in over a month and kept the heat off in the upstairs bedroom where Mrs. Jones was bedridden. During a wellness check it was discovered that Mrs. Jones had passed. An Autopsy revealed that she had bedsores, was dehydrated, near starvation, and hypothermic. These conditions all contributed to Mrs. Jones passing. Pam had no intentions of hurting her mother never mind killing her.**

**Pam is charged with involuntary manslaughter at common law. What result and why?**

**Question 13. 10 points**

**Peter and Joe are partners who collect debts for the mob. They agree to collect a gambling debt that Cleveland has with local mob boss Quagmire. Peter and Joe go to a local bar that Cleveland hangs out at and regularly places his bets. Their plan is to break Cleveland's kneecap. Cleveland isn't there and Peter and Joe start asking questions. The bartender laughs and says, "Good luck, the last guys to mess with Cleveland wound up in the hospital for a month." Joe doesn't think this collection is worth the measly 5 points they get for collection and tells Peter, "I don't want any part of this, Cleveland is a bad man. You should pull out of this, too. Peter, incredulous states, "Fine, I don't need your help and I don't have to split the points." Cleveland is in fact an undercover officer and when Peter attempts to break his kneecap to collect the money, he is arrested. Peter spills his guts stating Joe helped him with the plan to break Cleveland's kneecap and collect the money.**

**Discuss fully what common law crime(s) Peter and Joe have committed and what if any defenses they may raise.**

Question #: 15

14. 15 points

**Slim Shady was arrested and arraigned on charges of Burglary, Robbery, and aggravated assault. While sitting in his jail cell Slim Realized that Pauli Walnuts, an undercover Cop, was a rat.**

**Out on bail, Slim realized the only way he could possibly stay out of jail was by preventing Walnuts from testifying. Slim came up with a plan to go to Walnut's house, and to set it on fire while Walnut's was sleeping.**

**Slim got in his car, drove to Walnut's house and then drove around the block a few times to watch Walnut's house. Inside Slim's car was a rag, a book of matches, a can of gasoline, a crowbar, and lock picks. Slim was also carrying a switchblade on his person. Just as Slim was about to strike the match and light the rag on fire which he had previously soaked in gasoline, he was stopped by the police and arrested.**

**After Slim had been arrested it was learned that just before the police stopped Slim he was about to abandon his plan because he thought the police would discover him.**

**Applying both the "Common Law Approach" and the "Model Penal Code's Substantial Step Approach," is Slim criminally liable for the crime of Attempt; and does he have any available defenses?**

**Question #: 16**

Multiple Choice. If you are handwriting your exam simply CIRCLE the correct answer. Exams often follow those instructions. While out in Las Vegas on a bachelor party in May, Dave, who is 21 and not married, is having the time of his life. While in Vegas, what happens in Vegas stays in Vegas. While sitting at a slot machine Dave hits a jackpot for \$25,000.00. He is approached by a “lady of the night, Summer,” Summer tells Dave, “Let’s go have a good time.” They go up to Dave’s room where they have consensual sex. The Lady of the night looks to be around 30 and Dave was excited to have sex with an older woman and an exotic beauty. However, Summer was in fact only 17 and the age of consent in this jurisdiction is 18. Summer was three weeks away from her 18th birthday. Dave is charged with statutory rape. What is the best defense available to Dave if any?

- A. Consent. Summer, is a lady of the night and has sex for money.
- B. Entrapment. Summer approached Dave and told him let’s go have a good time.
- C. Mistake of fact. Dave honestly and reasonably believed Summer to be around 30 years old.
- D. No defense.

**Question #: 17**

Howard was supposed to be out-of-town on a three-day business trip. Because he completed his business more quickly than expected, he flew home on Wednesday night instead of Thursday afternoon. Howard arrived home and let himself into the house. He heard noises from the bedroom and, upon investigation; Howard was shocked to find his wife, Chastity, in bed with Nick, his best friend. Nick dressed quickly and took off out the back the door. Howard screamed a number of epithets at Chastity and then told her, "Nick's going to pay for this! Get me a drink! It will give me the steadiness to do what I have to do to avenge my honor." A frightened Chastity brought Howard a bourbon and water. Howard drank it quickly and demanded yet another drink. After consuming several more drinks, Howard unlocked the closet, pulled out a rifle, and loaded it. He then set off for Nick's house. Howard arrived at Nick's about 10 minutes later. Nick forgot to lock his front door, so Howard walked in. He found a trembling Nick in the living room, and Howard pointed the gun at him. Nick immediately began apologizing, blaming the affair on Chastity, and pleading for his life. Howard stood silently listening to Nick, but he kept the gun trained on his erstwhile friend. Suddenly, Nick pulled a switchblade knife from his pocket. As the metal flashed, Howard fired a single gun shot at Nick. The bullet struck him in the middle of the forehead and Nick died instantly. Howard set the gun down, fell to his knees, and began crying. A neighbor who heard the shot reported it to the police. They arrived a few minutes later and found a distraught Howard muttering about losing a friend and a marriage in one night. Howard can be convicted of:

- A. Murder.
- B. Manslaughter, because Howard was still distraught over finding Nick in bed with Chastity.
- C. Manslaughter, because his intoxication prevented Howard from having the requisite intent for murder.
- D. No Homicide crime, because Nick was about to attack him with a knife. He had a right to self-defense.



**Question #: 18**

Questions 3 and 4 are based on the following fact pattern: Kuegler, who had a long list of petty crimes to his credit, cased the Jaymart Department Store for a week. He noticed that a display case containing very expensive watches was near one of the store's exit doors. He planned to steal the watches by setting a diversionary fire in a trash basket, hoping that this would distract the store security personnel long enough for Kuegler to break the glass covering the watch case, grab the watches, and run out the nearby exit. Kuegler knew that the store had an automatic sprinkler system that would promptly douse the fire, but his purpose was merely to create a distraction rather than to cause any damage to the building. One afternoon at 2:30 p.m., Kuegler entered the Jaymart. He advanced to a trash barrel and poured some lighter fluid onto the trash. He threw the lighter fluid can into the barrel and tossed in a match after it. The lighter fluid immediately caused a long flame to rise. The flame quickly charred the wall next to the barrel and blistered the paint on the surrounding area. No serious damage was done to the structure, because the sprinklers operated as designed and quickly put out the fire before it could spread. Kuegler made a dash toward the case containing the watches, but just as he was breaking the glass case, one of the store's security guards apprehended Kuegler and called the police. Kuegler was read his Miranda rights and taken into police custody. A statute in the jurisdiction extends the crime of arson to buildings other than dwellings. If Kuegler is tried for the crime of arson (modern view), the court should find him:

- A. Not guilty, because Kuegler did not intend to burn the building.
- B. Not guilty, because Kuegler's act was sufficient only for attempted arson.
- C. Guilty, because Kuegler's conduct demonstrated the requisite state of mind for the crime.
- D. Guilty, because Kuegler started the fire during the act of perpetrating another felony.

