

General instructions

This is a closed book exam. Do not speak with any person other than the faculty member who is administering this exam until you have turned in your exam. Do not remove any exam materials, questions, or blue books from the room during the exam. After you complete the exam and turn in your blue books, you may take the questions with you when you exit the room.

The exam consists of two parts. You will have three hours to complete the exam. Recommended times are indicated for each part. Answer all questions.

Identify yourself on your blue books only by your exam number. By placing the exam number on your blue book and by submitting your blue book for credit, you are agreeing to the following pledge (as required by law school policy):

"On my honor I have neither given nor received improper assistance. And I will report any improper assistance that I am made aware of."

Do not assume any additional fact or law, except those laws studied in the course, without stating explicitly your assumption and explaining why such additional information is necessary for your answer.

PART I. SHORT ANSWERS (120 minutes for this part--or an average of ten minutes for each question)

Instructions. Write a coherent, literate response to each of the following problems. Each problem in this part can be answered adequately with a response that is no longer than one paragraph. Answers longer than 150 words will receive half credit.

1. Karl Killer, vengeful critic of the rock group ReDDeatDmeat decided to disrupt the group's concert. He bought a back row seat and brought a gun to the concert.

At the end of the groups's first song, Killer began shooting at the light fixtures on the stage. Terrified, members of the audience rushed to the exit doors. All escaped unhurt except for two persons who fell down and were trampled by the crowd. One of these, Vickie, was crushed to death. A second, Victor, was injured so severely that he was hospitalized for three months and is permanently disabled.

In a jurisdiction that follows the common law, Killer was convicted of the murder of Vickie and attempted murder of Victor. He has appealed the murder and attempted murder convictions arguing that there is insufficient evidence to support either. Please rule on the appeal and explain.

2. Same facts but the jurisdiction follows the Model Penal Code. Please rule on the appeal and explain.

3. In Mississippi Sally Stuper, a twenty-two year old female, threw a party one night. She invited all her friends, most of whom she knew were under the legal drinking age of twenty-one. At the party Stuper served alcoholic drinks to all her friends including Baker. Baker was nineteen. When Baker refused a third alcoholic drink, Stuper made fun of him and demanded, "What's the matter? Too big a sissy to hold your liquor?"

As a result of Stuper's taunts, Baker continued to drink. At about midnight, Baker who had become extremely intoxicated, announced that he was too drunk to drive and asked if anyone could give him a ride home. Again Stuper made fun of Baker and urged him to drive. Stuper assured Baker he was not too drunk, and she said, "Only chickens and children are afraid to drive drunk."

As a result, Baker got in his car and drove onto the road where he crossed over the center lane and collided with an oncoming car. Both Baker and the driver of the oncoming car were killed.

You are working for District Attorney Jim Hood who tells you he is thinking of charging Stuper with aggravated DUI as either a principal or accessory before the fact. He asks you if he can anticipate any problems with such a case. Please advise and explain.

4. Same facts. But the district attorney asks whether he should charge Stuper with conspiracy under the Mississippi statute on the theory that she conspired with Baker to violate the DUI law. Please advise and explain.

5. Police Officer Goode observed Skuzz Bagg sitting on a bench in a park near a playground frequented by young children. Bagg was holding a small brown bag on his lap. Officer Goode became alarmed because he knew Bagg was a thirty-year-old male who had been convicted several times of sexual offenses against young children.

When Officer Goode asked to see what was in the bag, Bagg opened it to reveal a bag of chocolate candy and photographs of naked children. When Officer Goode asked to see Bagg's identification, Bagg showed him a photo identification card that indicated that Bagg was allergic to several substances including chocolate. When asked what he was doing in the park, Bagg replied, "Minding my own business."

You are working for the district attorney. Your state follows the Model Penal Code. The Code criminalizes as sexual assault any sexual contact with a person less than 10 years old and any sexual contact with a person less than 16 by a defendant who is four years older. The Code defines sexual contact as "any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire."

Officer Goode has called the District Attorney on his cell phone from the park and is asking whether he should arrest Skuzz Bagg for attempted sexual assault. The District Attorney asks for your advice. Please explain.

6. Victor Vicious and Debbie Debbs were the lone survivors of an airplane crash in the Pacific Ocean. Both managed to swim or float to a tiny uninhabited island. They secured shelter in a small cave on the island and found fruit, turtles, and birds to eat.

Vicious was six feet four inches and weighed 250 pounds. Debbs was five feet two inches tall and weighed 110 pounds. After one week, Vicious told Debbs that since they were stuck together, they should "make the most of it." He then tried to kiss her. Debbs found Vicious repulsive and politely refused. At this Vicious became violent and struck Debbs in the face. He asserted, "From now on you will be my slave. You will do all the

work on this island. And if I want to have sex we will."

