

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 (60 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.

1. Don, who is eighteen, learned that his fifteen-year-old sister Heather was dating thirty-year-old Victor. He ordered his sister to stop seeing Victor, but she just laughed at him and said, "We love each other and nothing can come between us."

Don decided to teach Victor a lesson. One afternoon, he obtained a realistic looking toy pistol and drove to Victor's house. He parked outside the house and waited for Victor to come home from work.

When Victor returned and was parking his car, Don approached, holding the toy pistol behind his back. When Victor opened the car door, Don displayed the toy pistol and announced, "I am Heather's brother. I want you to stop seeing her."

Victor immediately reached under his car seat, pulled out a real handgun and pointed it at Don. Don grabbed the gun in Victor's hand and the two struggled for possession of it. While they were struggling the gun discharged, killing Victor.

You are working for the prosecutor. She informs you that she is thinking of seeking a murder indictment against Don based on the theory that Don feloniously assaulted Victor and the killing occurred during the felony. She asks your advice. Please advise. Apply the common law.

2. Same facts. The prosecutor is worried that the defendant may raise a defense of self-defense and asks whether such a defense would be available. Please advise. Apply the Model Penal Code.

3. Same facts. The prosecutor is worried about proving causation in the event the jury finds that the trigger was actually pulled by the victim. She asks whether the trial court would give this instruction: "The law presumes an actor intends the results of his acts." Please advise. (If there is a difference under the common law or Model Penal Code, please explain.)

4. Slick Sick was videotaped writing the following notice on a bathroom wall in the West Jackson Mall in Mississippi:

"Call Zonker for good oral sex. \$10 for ages 15 and up. Half price for under 15."

Sick wrote a phone number under the sign.

Sick is nineteen years old. He claims he was extremely drunk at the time he

wrote the notice on the wall. He claims he has no memory of the event.

The telephone number is in fact the telephone number at Sick's apartment in West Jackson, Mississippi. Sick lives alone at the apartment.

You are working for the district attorney who brings this file to you. He asks your opinion about whether to prosecute Sick for attempted sexual battery. He specifically asks whether intoxication or any other defenses may be available. Please advise.

5. United States Attorney for the Northern District of Mississippi Jim Greenlee has taken you out for lunch for a job interview. He says, "As I recall the federal insanity defense is the same as Mississippi's. They both apply the good old M'Naghton rule the same way, don't they." Please answer.

6. Syd Striker was drinking at the local bar (in Mississippi) in mid April. Seated next to him was an off duty, undercover FBI agent named Agent Friendly. Striker did not know Friendly.

Striker said, "I hate paying taxes. The government is bleeding me dry. I would blow the IRS to smithereens if I could get away with it."

Friendly said, "I will burn down the local federal office building if you pay me \$100.00."

Striker said, "I'll pay you when I get my tax refund."

Friendly said, "Deal. I'll do it then."

The two shook hands.

Then Friendly arrested Striker.

Striker has been charged with conspiracy to commit arson of a federal building. He has also been charged with attempted bribery of a public official.

The relevant federal bribery statute defines public official to include "an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof." 18 U.S.C. § 201(a)(1). It further provides:

Whoever (1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official. . .to induce such public official. . .to do or omit to do any act in violation of the lawful duty of such official or person. . .shall be fined under this title for not more than three times the monetary equivalent of the thing of value. . .or imprisoned for not more than fifteen years, or both. . .

Id. § 201 (b)(1)&(4).

You have been appointed to represent Striker, and he asks if he is guilty or has any defenses available. Please explain.

## PART II. ANALYTIC ESSAYS (120 minutes)

Instructions. Write coherent, literate essays in the Blue Book that respond to the following problems.

### A. The Case of the Loser Lover (60 minutes)

John Loser dated Vickie Vickerson for three years. On March 30, 2004, Vickie's birthday, John gave her a CD by the master jazz saxophone player Lester Young. On March 31, John proposed to Vickie and gave her a valuable diamond ring worth \$10,000.

On April 1, Vickie sent John a letter that read:

Dear John, I have met someone new. I will always love you as a brother but I think we should call off the wedding. See you around.

John called Vickie to try to persuade her to change her mind. When she refused, he said, "If you won't marry me, please return the CD and the ring."

Vickie responded, "They are mine," and hung up.

John knew that Vickie usually removed the ring while she was in the shower, so he decided to sneak into her house to get the ring. One night he waited outside Vickie's house until the bathroom light went on and the bathroom window began to fog up from the shower. Then he forced open her door, went to the bedroom and began to look for the ring.

He could not find the ring, but he saw the Lester Young CD. He picked up the CD and held it in his hand.

When John could not find the ring in the bedroom he opened the bathroom door to look for the ring. Startled by the opening of the door, Vickie slipped in the shower. She cracked her head on the wall, lost consciousness and began to bleed. John was terrified and dropped the CD on the bathroom floor. He fled without either the CD or the ring. He returned home and tried to decide what to do. After waiting for forty-five minutes, John called the police and explained what happened.

By the time an ambulance arrived at Vickie's she had bled to death.

John insists that he thought he had the right to get the ring. Although the property law may not be completely settled in all jurisdictions, please assume for the purposes of this question that the birthday present, the CD, was an unconditional gift and that the engagement ring was a gift conditional on the marriage taking place under the property law in the jurisdiction where the events occurred.

Please evaluate John's homicide liability under the common law and under the Model Penal Code.

The Model Penal Code defines burglary:

A person is guilty of burglary if he enters a building or occupied structure . . . with purpose to commit a crime therein. . .

Model Penal Code § 221.1(1). The code defines robbery:

A person is guilty of robbery if, in the course of committing a theft, he [or she]:  
(a) inflicts serious bodily injury upon another. . .

Model Penal Code § 222.1(1). It defines theft:

A person is guilty of theft if he [or she] unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him [or her] thereof.

Model Penal Code § 223.2(1).

## B. The Case of the Phony Fan (60 minutes)

Lem Snopes hated the popular vocal ensemble the Dixie Dix, because the Dix had made disparaging statements about the President. When Snopes learned that the Dix were going to be giving a concert in Tupelo, Mississippi on July 4, he decided to disrupt the concert.

On June 30, Snopes went to the Fireworks Works, a store operated by Bub Varner. Snopes explained to Varner that he wanted something really loud with a short fuse because he wanted to throw it from the balcony during the Dix Concert.

Varner recommended a "Cherry Bomb Supreme," a kind of firecracker. On July 4, Snopes attended the Dixie Dix concert. At the end of the first song, Snopes lit the fuse of one of the firecrackers and threw it off the balcony.

The firecracker did not explode in mid air as Snopes expected. It exploded just as it hit the head of audience member Jon Goode.

When the firecracker exploded, a member of the audience screamed, "Someone has a gun. Run for your lives." As a result thousands of people rushed for the doors. In the rush, Sarah Burnhardt fell to the ground. She was kicked and stepped on by many members of the crowd.

Goode and Burnhardt were rushed to the hospital. Goode suffered serious burns to his face and partial loss of hearing in both ears. Burnhardt died from internal injuries resulting from trauma to her abdomen.

Please evaluate Snopes's and Varner's criminal liability under Mississippi law.