**Question #: 19**

Questions 3 and 4 are based on the following fact pattern: Kuegler, who had a long list of petty crimes to his credit, cased the Jaymart Department Store for a week. He noticed that a display case containing very expensive watches was near one of the store's exit doors. He planned to steal the watches by setting a diversionary fire in a trash basket, hoping that this would distract the store security personnel long enough for Kuegler to break the glass covering the watch case, grab the watches, and run out the nearby exit. Kuegler knew that the store had an automatic sprinkler system that would promptly douse the fire, but his purpose was merely to create a distraction rather than to cause any damage to the building. One afternoon at 2:30 p.m., Kuegler entered the Jaymart. He advanced to a trash barrel and poured some lighter fluid onto the trash. He threw the lighter fluid can into the barrel and tossed in a match after it. The lighter fluid immediately caused a long flame to rise. The flame quickly charred the wall next to the barrel and blistered the paint on the surrounding area. No serious damage was done to the structure, because the sprinklers operated as designed and quickly put out the fire before it could spread. Kuegler made a dash toward the case containing the watches, but just as he was breaking the glass case, one of the store's security guards apprehended Kuegler and called the police. Kuegler was read his Miranda rights and taken into police custody. A statute in the jurisdiction extends the crime of arson to buildings other than dwellings. If Kuegler is tried for the crime of arson (modern view), the court should find him: Which of the following best describes the crimes, if any, of which Kuegler could be properly convicted (modern view)?

- A. Larceny only
- B. Larceny and attempted arson.
- C. Attempted Larceny and arson.
- D. None of the above.

**Question #: 20**

Parafun, Inc. manufactured and sold parachutes for use by sport skydivers. The corporation's product development committee selected a design for a parachute submitted by Silk, one of Parafun's three professional designers. The chute was placed on the market, with the warning, "This parachute should be discarded after 150 jumps." Parafun's market researchers had established that the usual practice among sport skydivers was to discard a parachute after 100 jumps. After the design had been approved and the product was successfully manufactured and marketed, Silk took several of the parachutes to an independent stress analysis laboratory. The scientists tested the chutes and concluded that there was a 1% failure rate on the chutes for jumps 100 through 150, because the center of the parachute might tend to collapse because of a design defect. Silk did not report this problem to his superiors at Parafun, because he feared he would be fired. Several months after Silk received the testing report, Airborne, a sport skydiver, used one of the chutes designed by Silk and manufactured and sold by Parafun. Airborne's use was the 115th jump for the chute. When Airborne leaped from the plane, the chute opened properly, but halfway down, the center of the chute collapsed inward. Airborne hurtled to the ground to his death. An investigation established that Silk knew of the design defect. If Parafun is charged with manslaughter, the verdict should be:

- A. Guilty, because Silk was Parafun's employee and he designed the instrumentality of death.
- B. Guilty, because Airborne died as a result of the failure of a product manufactured and sold by Parafun.
- C. Not guilty, because a corporation cannot be found guilty of manslaughter.
- D. Not guilty, because there was only a 1% chance of parachute failure.

**Question #: 21**

A husband and wife took their 12-year-old son to a political rally to hear a controversial speaker. The speaker was late, and the wife stepped outside to smoke a cigarette. While there, she saw a man placing what she believed to be a bomb against a wall at the back of the building. She went back inside and told her husband what she had seen. Without alerting anyone, they took their son and left. Some 20 minutes later, the bomb exploded, killing eight persons and injuring 50. In the jurisdiction, murder in the first degree is defined as an intentional homicide committed with premeditation and deliberation; murder in the second degree is defined as all other murder at common law; and manslaughter is defined as either homicide in the heat of passion arising from adequate provocation or a homicide caused by gross negligence or reckless indifference to consequence. As to the deaths of the eight persons, what crime, if any, did the wife commit?

- A. Manslaughter
- B. Murder in the first degree
- C. Murder in the second degree
- D. No crime

**Question #: 22**

During an altercation between two men at a company picnic, the victim suffered a knife wound in his abdomen and the defendant was charged with assault and attempted murder. At his trial, the defendant seeks to offer evidence that he had been drinking at the picnic and was highly intoxicated at the time of the altercation. In a jurisdiction that follows the common-law rules concerning admissibility of evidence of intoxication, the evidence of the defendant's intoxication should be:

- A. Admitted without limitation
- B. Admitted subject to an instruction that it pertains only to the attempted murder charge.
- C. Admitted subject to an instruction that it pertains only to the assault charge.
- D. Excluded altogether.

**Question #: 23**

The defendant, 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. Which of the following is the best theory for finding the defendant 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 intent to kill but with disregard of the consequences.

**Question #: 24**

Sarah and Jenny hated Doug and agreed to start a fight with Doug and, if the opportunity arose, to kill him. Sarah and Jenny met Doug in the street outside a bar and began pushing him around. Liz and Jesse, who also hated Doug, stopped to watch. Liz threw Jenny a knife. Jesse told Jenny, "Kill him." Sarah held Doug while Jenny stabbed and killed him. On a charge of murdering Doug, Jesse is:

- A. Not guilty, because her words did not create a "clear and present danger" not already existing.
- B. Not guilty, because mere presence and oral encouragement, whether or not she has the requisite intent, will not make her guilty as an accomplice.
- C. Guilty, because, with the intent to have Jenny kill Doug, she shouted encouragement to Jenny.
- D. Guilty, because she aided and abetted the murder through her mere presence plus her intent to see Doug killed.

