Criminal Law

Prof. Fortune

Fall 97

The examination is three hours long. Questions are weighted as indicated. Write on one side of the page. You may refer to the Model Penal Code provisions in the separate handout.

The legislature of New Catanoia (where all questions are presumed to take place) has not yet adopted the Model Penal Code; however New Catanoia courts are strongly influenced by the general provisions of the Code. Those sections are reproduced in a separate handout.

Honor Code notice and pledge

The College of Law Honor Code prohibits cheating on examinations. The Code requires students to report cheating. Failure to report cheating is a violation of the Honor Code. By turning in this examination, I pledge that I have neither given nor received any unauthorized aid on the examination.

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Question 1 (20 points)

D, out to dinner with her husband, picked up the wrong coat when she left the restaurant. They walked down the street and stopped at a bar for a drink. (The bar is within 1000 yards of a school). After they were seated, D discovered that it was not her coat and that there was a baggie in the pocket of the coat. She pulled the baggie out, noted that it was filled with a white powder, put the baggie on the table and said to her husband, "Look what was in the pocket of this coat. I'll bet it's cocaine." A policeman was sitting at the next table. Overhearing the conversation and seeing the baggie, he arrested D for possession of cocaine under the following statute:

218A.1405 A person who, within 1000 yards of a school, possesses cocaine is guilty of a Class B felony (punishable by 10-20 years).

D says she didn't intentionally possess the baggie, didn't know it was cocaine, didn't know she was within 1000 yards of a school, and didn't know that possession of cocaine near a school carries special penalties. 218A.1404 is the general statute for possession of cocaine. That statute provides:

A person who possesses cocaine is guilty of a Class C felony (punishable by 5-10 years).

Identify and discuss the issues.

Question 2 (30 points)

While shopping at a Mom and Pop store, A noticed that the storekeeper had a large amount of money in a cardboard box. A offered to tell B about a "good store to rob" if B would rob the store and split the proceeds with A. B refused the offer, but A told him the location of the store anyway. In response to C's question, B told C what A had said about the store. C decided to rob the store. C asked D to loan him a gun. When D asked, "What for?," C said, "to rob someone." D protested but allowed C to take the gun. C asked E, a quick man with a gun, to help. E agreed. C drove himself and E to the store, gave E the gun, and waited in the car while E entered. Seeing E enter with a gun, the storekeeper drew his own gun and fired at E, who, fearing for his life, returned fire and killed the storekeeper. E fled without taking any money.
**Part 1:** C, D and E are charged with attempted robbery, felony murder, and reckless murder. Consider their liability for the charged crimes, and conspiracy to commit the charged crimes. Apply the following statutes:

Robbery is the unlawful taking of property by force directed against another person. Robbery is a Class C felony.

Murder in the first degree is . . . the unlawful killing of a person in the perpetration of, or attempt to perpetrate, arson, rape, robbery or kidnapping. Murder in the first degree is a Class A felony.

Murder in the second degree is the . . . intentional and unjustified killing of a person, or the reckless killing of a person under circumstances manifesting extreme indifference to the value of human life. Murder in the second degree is a Class B felony.

**Part 2:** Are A and B guilty of any offenses?

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**Question 3 (15 points)**

Doug and Vern were neighbors and Doug built an eight foot high spite wall 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 shotgun and said "Stop what you're doing." Vern raised the crowbar and advanced into Doug's yard. Doug stood his ground and shot Vern in the chest when Vern was about ten feet away. Vern died from the shot.

Doug has been indicted for murder (MPC 210.2). Discuss the issues.

**Question 4 (15 points)**

David was eager to be accepted by the Blackstone Rangers, a neighborhood gang. He willingly participated in the burglary of a sporting good store in which the Rangers stole several handguns. Two nights later, two Rangers, Andy and Bob, picked David up and took him to a loft in which another boy, Victor, was tied to a chair in the middle of a pile of oily rags. Andy and Bob told David that Victor was a member of a rival gang and that David must kill Victor in order to become a Ranger. Andy threw a jar of gasoline on Victor, gave David a lit match and told him to throw it on Victor. David was horrified and started to leave. Andy pointed a gun at David and told him to "just do it." David threw the match on the rags, the room burst into flames, and David, Andy and Bob fled.

Victor was not killed in the blaze. He was rescued and taken to the hospital with third degree burns. He died in the hospital three days later when he contracted pneumonia and his lungs, badly damaged by the fire, failed.

David has been indicted for murder under MPC Sec. 210.1. Discuss the issues.

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**Question 5 (20 points) -- short answer (two points apiece)**

1) What is the defendant's burden under the Model Penal Code when the substantive statute labels something an "affirmative defense?"
2) What is the Wharton rule?

3) What is the effect of a "guilty but mentally ill" verdict?

4) What mental states were encompassed at common law by the term "malice?"

5) What is the difference between duress and necessity?

6) Under what circumstances can the voluntary act requirement be satisfied by an omission to act? Give an example.

7) When is ignorance of the law an excuse? Give an example.

8) When is voluntary intoxication a defense? Give an example.

9) Under what circumstances may a police officer, consistent with the Constitution, shoot to kill a fleeing felon?

10) Is the "battered woman syndrome" a defense of excuse or justification? Explain your answer.