CRIMINAL LAW

FORTUNE

FALL

Instructions

The examination is three hours long, with the weight of each question indicated on the examination. Allot your time accordingly. There are no trick questions. Write on one side of the page. You may abbreviate (for example by writing D for defendant) if you so desire.

The state of West York (where all questions are presumed to take place) has not yet adopted the general provisions of the Model Penal Code, though its courts are greatly influenced by the Penal Code. You should thus take into account relevant provisions of the Penal Code as well as common law principles.

The homicide statutes of West York are as follows:

Criminal Homicide

(1) A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being.

(2) Criminal Homicide is murder, manslaughter or negligent homicide.

Murder

(1) Except as provided in the definition of manslaughter, criminal homicide constitutes murder when:

a) it is committed purposely or knowingly;

b) it is committed recklessly under circumstances manifesting extreme
indifference to human life.

(2) Murder is a felony of the first degree.

Manslaughter

(1) Criminal homicide constitutes manslaughter when:

a) it is committed recklessly;

b) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of the such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be.

(2) Manslaughter is a felony of the second degree

Negligent Homicide

(1) Criminal Homicide constitutes negligent manslaughter when it is committed negligently.

(2) Negligent Homicide is a felony of the third degree.

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Question 1 (20 points)

Assume the West York legislature passes a "fetal homicide" law, amending the definition of "human being" to include "fetuses." Defendant is charged with the murder of "Baby Doe," a nonviable 15 week fetus. On learning that his wife was pregnant by another man, defendant struck her with his fist in the face. As a result of the blow she fell down a flight of stairs, causing injury to the placenta and necessitating a therapeutic
abortion. The doctor performing the abortion would testify that the fetus was alive (in the sense of vital organ functioning) when the abortion was performed but could not have been carried to term (or to the point of viability) because the placenta had separated from the uterine wall and a miscarriage would have shortly occurred.

What are the arguments you would expect the defendant to raise in opposition to an indictment charging defendant with the "purposeful murder of Baby Doe?" Discuss.

Question 2 (20 points)

While drinking a beer in the airport cocktail lounge and waiting for his flight to depart for Los Angeles, Davis fell into conversation with a mysterious stranger, who offered Davis $1000 to check a bag on his ticket and deliver it to a person (described by the stranger) who would be waiting at the Los Angeles airport. After another round and some small talk, Davis accepted the offer and the stranger gave Davis the bag and $500, the balance to be paid on delivery. The stranger then left and Davis took the bag, which was heavier than he expected, and drank another beer. He did not open the bag, which he believed to contain illegal drugs of some kind -- probably cocaine.

Standing in line with the bag, Davis had second thoughts. He believed that a security guard was watching him strangely and he thought about the possibility of drug-sniffing dogs. Suddenly Davis dropped the bag and attempted to flee. He was immediately apprehended and the bag confiscated. When opened, airport security found a powerful bomb, timed to go off when the plane would have been in mid-flight.
Davis is charged with: 1) knowing possession of a destructive device; 2) attempt to distribute cocaine to the LA contact; and 3) attempted murder. Discuss his potential liability on these charges.

Question 3 (10 points)

A West York statute provides that "it shall be unlawful for any person knowingly or purposely to manufacture, distribute, or possess with intent to distribute any controlled substance." Dooley is a chemist, who developed a "new" hallucigen, similar to LSD but with a different chemical makeup. He named it "LST." He called his lawyer and described the chemical. The attorney, reading through the list of controlled substances found in the statute, mistakenly advised Dooley that he would not get in trouble for manufacturing "LST." The lawyer neglected to read the "catch-all" language at the end of the statute, which reads, "any newly manufactured chemical compound having similar qualities to those listed above."

In reliance on his attorney's advice, Dooley manufactured and distributed "LST," for which he is now prosecuted under the state statute above, because LST has similar qualities to LSD, which is a listed controlled substance.

Dooley asserts that he was not given adequate notice that his acts were illegal, and that his mistake as to the legality of his conduct was reasonable. Discuss.

Question 4 (20 points)

Debra was repeatedly beaten by Vern, her husband, over a long period of time. She complained to the police a number of times but Vern was never
incarcerated because she did not press charges. She felt herself totally under Vern's control and unable to get out of the situation in which she found herself. Debra didn't work outside the home, had three small children, was without family or friends, and felt that she had no alternative but to stay with him. On the fatal night, Vern came home drunk, threw a plate of food at her, and stormed off to take a nap, saying he was going to "beat the tar out of her" after his nap. During the next hour Debra became increasingly agitated, in part from the half pint of vodka she consumed. Finally, seeing no way out of her situation and believing she would be severely beaten when Vern woke up, she shot Vern in the head with his shotgun.

Debra has been indicted for purposeful murder. On these facts would she be entitled to a self-defense instruction? To a necessity (i.e. choice of evils) instruction? To an instruction on the lesser included offense of manslaughter? To what extent would expert testimony be received about Debra's mental state? A psychologist is prepared to testify that Debra has an 80 IQ, has low self-esteem, is a dependent personality, lacks social syndrome." poor judgment, and is an example of the "battered spouse

Discuss the issues.

Question 5 (10 points)

Dugan is a certified alcoholic. On the fatal night he took "just one drink" at a friend's home, and claims to remember nothing thereafter until he woke up in the hospital after running over a pedestrian several hours after he took that first drink. Witnesses at the scene established that Dugan was driving very fast and that he ran up on the sidewalk striking and killing the pedestrian. His blood alcohol taken at the hospital was 0.22%, more than twice the point of legal intoxication. An empty pint vodka bottle was found in the car. Dugan has been indicted for reckless murder. Discuss the issues, particularly the "voluntary act" requirement and the effect of voluntary intoxication.

Question 6 (20 points)
Doug and Vern were neighbors, and Doug built an eight foot high spite fence on his side of the property line between them. He awoke one morning to the sounds of splintering wood and looked out to see Vern pulling the fence down with a crowbar. Doug rushed out with a loaded shotgun, aimed it at Vern and said "stop or I'll stop you." Vern took two steps into Doug's yard with crowbar raised. Doug took a step forward and shot Vern in the chest from a distance of 10 feet, killing him instantly. Doug has been indicted for murder.

Discuss the issues, including the defenses which Doug might raise.