**Question #: 25**

After three years of marital discord, a police officer left his wife and moved in with his best friend. A week later, the police officer discovered to his shock that his friend was having an affair with his wife. The police officer immediately moved out of his friend's house. Determined to get back at his friend for his betrayal, the police officer decided to steal his friend's valuable coin collection and anything else he could carry. On a night that he believed that his friend would be out with his wife, the police officer sneaked into his friend's house and snatched the coin collection from his friend's desk. However, the police officer then heard a noise from upstairs. Knowing that his friend had a gun, the police officer dropped the coin collection and ran into the garage. He knew that his friend kept the keys in the ignition of his car, so he jumped into the vehicle, intending to drive it to a more central location, park it, and then hail a taxi. If the police officer is charged with stealing his friend's car, he will likely be found

- A. Guilty, because he used the car to flee the scene of a felony.
- B. Guilty, because he took the vehicle without permission.
- C. Not guilty, because leaving the keys in the car is implied consent.
- D. Not guilty, because he merely intended to use it to escape.



**Question #: 26**

A defendant, in desperate need of money to pay for an operation for his daughter, decides he has no choice but to steal it. He goes to a very busy restaurant at closing time, opens his coat, and shows the restaurant owner a contraption that looks very much like a bomb but is actually just a bunch of tubes taped together with wires poking out. When the owner backs away in fear, the defendant grabs all the money in the cash register and leaves. Of what common law offense is the defendant guilty?

- A. False pretenses.
- B. Larceny by trick.
- C. Robbery.
- D. Extortion.

**Question #: 27**

A young man is a heroin addict and alcoholic. Not a day goes by that the young man doesn't use heroin and become completely intoxicated by noon. He supports his lifestyle through various criminal ventures. Sometimes, he sells heroin and keeps part of what he is supposed to sell. Normally, however, he makes runs from one state to another with large quantities of heroin and cocaine for the heads of a criminal cartel. One day, the young man is in dire need of a heroin fix and is feeling extremely sick as a result. However, he cannot get any drugs because the Drug Enforcement Agency has just seized a large shipment from the young man's usual drug connection, and many of the higher-ups in the criminal organization that sold the drugs are now incarcerated and unable to make bail. Desperate for heroin, the young man goes to a bar that he knows opens early and usually has few, if any, customers in the early morning. The young man arrives at the bar at 10:45 a.m. The sign on the door says that the bar is open from 12 p.m. to 1 a.m., but the door is wide open, and the bartender is alone inside. The young man enters the bar, with his nephew's realistic-looking water pistol tucked into the back of his waistband, intending to commit robbery. However, when the bartender asks if he can help him, the young man chickens out and turns to leave. What is the likely outcome if the young man is charged with burglary in a jurisdiction that follows the modern construction of the crime?

- A. Guilty, because he entered before the bar was open for business.
- B. Guilty, because he entered the bar with the intent to commit a felony therein.
- C. Not guilty, because the bar was not a "dwelling place."
- D. Not guilty, because the bar was open to the public.

**Question #: 28**

An engineer lived near the college campus of his alma mater. He had been a member of a fraternity in his days as an undergraduate student, and he often went back to the house to party with the fraternity brothers. The engineer remembered what it was like to be a broke college student, and he got in the habit of lending money to the brothers. One night after a social at the house, a pledge of the fraternity approached the engineer and asked him if he could borrow \$500 for textbooks. The engineer was reluctant to lend this much money, but agreed if the pledge could provide some collateral. The pledge gave the engineer his diamond-encrusted money clip, which was inherited from his great-uncle. The engineer accepted and told the pledge he had to repay the loan with 60 days. The engineer did not see the pledge at all for the next 50 days and learned that he had failed out and had left campus. The engineer figured he would never see the pledge again, so he sold the money clip on the Internet for \$5,000. On the 58th day after borrowing the money, the pledge returned with the \$500 and asked for his money clip. The engineer told him he had been robbed, and the money clip was taken in the robbery. He told the pledge to keep the \$500 and offered him an additional \$500 in restitution for the money clip. Of which crime could the engineer rightfully be convicted?

- A. Embezzlement.
- B. Larceny.
- C. Larceny, but only if the money clip was worth more than \$1,000.
- D. Embezzlement, but only if the pledge did not accept the engineer's offer of restitution.

**Question #: 29**

For the past three weeks, a shopkeeper has been actively protesting the construction of a major overpass in his small town. Every day, he blocks traffic and yells disparaging remarks at the drivers who are "sacrificing their hometown just so they get to work quicker." A driver and a passenger who regularly carpool to work have grown frustrated with the shopkeeper and at having to leave for work 30 minutes early because of the traffic delays he has caused. One morning as they are driving past the shopkeeper's regular location, the shopkeeper spits at them through the open window of the car. The passenger manages to duck, but the driver is spattered with the shopkeeper's saliva. If the shopkeeper is charged with the assault of the passenger, he will likely be found

- A. Guilty, because the shopkeeper committed battery.
- B. Guilty, because the shopkeeper tried to spit on the passenger.
- C. Not guilty, because the shopkeeper was exercising his right to protest.
- D. Not guilty, because the shopkeeper did not physically threaten the passenger.

**Question #: 30**

The State of Madison has enacted a statute providing that (1) first degree murder is "a deliberate and premeditated killing"; (2) second degree murder is "an unlawful killing with malice aforethought"; and (3) manslaughter is "either an unlawful killing committed with adequate provocation or an unlawful killing committed through criminal negligence." A worker, a resident of the State of Madison, is distraught over his recent dismissal from his job, which he had held for 20 years. The day following his dismissal, the worker returns to his former employer's place of business with two loaded handguns. The worker enters the building and confronts the owner of the business. Waving the two handguns around indiscriminately, the worker shouts, "You'd better give me my job back, or I'm going to start shooting!" Concerned for the safety of her employees and customers, the owner dives at the worker in an attempt to disarm him. As the owner tackles the worker, one of the handguns hits the ground and discharges. A customer is shot and killed. The worker is guilty of

- A. First degree murder.
- B. Second degree murder.
- C. Manslaughter.
- D. No crime.

