

Criminal Law § 2  
Final Exam

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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. You are the prosecutor in an indecent exposure case in Mississippi. The defendant pled not guilty by reason of insanity and introduced some evidence supporting the defense. After the close of evidence, the trial judge has shown you the jury instruction that she proposes to give to the jury. The proposed instruction reads as follows:

In order to find the defendant guilty of indecent exposure you must find that the defendant was not insane at the time of the alleged offense. To prevail on this defense the defendant must show by a preponderance of evidence that at the time of the alleged offense he or she was unable to know the nature and quality of his acts and was unable to know that what he or she was doing was wrong.

The judge asks you whether this instruction accurately states the law of Mississippi. Please explain.

2. Frank Fingers had too many beers at the bar and was refused more service. As he was leaving, he saw something sparkling on the floor and picked it up. He thought it was a fake diamond earring, and he put it in his pocket.

The earring was a real diamond earring valued at \$1200 that had been dropped by Stella Starr. Fingers was observed pocketing the earring. He was arrested and charged with a crime in the jurisdiction that follows the common law and has enacted the following statute:

Whoever commits theft of property of the value of five hundred dollars or more shall be guilty of the crime of grand larceny and sentenced to prison for five to ten years.

Fingers has come to you for advice. He swears he did not know what he was doing when he picked up the earring and wants to know if he has any defense to the charge. Please advise.

3. Karl Stuper and Ben Loser got drunk and decided to go to a sorority to shoot off their handguns. When they arrived at the sorority, they fired their guns into the air. Phyllis Phool appeared at one of the windows and said, "You guys missed. I'll bet you couldn't even hit the side of this building if you aimed right at it."

Stuper said to Loser, "Let's see if we can hit a couple of windows."

Loser replied, "Cool thing, Dude."

Stuper aimed at an empty window next to the one where Phool

had appeared, but he missed the building. Loser aimed at the same window but Loser missed and instead shot and killed Phool.

The events occurred in a jurisdiction that follows the Model Penal Code. Loser pled guilty to manslaughter. You are working for the prosecutor. He wants to know whether he should charge Stuper with the crime of attempted murder for firing the gun that did not cause death and with the crime of murder on the theory that he was an accomplice to Loser's criminal homicide.

Please advise and explain whether the facts support attempt or murder liability under the Model Penal Code.

4. Bart Badder was sitting at the Lamarville Bar in Lamarville, Mississippi. After his fifth whisky, he announced to the bartender, "I hate my wife and would kill her if I could get away with it."

The bartender was in fact Fred Friendly, an undercover police officer working for the Lamarville police as part of a program to apprehend underage drinkers.

Friendly wanted to establish a solid case against Badder, so he said, "If you will kill my wife, I will kill yours, and that way we can each have a solid alibi."

Badder, replied, "Good idea. It's a deal." And the two shook hands. Friendly then arrested Badder, read him his rights and took him to the Lamarville Police station where he is in the lockup.

The Lamarville city attorney has called and asks if there will be any difficulty in proving conspiracy and attempted capital murder under Mississippi law. Please advise.

5. Sly Slyme kidnapped Valery Engel. He took her into the woods and told her that he planned to have sexual intercourse with her whether or not she wanted.

Engel informed Slyme that she did not want to have sexual intercourse with him. She revealed that she was an undercover police officer. She told him that if he raped her he would have two choices. First, he could let her live, in which case she would make sure that he was convicted of rape and spent the rest of his life in prison. Second, he could kill her, in which case her fellow police officers would track him down and make sure he was convicted of murder.

After carefully examining the contents of Engel's purse, including her police badge and identification, Slyme decided to release Engel.

Explain whether Slyme is guilty of attempted rape under the Model Penal Code.

6. Same facts. Explain whether Slyme is guilty of attempted rape under Mississippi law.

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 Bad Turkey Hunter (60 minutes)

Don Davidson went turkey hunting on October 1. He did not know that his hunting license had expired. He believed that the turkey hunting season did not open until November, but he wanted to get the birds early. In fact turkey hunting season opened on October 1.

After looking for game in vain for much of the day, Davidson approached some bushes where he thought he heard turkeys. He took careful aim at the bushes and fired.

When Davidson looked into the bushes he found the bleeding, motionless body of Vic Vickers. Davidson immediately concluded that Vickers was dead. In fact, Vickers was still alive but was unconscious and seriously injured.

Believing Vickers was already dead, Davidson took Vickers, threw him into a nearby pond and left. The cold water restored Vickers to consciousness, and he began to pull himself out of the pond. Just as Vickers reached the bank of the pond, lightning struck the water and killed Vickers.

The jurisdiction follows the Model Penal Code. In addition it has enacted criminal statutes that provide that hunting without a license is a class A misdemeanor punishable by six months in jail and that hunting out of season is a class D felony punishable by eighteen months in prison for a first offense.

Evaluate Davidson's criminal liability under the Model Penal Code.

B. The Case of the Very Broken Engagement (60 minutes)

Betty Dodd and Thomas Twotheimer were engaged to be married. They planned a large, lavish and expensive wedding for June 12 and invited all their relatives, friends and acquaintances. On the morning of the wedding, Twotheimer called Dodd on his cell phone to tell her he had changed his mind.

He explained that he needed more time to think about things and was on his way to the airport to catch a plane for Las Vegas. When Dodd pressed him, Twotheimer admitted he had been seeing another woman, Val Slinky. In fact he confessed Slinky was accompanying him to Las Vegas. When Dodd asked whether Twotheimer had had sex with Slinky, he laughed and said that Slinky was much better at sex than Dodd would ever be.

Dodd flew into a rage over the phone and threatened to kill Twotheimer and Slinky. Her exact words were, "You two better stay out of town because if I ever see your faces again I am going to

kill you."

One month later Dodd was at the local jewelry store returning wedding gifts when Twotheimer and Slinky entered. Twotheimer and Slinky were holding hands, giggling and looking at engagement rings. They did not see Dodd until she marched up to them. Dodd was holding a crystal flower vase that she had brought to the store to return. Dodd demanded to know what was so funny and announced, "I told you if I ever saw you again I would kill you, you lousy [expletive deleted]."

Slinky laughed and replied, "What's the matter, can't keep your man?"

In response, Dodd struck Slinky in the head with the vase. The vase broke, slicing off part of Slinky's nose and causing severe cuts to Slinky's face.

Dodd screamed, "I hope you die, [word deleted]," and ran out of the store.

Dodd did not know that Slinky suffered from hemophilia, a condition that causes blood to fail to clot. As a result of the cuts to her face, Slinky would have bled to death, but Twotheimer rushed Slinky to the hospital where emergency medical treatment stopped the bleeding and saved her life.

Two weeks later, however, while Slinky was obtaining additional medical treatment from a plastic surgeon to repair damage to her nose and prevent the formation of scar tissue on her face, she suffered an adverse reaction to a commonly prescribed drug and died of heart failure at the doctor's office.

The jurisdiction in which the events occurred has enacted the following statutes:

Section 1.01. Murder is the unlawful killing of a human being with malice aforethought.

Section 1.02. All murder which is perpetrated by means of an explosive device, armor-piercing ammunition, poison, lying in wait, torture, or any other kind of willful, deliberate, and premeditated killing or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, or train wrecking is murder in the first degree. All other kinds of murders are of the second degree.

The jurisdiction follows the common law in all other respects.

Please evaluate Dodd's criminal liability for homicide.