From that day on, Vicious carried a four foot long sharpened stick at all times. He forced Debbs to do all the work on the island. If she was slow in preparing a meal or completing a task, Vicious would hit her or poke her with the stick. Although he did not rape her, he repeatedly threatened to do so.

After two weeks Debbs was covered with cuts and bruises inflicted by Vicious, and she lived in constant fear that she would be raped. She began making secret plans to leave the island. Getting up before Vicious in the mornings, she collected driftwood, ropes, vines and material she found on the beach to make a raft.

When Debbs had almost completed her work on the raft, Vicious awoke early one morning and discovered her project. He immediately understood what her plan was. Furious, he tied her to a tree and beat her. He promised that he would kill her if she ever tried again to leave the island.

After this beating, Debbs decided to change her plans. She found a large plastic container on the beach. She filled it with fruit juice and let it ferment. When the juice had turned to wine, she offered it to Vicious. Vicious drank a large amount of the wine and lost consciousness. Debbs then bound him securely with rope.

When Vicious recovered consciousness he promised not to hurt Debbs again if she would untie him. When she refused, he threatened, "You are going to be sorry if you don't let me loose."

Debbs replied, "Don't go away." She then went for walk on the beach to think things over. After fifteen minutes she returned to the cave and stabbed Vicious to death with the stick Vicious had always carried.

Debbs has been charged with murder in a jurisdiction that follows the common law. She has moved to dismiss the indictment arguing that there is no evidence of malice. Rule on her motion and explain.

7. Same facts. Assume her motion was denied (rightly or wrongly). Debbs requests jury instructions on voluntary manslaughter. Explain whether the trial judge will grant her request.

8. Same facts. What defense or defenses should Debbs raise and what problems will she face?

9. Dufus Prankster liked to bother his neighbor Drake Dumbunnie. Prankster's latest scheme involved ringing Dumbunnie's doorbell around midnight and running away before Dumbunnie answered the door.

One night Dumbunnie opened the door holding a shotgun and

shouted out, "The next time I'm shooting."

The next night Prankster tied a dog, Fido, to a bush in Dumbunnie's front yard. Then he rang Dumbunnie's door bell and ran. Dumbunnie appeared at the door with his shotgun. When he heard Fido moving, he aimed the gun in the direction of the bushes and fired, shouting "Die you fiend!"

Fido died.

Fido belonged to Miss Kindlyheart not to Dumbunnie.

Dumbunnie has been charged in a Model Penal Code jurisdiction that has enacted the following statute:

Malicious mischief. A person is guilty of malicious mischief if he or she purposely or knowingly damages or destroys the property of another.

Dumbunnie has been convicted of malicious mischief and appeals arguing that he did not cause the destruction of the property because it was unforeseeable that the dog would be tied to the bushes and because Prankster was an intervening and superseding cause. You are clerking for the appellate judge who asks you how to rule on the appeal. Please advise.

10. Same facts. Dumbunnie has also been charged under laws modeled after the Model Penal Code with aggravated assault, which is defined:

A person is guilty of aggravated assault if he or she (a) attempts to cause serious bodily injury to another. . . or (b) attempts to cause. . .bodily injury with a deadly weapon.

Dumbunnie wanted to raise two defenses at trial. First, he wanted to argue that he could not be guilty of these crimes because no human being was anywhere near where he was shooting. Second, he wanted to argue that he honestly and reasonably believed that he was entitled to shoot trespassers in his yard who were harassing him.

The trial court excluded evidence on both these defenses and also refused defense instructions on these theories. Dumbunnie appeals.

You are clerking for the appellate judge who asks you how to rule on the two issues. Please advise.

11. On summer evening in Mississippi Officer Friendly stopped a car that was driving over the speed limit. There were three persons in the car. Able and Baker were in the front seats. Charlie was in the back seat. Before Officer Friendly could ask any questions, Able announced, "The gun and the body are in the trunk. I was there but I didn't do it. Charlie pulled the trigger."

Baker quickly added, "That's right. Charlie pulled the trigger. I was just the lookout."

Charlie said, "What's going on? These jokers just picked me up. I was hitchhiking."

A gun and dead body were found in the trunk. A smudged fingerprint on the gun has been analyzed. The state's expert has testified that the print does not belong to Able but may belong to either Charlie or Baker.

Charlie is being tried for murder in Mississippi. The facts set forth above have been admitted into evidence but no other evidence.

At the close of all the evidence, Charlie moves to dismiss the case because it is based on uncorroborated accomplice testimony. Alternatively, he requests instructions directing the jury to evaluate uncorroborated accomplice testimony with caution. Rule on his motion and respond to his request and explain.

12. Asa Fruitcake suffers from a number of diagnosed mental problems that have not responded well to treatment. He has a recurring delusion that he is Justice Scalia. Along with this delusion goes the conviction that whatever Fruitcake want to do (while he thinks he is Justice Scalia) is legal. Fruitcake also has impulse control issues. His body sometimes engages in activity that he does not want it to.