# Crim Law Hetu Fall 2023 Final

Question #: 1

Fall 2023

**CRIMINAL LAW FINAL EXAM**

**PROFESSOR HETU**

**YOUR STUDENT ID NUMBER**

**THIS IS A CLOSED BOOK EXAM. YOU ARE NOT TO HAVE ANY DOCUMENT, CELL PHONE, SCRAP PAPER OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.**

**YOU ARE ONLY ALLOWED TO USE THE TOOLS THAT EXAMSOFT PROVIDES FOR YOU. THIS IS THE SAME SOFTWARE AND RULES USED FOR THE BAR EXAM. IF YOU ARE HANDWRITING THE EXAM YOU WILL BE GIVEN A SCRAP BLUEBOOK FOR OUTLINE, THOUGHTS, ETC. THE SCRAP BLUEBOOK MUST BE TURNED WITH YOUR EXAM!**

**IF YOU ARE HANDWRITING YOUR EXAM, ALL ANSWERS MUST BE IN THE BLUE BOOK.**

**YOU MUST HAVE YOUR STUDENT ID# ON BOTH BLUEBOOKS, YOUR EXAM ANSWER BLUEBOOK AND YOUR SCRAP BLUEBOOK. FAILURE TO TURN IN THE SCRAP BLUEBOOK WILL RESULT IN A F ON YOUR MIDTERM. ONLY USE YOUR STUDENT ID, DO NOT WRITE YOUR NAME ANYWHERE!!**

**INSTRUCTIONS:**

1. Your answers must be typed in the Examsoft software or handwritten in the provided bluebooks. **If handwriting only write on ONE side of the page.** If handwriting your exam all answers must be in the blue book with your **student ID number.**

1. Do not identify yourself in your answer in any way other than by student ID. Do not write any information that might reveal who you are.

1. This is a closed book examination. The AI in examsoft is very sophisticated and will flag when it feels you are “cheating.” If flagged I will review your exam and make a decision.

This exam consists of THREE parts for a total of 312 points and will count towards your final semester grade. The total time for the exam is 3 hours unless you have an accommodation. Those who have an accommodation will get the appropriate extended time. I will give a 15-minute warning, 5 minute warning and finally a 1-minute warning. Once the 15-minute warning is given you must remain in your seats until the exam is finished. If you finish before the 15-minute warning you are free to leave. Leave as quietly as possible. Have respect for your fellow classmates. If your phone goes off during the exam you will receive an F.

Part one consists of 10 definitions worth 5 points each.

Part two consists of 14 short fact patterns worth 10-30 points each.

Part three consists of 15 multiple choice questions worth 3 points each.

**IF ANY OF THE INSTRUCTIONS ARE NOT FOLLOWED YOU WILL RECEIVE A ZERO ON THE EXAM.**

**GOOD LUCK.**



**PART ONE: DEFINITION/FILL IN THE BLANK. WRITE THE COMPLETE RULE OF LAW. BE SURE TO READ THE QUESTION CAREFULLY AND ANSWER APPROPRIATELY.**

**1. What is the Model Penal Code rule of law for Kidnapping?**

**1. Write the M'Naughten Test**

**1. What is the Common Law rule for Robbery?**

**1. Write the Insanity Test.**

**1. What is the rule Entrapment?**

**1. What is Common Law Rule Conspiracy?**

**1. What is the Substantial Step Test?**

**1. What is the Common Law Rule Involuntary Manslaughter?**

**1. What is the Self Defense Rule for the use of deadly force?**

**1. What is the defense of Duress?**

**Question #: 2**

**PART II: SHORT ANSWER FACT PATTERNS**

**PART II CONSISTS OF QUESTIONS IN THE FORM OF HYPOTHETICALS, EACH OF WHICH DESCRIBES A SITUATION FROM WHICH A PARTICULAR CRIMINAL CHARGE(S) IS LIKELY TO BE BROUGHT AND WHICH IS, THEREFORE, GOVERNED BY A SPECIFIC RULE OF LAW. EACH QUESTION REQUIRES THAT YOU IDENTIFY THE RULE OF LAW OR LAWS THAT WILL CONTROL THE RESULT AND WILL REQUIRES A SHORT ANSWER WRITTEN IN THE FOLLOWING FORMAT:**

**IRAC! STATE THE ISSUE, THEN WRITE THE RULE OF LAW, FOLLOWED BY A FULL ANALYSIS, AND FINALLY YOUR CONCLUSION. ANSWER IN PARAGRAPH FORM!**

**READ THE CALL OF THE QUESTION AND ANSWER ACCORDINGLY! IF THE CALL DOES NOT STATE EITHER “COMMON LAW” OR “MODERN VIEW” YOU MUST ADDRESS BOTH.**

**IF YOU DO NOT ANSWER THE CALL OF THE QUESTION YOU WILL LOSE POINTS.**

**Question 1. 15 points**

**Tiny was Six Foot Five and weighed 300 pounds. One afternoon Tiny was wandering rather aimlessly and became lost in an unfamiliar part of the city. He reached into his pocket and discovered he only had a dollar and 50 cents. He wanted to take a bus back to the city center, but bus fare was \$3.00 per ride. Tiny was looking ragged with unkempt hair and had on dirty sweats. Tiny approached Howard, a short slightly built man who was standing alone at the bus stop. In a gruff voice, Tiny asked Howard, “Do you have any money?” When Howard replied, “Yes,” Tiny said, “Give me five dollars!” Howard reached into his pocket and handed Tiny a five-dollar bill. Howard walked away from the bus and flagged down a passing patrol car. Howard told the police, “He took my bus fare,” and pointed out Tiny, who**

was still standing at the bus stop. Tiny claimed he was just begging for money to get back home.

What crime(s) can Tiny be charged under common law with if any, and what defense(s) are available to Tiny if any?

**Question 2. 15 points**

George joined the Van Buren gang. At a gang meeting and as part of the initiation process, Frank the Van Buren leader ordered George to kill Kruger, a member of a rival gang. George refused, saying he no longer wanted to be become a member of the Van Buren gang. Frank with the approval of the other gang members, told George that he had become to involved with the Van Buren's to quit and that they would kill him and his mother if he didn't kill Kruger. Frank was a notorious killer and liked to torture his victims before killing them. George frightened for his and his mother's life shot Kruger to death that night.

What is the most serious crime under common law that George could be charged with and what available defense(s) does George have, if any?

**Question 3. 20 points**

Mike had his friend Trevor over to his apartment to watch a football game. During the game they began arguing over whether it was Brady or Belichick who was more important. Mike had enough of Trevor and told him in no uncertain terms to, "Get the f.....out, you are a f.....moron!!" Trevor incensed by Mike's tone and language refused to leave and fearing Mike was going to punch him, walked into the kitchen, and grabbed a knife. Trevor stated, "You keep talking to me like that I'll slash you." Mike pulled a gun from under his recliner, walked carefully to the front door, opened it, and again told Trevor to leave. Trevor again refused to leave. Instead, Trevor walked slowly towards Mike, brandishing the knife in a threatening manner. Mike, rather than running out the door ( he could have escaped easily as he is in much better shape than Trevor) shot in Trevor's direction, intending

only to scare him. However, the bullet ricocheted and struck Trevor killing him instantly.

What is the most serious crime Mike could be charged with and what defense(s) does Mike have available?

**Question 4. 12 points**

Kevin, James, and Kyrie, who were in need of money, approached their wealthy Boss's secretary and asked her to put poison in his coffee because they would take over the company upon his death. The secretary agreed upon the condition she would stay on as secretary for them and get a bonus of \$50,000.00. After Kevin, James, and Kyrie agreed to the secretary's demand the secretary placed arsenic in the boss's coffee. She handed the boss the coffee and went back to her desk. About fifteen minutes later she went into the boss's office and found him dead from the poison.

It was later learned that Kyrie as usual decided it wasn't a good idea to kill the boss. He left a note for Kevin and James telling them he had changed his mind.

Discuss which inchoate crimes under common law were committed and available defenses if any.

**Question 5. 30 points**

Kim learned that her boyfriend, Dave, had been cheating on her with Michelle, who was Kim's sister. Angry and upset with both Dave and Michelle, Kim decided to have her revenge by making both of them pay or humiliating her.

Kim found out that Dave and Michelle would be out later that evening. At that time she snuck over to Michelle's house intending to set the place on fire.

Kim who had a spare key to Michelle's house (in case Michelle lost hers) used it to open the back door and gain access. Once inside she began

splashing kerosene on the walls, the floor, the ceiling and the stairs leading up to Michelle's bedroom. Just before throwing a lit match she said, "I hope this house burns to the ground, you bitch!" With that Kim threw the lit match and within seconds the house was engulfed in flames.

(Before going to Michelle's house Kim drank a fifth of Peach Schnapps.)

Kim then drove to the restaurant at which Dave and Michelle were having dinner, where she waited outside for a couple of hours until Dave and Michelle came out. When they finally emerged from the restaurant holding hands and acting amorously. Kim became enraged and ran up to them and pointed an unloaded gun at them, which frightened the dickens out of them. Kim then forced Dave and Michelle into a nearby shipping container loaded onto a shipping vessel, which was scheduled to head out of country. Kim left and yelled, "Have a nice life in Panama, you cheating scumbags!"

(While waiting for Dave and Michelle to come out of the restaurant Kim had smoked some weed to pass the time.)

Discuss what crime(s) (modern view) Kim committed and her available defenses if any.

Question 6. 10 points

Bautista after a hard day at work went to his favorite pub for a couple of beers. Bautista had one beer and realized it was his girlfriend's sister's birthday and they were all going out to dinner. As he walked outside the bar he saw two guys severely beating up another guy with their fists. Bautista a formidable foe and not one to back down from a confrontation sprang into action and gave the two guys a beat down. The stranger who had a broken nose and other facial injuries thanked Bautista and left.

If Bautista is criminally charged with the common law crime of battery are there any affirmative defenses he can successfully raise?

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**Question 7. 15 points**

**Flounder and Pinto are fraternity brothers. One Saturday afternoon the two begin arguing over whose turn it is to make the beer run. Pinto is enraged because Flounder always finds a way of backing out. After a few minutes they are in each other's face screaming obscenities when Pinto tells Flounder, "The only reason your in this fraternity is because you're a legacy and no one wanted you in the fraternity, you useless fat slob!!" Enraged Flounder pushes Pinto who falls backward hitting his head on the bumper of the car opening up a huge gash.**

**Flounder scared takes off and hides. Luckily, D-Day was outside and saw what happened, D-Day rushes Pinto to the campus doctor who stitches Pinto up and releases him. However, the doctor did not check Pinto's records because if he had he would've seen that Pinto is a hemophiliac and would have kept him under observation. Pinto winds up bleeding out and dies.**

**(Assume that common law principles are applicable in this jurisdiction.)**

**What common law crime(s) has Flounder committed if any and any defenses available.**

**Question 8. 20 points**

**Humpty who spent all of his Humpty Dance money is being evicted out of his East New York Penthouse apartment along with his wife and son (little humpty.) Strapped for cash Humpty decides the only way not to have his family be homeless is to sell crack cocaine. However, East New York's crack is run by Tone Loc who has a propensity for violence and kidnapping family members of anyone infringing on his turf.**

**Humpty thinks it's worth the risk and sells crack on Tone's turf. Well Tone finds out, kidnaps Little Humpty and tells Humpty, "If you want your kid back, you need to make reparations. You're going to rob Tiffany's tomorrow or I'm going to start cutting off Little Humpty's fingers." Humpty petrified for**

his son's safety does in fact rob Tiffany's and is caught in the act and charged with robbery.

Humpty spills his guts to the NYPD about selling drugs on Tone Loc's turf. To his dismay the NYPD also charge Humpty with distribution of narcotics.

Discuss fully FIRST any defense(s) that Humpty can use for the robbery charge and will it be successful (full analysis on why or why not) and THEN discuss any defense(s) to the distribution of narcotics charge and will it be successful why or why not. Discuss the modern view.

**Question 9. 10 points**

A gangster and two of his friends were members of a teenage street gang. While they were returning from a dance late one evening, their car collided with a car driven by an elderly woman. After an argument, the gangster attacked the elderly woman with his fists and beat her to death. The two friends watched, and when they saw the woman fall to the ground they urged the gangster to flee. The gangster was eventually apprehended and tried for manslaughter but the jury could not decide on a verdict.

If the gangster's companions are subsequently tried as accomplices to manslaughter, they should be found: Circle One or type the correct answer.

**GUILTY or NOT GUILTY**

Recite the applicable rule of law according to the MODERN VIEW and apply it to the facts to support the conclusion you reached in your answer above.