One day Fruitcake woke up believing he was Justice Scalia. He believed that he was legally required to kill Professor Kackrun, a teacher of Constitutional Law who has said unflattering things about Justice Scalia.

Fruitcake got a knife and went to Professor Kackrun's office. Professor Kackrun was working at his computer terminal with his back to the door. Fruitcake threw the knife at the professor's back and screamed, "Die, filthy beast." The knife missed Professor Kackrun and Fruitcake ran away.

Fruitcake has been charged with attempted murder in Mississippi. His lawyer Fred McGavran has raised the insanity defense and presented two experts. One opined that Fruitcake could not tell right from wrong when he attacked the victim. The second opined that Fruitcake probably knew killing was wrong but was unable to control his impulse to kill. The state's expert opined that Fruitcake suffered from only a slight personality disorder; he concluded that Fruitcake was fully capable of telling right from wrong and controlling his conduct.

Defense counsel has requested the following jury instruction:

The state must prove beyond a reasonable doubt that the defendant was sane at the time of the offense of attempted murder. In order to prove the defendant sane, the state must prove beyond a reasonable doubt that at the time of the commission of the attempted murder the defendant had the mental capacity to distinguish between right and wrong with reference to the acts he committed and to conform his conduct to the requirements of the law.

You are clerking for the trial judge who asks whether the requested instruction accurately states the law. Please explain.

PART II. ANALYTIC ESSAYS (60 minutes)

Instructions. Write a coherent, literate essay in the Blue Book that responds to the following problem. Answers over 650 words will receive half credit.

The Case of the Dastardly Deed (60 minutes)

Nineteen-year-old Dan Dastard woke up one morning and decided to rob the Lamar State Bank in Lamarville, Mississippi. That afternoon he bought a handgun at a pawn shop. He did not have a hunting license or engage in any recreational activity that required the use of a handgun.

The next day Dastard drove to the bank, parked outside, and walked into the lobby. He carried the gun in his pocket with most of the handle sticking out and clearly visible. Dastard did not have a license to carry a concealed weapon. Nor did he have any account at the bank. In the lobby he wrote a message on a withdrawal slip that said, "Give me all your money before someone gets hurt."

He walked up to Tracie Teller, the only teller on duty, and presented her with the note. When she read the note Teller pleaded with Dastard not to rob the bank. She explained that she had just started to work at the bank and was afraid she would lose her job if she were robbed.

Dastard hesitated but then displayed the handgun and announced, "I'm not kidding."

At the sight of the gun Teller began to cry. She told Dastard that she was pregnant and she said that her husband was a police officer. She said her husband might beat her if she got robbed, and she sobbed, "Please go rob someone else."

In fact Teller had no husband and was not pregnant. While she was pleading with Dastard, she was activating a silent alarm system with her foot. The alarm system was connected to the local police department.

Dastard did not know that an alarm system was activated and did not know that the police were on their way. But he nevertheless decided to give up his robbery plan. At the beginning he had thought that being a robber would be cool. Instead he felt confused, embarrassed, stupid, and guilty.

Dastard stuck the handgun back in his pocket, ran back to his car, gunned the engine, and sped out of the bank parking lot.

One block from the bank, Dastard saw a man wearing a black sweatshirt running across the road. The man was directly in front of Dastard's car. Dastard sounded his car horn but did not slow down. He thought there was plenty of time for the man to cross the street. He was surprised when the man stopped in the road and appeared to point at Dastard. Dastard struck the man, who died immediately.

The dead man was Officer Friendly, a police officer on duty who was responding to the silent alarm from the bank. His black sweatshirt was labeled "Lamarville P.D." He was pointing a gun

at Dastard trying to effect an arrest at the time Dastard collided with Friendly and killed him.

Section 97-37-1 of the Mississippi Code provides:

(1) [A]ny person who carries, concealed in whole or in part, any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, slingshot, pistol, revolver, or any rifle with a barrel of less than sixteen (16) inches in length, or any shotgun with a barrel of less than eighteen (18) inches in length, machine gun or any fully automatic firearm or deadly weapon, or any muffler silencer for any firearm whether or not it is accompanied by a firearm, or uses or attempt to use against another person any imitation firearm, shall upon conviction be punished as follows:

(a) By a fine of not . . . more than Five Hundred Dollars. . . or by imprisonment in the county jail for not more than six (6) months, or both. . . for the first conviction under this section. . . .

(2) It shall not be a violation of this section for any person over the age of eighteen (18) years to carry a firearm or deadly weapon concealed in whole or in part within the confines of his own home or his place of business, or any real property associated with his home or business or within any motor vehicle.

The Mississippi robbery statute provides: "Every person who shall feloniously take the personal property of another, in his presence or from his person and against his will, by violence to his person or by putting such person in fear of some immediate injury to his person, shall be guilty of robbery." Miss. Code Ann. § 97-3-73.

Please evaluate Dastard's criminal liability under Mississippi state criminal law.