**Question 10. 10 POINTS**

Sandy left a bar extremely intoxicated and decided she only live a mile away so she would drive home. While driving home Sandy was driving with her hands at ten and two on the steering wheel, wearing her seatbelt, and staying within the speed limit. However, she did cross the double yellow line a couple of times. When she approached the only light in between the bar and her house the light turned red. She came to complete stop before the cross walk, when the light turned green she proceeded through the intersection in a safe and reasonable manner as she got about three quarters of the way through the intersection a car driven by Jerry was

traveling at an excessive speed because he was late for his overnight shift. Jerry struck Sandy's vehicle and he was instantly killed. Sandy only suffered minor cuts. The officer on the scene noticed Sandy's intoxication and gave her the Breathalyzer test, in which she blew a .20, which is over two times the legal limit in this jurisdiction.

Sandy was charged with involuntary manslaughter, she should be found:  
Circle One or type the correct answer.

**GUILTY or NOT GUILTY**

Recite the applicable rule of law according to **COMMON LAW** and apply it to the facts to support the conclusion you reached in your answer above.

### **Question 11. 15 points**

El Chapo on his release from prison is approached by Michael Corleone ( who is now a Boston detective,) about getting back in the "game." El Chapo knows of Corleone's connections and knows he can make good money and regain his seat as head of the Cartel. However, El Chapo is cautious and passes on the offer as he just got his freedom back.

About a month later Corleone again reaches out to El Chapo. This time Corleone tells him they need someone with El Chapo's connections and know how to expand the business. El Chapo now tired of living off McDonald's and living in a one-bedroom cockroach infested apartment agrees. He knows he can take the business to the next level.

Corleone sets up the sting and El Chapo is arrested for intent to distribute narcotics.

What defense(s) does El Chapo have available if any and explain if the defense(s) will be successful or unsuccessful.

### **Question 12. 10 points**

Mrs. Jones was suffering from ALS, which made her incapable of caring for herself. Mrs. Jones was living with her daughter Pam, who as her durable power of attorney was receiving Mrs. Jones Social Security benefits, retirement benefits, and had access to Mrs. Jones Checking and savings account. They were also living in Mrs. Jones house.



**Pam, however, could barely take care of herself and neglected her mother. She hadn't bathed Mrs. Jones in over a month and kept the heat off in the upstairs bedroom where Mrs. Jones was bedridden. During a wellness check it was discovered that Mrs. Jones had passed. An Autopsy revealed that she had bedsores, was dehydrated, near starvation, and hypothermic. These conditions all contributed to Mrs. Jones passing. Pam had no intentions of hurting her mother never mind killing her.**

**Pam is charged with involuntary manslaughter at common law. What result and why?**

**Question 13. 15 points**

**Peter and Joe are partners who collect debts for the mob. They agree to collect a gambling debt that Cleveland has with local mob boss Quagmire. However, Joe has had it with Peter's shenanigans, hopes that Cleveland pounds Peter when he tries to collect the debt and has no intention of helping Peter collect the debt. Peter and Joe go to a local bar that Cleveland hangs out at and regularly places his bets. Peter's plan is to break Cleveland's kneecap. Cleveland isn't there and Peter and Joe start asking questions. The bartender laughs and says, "Good luck, the last guys to mess with Cleveland wound up in the hospital for a month. Cleveland is in fact an undercover officer and when Peter attempts to break his kneecap to collect the money, he is arrested. Peter spills his guts stating Joe helped him with the plan to break Cleveland's kneecap and collect the money.**

**Discuss fully what crime(s) Peter and Joe have committed and what if any defenses they may raise.**

**Question 14. 20 points**

**Slim Shady was arrested and arraigned on charges of Burglary, Robbery, and aggravated assault. While sitting in his jail cell Slim Realized that Pauli Walnuts, an undercover Cop, was a rat.**

**Out on bail, Slim realized the only way he could possibly stay out of jail was by preventing Walnuts from testifying. Slim came up with a plan to go to Walnut's house, and to set it on fire while Walnut's was sleeping.**

**Slim got in his car, drove to Walnut's house and then drove around the block a few times to watch Walnut's house. Inside Slim's car was a rag, a book of matches, a can of gasoline, a crowbar, and lock picks. Slim was also carrying a switchblade on his person. Just as Slim was about to strike the match and light the rag on fire which he had previously soaked in gasoline, he was stopped by the police and arrested.**

**After Slim had been arrested it was learned that just before the police stopped Slim he was about to abandon his plan because he thought the police would discover him.**

**Applying both the "Common Law Approach" and the "Model Penal Code's Substantial Step Approach," is Slim criminally liable for the crime of Attempt; and does he have any available defenses?**

### Question #: 3

Multiple Choice. If you are handwriting your exam simply CIRCLE the correct answer. Exams often follow those instructions. While out in Las Vegas on a bachelor party in May, Dave, who is 21 and not married, is having the time of his life. While in Vegas, what happens in Vegas stays in Vegas. While sitting at a slot machine Dave hits a jackpot for \$25,000.00. He is approached by a “lady of the night, Summer,” Summer tells Dave, “Let’s go have a good time.” They go up to Dave’s room where they have consensual sex. The Lady of the night looks to be around 30 and Dave was excited to have sex with an older woman and an exotic beauty. However, Summer was in fact only 17 and the age of consent in this jurisdiction is 18. Summer was three weeks away from her 18th birthday. Dave is charged with statutory rape. What is the best defense available to Dave if any?

- A. Consent. Summer, is a lady of the night and has sex for money.
- B. Entrapment. Summer approached Dave and told him let’s go have a good time.
- C. Mistake of fact. Dave honestly and reasonably believed Summer to be around 30 years old.
- D. No defense.

**Question #: 4**

Howard was supposed to be out-of-town on a three-day business trip. Because he completed his business more quickly than expected, he flew home on Wednesday night instead of Thursday afternoon. Howard arrived home and let himself into the house. He heard noises from the bedroom and, upon investigation; Howard was shocked to find his wife, Chastity, in bed with Nick, his best friend. Nick dressed quickly and took off out the back the door. Howard screamed a number of epithets at Chastity and then told her, "Nick's going to pay for this! Get me a drink! It will give me the steadiness to do what I have to do to avenge my honor." A frightened Chastity brought Howard a bourbon and water. Howard drank it quickly and demanded yet another drink. After consuming several more drinks, Howard unlocked the closet, pulled out a rifle, and loaded it. He then set off for Nick's house. Howard arrived at Nick's about 10 minutes later. Nick forgot to lock his front door, so Howard walked in. He found a trembling Nick in the living room, and Howard pointed the gun at him. Nick immediately began apologizing, blaming the affair on Chastity, and pleading for his life. Howard stood silently listening to Nick, but he kept the gun trained on his erstwhile friend. Suddenly, Nick pulled a switchblade knife from his pocket. As the metal flashed, Howard fired a single gun shot at Nick. The bullet struck him in the middle of the forehead and Nick died instantly. Howard set the gun down, fell to his knees, and began crying. A neighbor who heard the shot reported it to the police. They arrived a few minutes later and found a distraught Howard muttering about losing a friend and a marriage in one night. Howard can be convicted of:

- A. Murder.
- B. Manslaughter, because Howard was still distraught over finding Nick in bed with Chastity.
- C. Manslaughter, because his intoxication prevented Howard from having the requisite intent for murder.
- D. No Homicide crime, because Nick was about to attack him with a knife. He had a right to self-defense.

### Question #: 5

Questions 3 and 4 are based on the following fact pattern: Kuegler, who had a long list of petty crimes to his credit, cased the Jaymart Department Store for a week. He noticed that a display case containing very expensive watches was near one of the store's exit doors. He planned to steal the watches by setting a diversionary fire in a trash basket, hoping that this would distract the store security personnel long enough for Kuegler to break the glass covering the watch case, grab the watches, and run out the nearby exit. Kuegler knew that the store had an automatic sprinkler system that would promptly douse the fire, but his purpose was merely to create a distraction rather than to cause any damage to the building. One afternoon at 2:30 p.m., Kuegler entered the Jaymart. He advanced to a trash barrel and poured some lighter fluid onto the trash. He threw the lighter fluid can into the barrel and tossed in a match after it. The lighter fluid immediately caused a long flame to rise. The flame quickly charred the wall next to the barrel and blistered the paint on the surrounding area. No serious damage was done to the structure, because the sprinklers operated as designed and quickly put out the fire before it could spread. Kuegler made a dash toward the case containing the watches, but just as he was breaking the glass case, one of the store's security guards apprehended Kuegler and called the police. Kuegler was read his Miranda rights and taken into police custody. A statute in the jurisdiction extends the crime of arson to buildings other than dwellings. If Kuegler is tried for the crime of arson (modern view), the court should find him:

- A. Not guilty, because Kuegler did not intend to burn the building.
- B. Not guilty, because Kuegler's act was sufficient only for attempted arson.
- C. Guilty, because Kuegler's conduct demonstrated the requisite state of mind for the crime.
- D. Guilty, because Kuegler started the fire during the act of perpetrating another felony.

**Question #: 6**

Which of the following best describes the crimes, if any, of which Kuegler could be properly convicted (modern view)?

- A. Larceny only
- B. Larceny and attempted arson.
- C. Attempted Larceny and arson.
- D. None of the above.

**Question #: 7**

Parafun, Inc. manufactured and sold parachutes for use by sport skydivers. The corporation's product development committee selected a design for a parachute submitted by Silk, one of Parafun's three professional designers. The chute was placed on the market, with the warning, "This parachute should be discarded after 150 jumps." Parafun's market researchers had established that the usual practice among sport skydivers was to discard a parachute after 100 jumps. After the design had been approved and the product was successfully manufactured and marketed, Silk took several of the parachutes to an independent stress analysis laboratory. The scientists tested the chutes and concluded that there was a 1% failure rate on the chutes for jumps 100 through 150, because the center of the parachute might tend to collapse because of a design defect. Silk did not report this problem to his superiors at Parafun, because he feared he would be fired. Several months after Silk received the testing report, Airborne, a sport skydiver, used one of the chutes designed by Silk and manufactured and sold by Parafun. Airborne's use was the 115th jump for the chute. When Airborne leaped from the plane, the chute opened properly, but halfway down, the center of the chute collapsed inward. Airborne hurtled to the ground to his death. An investigation established that Silk knew of the design defect. If Parafun is charged with manslaughter, the verdict should be:

- A. Guilty, because Silk was Parafun's employee and he designed the instrumentality of death.
- B. Guilty, because Airborne died as a result of the failure of a product manufactured and sold by Parafun.
- C. Not guilty, because a corporation cannot be found guilty of manslaughter.
- D. Not guilty, because there was only a 1% chance of parachute failure.

**Question #: 8**

A husband and wife took their 12-year-old son to a political rally to hear a controversial speaker. The speaker was late, and the wife stepped outside to smoke a cigarette. While there, she saw a man placing what she believed to be a bomb against a wall at the back of the building. She went back inside and told her husband what she had seen. Without alerting anyone, they took their son and left. Some 20 minutes later, the bomb exploded, killing eight persons and injuring 50. In the jurisdiction, murder in the first degree is defined as an intentional homicide committed with premeditation and deliberation; murder in the second degree is defined as all other murder at common law; and manslaughter is defined as either homicide in the heat of passion arising from adequate provocation or a homicide caused by gross negligence or reckless indifference to consequence. As to the deaths of the eight persons, what crime, if any, did the wife commit?

- A. Manslaughter
- B. Murder in the first degree
- C. Murder in the second degree
- D. No crime



**Question #: 9**

During an altercation between two men at a company picnic, the victim suffered a knife wound in his abdomen and the defendant was charged with assault and attempted murder. At his trial, the defendant seeks to offer evidence that he had been drinking at the picnic and was highly intoxicated at the time of the altercation. In a jurisdiction that follows the common-law rules concerning admissibility of evidence of intoxication, the evidence of the defendant's intoxication should be:

- A. Admitted without limitation
- B. Admitted subject to an instruction that it pertains only to the attempted murder charge.
- C. Admitted subject to an instruction that it pertains only to the assault charge.
- D. Excluded altogether.

**Question #: 10**

The defendant, 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. Which of the following is the best theory for finding the defendant 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 intent to kill but with disregard of the consequences.

**Question #: 11**

Sarah and Jenny hated Doug and agreed to start a fight with Doug and, if the opportunity arose, to kill him. Sarah and Jenny met Doug in the street outside a bar and began pushing him around. Liz and Jesse, who also hated Doug, stopped to watch. Liz threw Jenny a knife. Jesse told Jenny, "Kill him." Sarah held Doug while Jenny stabbed and killed him. On a charge of murdering Doug, Jesse is:

- A. Not guilty, because her words did not create a "clear and present danger" not already existing.
- B. Not guilty, because mere presence and oral encouragement, whether or not she has the requisite intent, will not make her guilty as an accomplice.
- C. Guilty, because, with the intent to have Jenny kill Doug, she shouted encouragement to Jenny.
- D. Guilty, because she aided and abetted the murder through her mere presence plus her intent to see Doug killed.

**Question #: 12**

After three years of marital discord, a police officer left his wife and moved in with his best friend. A week later, the police officer discovered to his shock that his friend was having an affair with his wife. The police officer immediately moved out of his friend's house. Determined to get back at his friend for his betrayal, the police officer decided to steal his friend's valuable coin collection and anything else he could carry. On a night that he believed that his friend would be out with his wife, the police officer sneaked into his friend's house and snatched the coin collection from his friend's desk. However, the police officer then heard a noise from upstairs. Knowing that his friend had a gun, the police officer dropped the coin collection and ran into the garage. He knew that his friend kept the keys in the ignition of his car, so he jumped into the vehicle, intending to drive it to a more central location, park it, and then hail a taxi. If the police officer is charged with stealing his friend's car, he will likely be found

- A. Guilty, because he used the car to flee the scene of a felony.
- B. Guilty, because he took the vehicle without permission.
- C. Not guilty, because leaving the keys in the car is implied consent.
- D. Not guilty, because he merely intended to use it to escape.

**Question #: 13**

A defendant, in desperate need of money to pay for an operation for his daughter, decides he has no choice but to steal it. He goes to a very busy restaurant at closing time, opens his coat, and shows the restaurant owner a contraption that looks very much like a bomb but is actually just a bunch of tubes taped together with wires poking out. When the owner backs away in fear, the defendant grabs all the money in the cash register and leaves. Of what common law offense is the defendant guilty?

- A. False pretenses.
- B. Larceny by trick.
- C. Robbery.
- D. Extortion.

**Question #: 14**

A young man is a heroin addict and alcoholic. Not a day goes by that the young man doesn't use heroin and become completely intoxicated by noon. He supports his lifestyle through various criminal ventures. Sometimes, he sells heroin and keeps part of what he is supposed to sell. Normally, however, he makes runs from one state to another with large quantities of heroin and cocaine for the heads of a criminal cartel. One day, the young man is in dire need of a heroin fix and is feeling extremely sick as a result. However, he cannot get any drugs because the Drug Enforcement Agency has just seized a large shipment from the young man's usual drug connection, and many of the higher-ups in the criminal organization that sold the drugs are now incarcerated and unable to make bail. Desperate for heroin, the young man goes to a bar that he knows opens early and usually has few, if any, customers in the early morning. The young man arrives at the bar at 10:45 a.m. The sign on the door says that the bar is open from 12 p.m. to 1 a.m., but the door is wide open, and the bartender is alone inside. The young man enters the bar, with his nephew's realistic-looking water pistol tucked into the back of his waistband, intending to commit robbery. However, when the bartender asks if he can help him, the young man chickens out and turns to leave. What is the likely outcome if the young man is charged with burglary in a jurisdiction that follows the modern construction of the crime?

- A. Guilty, because he entered before the bar was open for business.
- B. Guilty, because he entered the bar with the intent to commit a felony therein.
- C. Not guilty, because the bar was not a "dwelling place."
- D. Not guilty, because the bar was open to the public.

**Question #: 15**

An engineer lived near the college campus of his alma mater. He had been a member of a fraternity in his days as an undergraduate student, and he often went back to the house to party with the fraternity brothers. The engineer remembered what it was like to be a broke college student, and he got in the habit of lending money to the brothers. One night after a social at the house, a pledge of the fraternity approached the engineer and asked him if he could borrow \$500 for textbooks. The engineer was reluctant to lend this much money, but agreed if the pledge could provide some collateral. The pledge gave the engineer his diamond-encrusted money clip, which was inherited from his great-uncle. The engineer accepted and told the pledge he had to repay the loan with 60 days. The engineer did not see the pledge at all for the next 50 days and learned that he had failed out and had left campus. The engineer figured he would never see the pledge again, so he sold the money clip on the Internet for \$5,000. On the 58th day after borrowing the money, the pledge returned with the \$500 and asked for his money clip. The engineer told him he had been robbed, and the money clip was taken in the robbery. He told the pledge to keep the \$500 and offered him an additional \$500 in restitution for the money clip. Of which crime could the engineer rightfully be convicted?

- A. Embezzlement.
- B. Larceny.
- C. Larceny, but only if the money clip was worth more than \$1,000.
- D. Embezzlement, but only if the pledge did not accept the engineer's offer of restitution.

**Question #: 16**

For the past three weeks, a shopkeeper has been actively protesting the construction of a major overpass in his small town. Every day, he blocks traffic and yells disparaging remarks at the drivers who are "sacrificing their hometown just so they get to work quicker." A driver and a passenger who regularly carpool to work have grown frustrated with the shopkeeper and at having to leave for work 30 minutes early because of the traffic delays he has caused. One morning as they are driving past the shopkeeper's regular location, the shopkeeper spits at them through the open window of the car. The passenger manages to duck, but the driver is spattered with the shopkeeper's saliva. If the shopkeeper is charged with the assault of the passenger, he will likely be found

- A. Guilty, because the shopkeeper committed battery.
- B. Guilty, because the shopkeeper tried to spit on the passenger.
- C. Not guilty, because the shopkeeper was exercising his right to protest.
- D. Not guilty, because the shopkeeper did not physically threaten the passenger.



**Question #: 17**

The State of Madison has enacted a statute providing that (1) first degree murder is "a deliberate and premeditated killing"; (2) second degree murder is "an unlawful killing with malice aforethought"; and (3) manslaughter is "either an unlawful killing committed with adequate provocation or an unlawful killing committed through criminal negligence." A worker, a resident of the State of Madison, is distraught over his recent dismissal from his job, which he had held for 20 years. The day following his dismissal, the worker returns to his former employer's place of business with two loaded handguns. The worker enters the building and confronts the owner of the business. Waving the two handguns around indiscriminately, the worker shouts, "You'd better give me my job back, or I'm going to start shooting!" Concerned for the safety of her employees and customers, the owner dives at the worker in an attempt to disarm him. As the owner tackles the worker, one of the handguns hits the ground and discharges. A customer is shot and killed. The worker is guilty of

- A. First degree murder.
- B. Second degree murder.
- C. Manslaughter.
- D. No crime.