Criminal Law Final

Fall 98

Fortune

The examination is three hours long. Questions are weighted as indicated. Budget your time accordingly. Write every other line. You may refer to the Model Penal Code provisions in the separate handout. Otherwise, the examination is closed book.

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.

Question 1 (20 points)

While walking down a rural road, Able and Baker come upon Victor, obviously intoxicated, lying on railroad tracks running parallel to the road. Able says, "Let him lie. Don't touch him," but Baker drags the man off the tracks onto the shoulder of the road. Able and Baker go on their way. 15 minutes pass; a train comes by; Victor is not harmed, though he would have been killed if Baker had not moved him. 30 more minutes pass; Victor crawls onto the roadway in front of an oncoming truck; Victor is struck and killed because the driver is speeding and not paying attention.

Assume New Catanoia has adopted the homicide statutes on page 15 of the Model Code handout. Discuss the liability of Able and Baker for Victor's death.

Question 2 (20 points)

In New Catanoia, hunting is regulated by the Department of Fish and Wildlife. Catanoia statute 150.025 gives the Commissioner of the Department of Fish and Wildlife authority to establish seasons for fishing and hunting. Pursuant to this authority the Commissioner fixed the deer season in County X to be Nov. 1 to Nov. 10 and the deer season in the adjoining county, County Y, to be Nov. 11 to Nov. 20. The Commissioner caused deer season notices to be posted in sporting goods stores around the state.

On Nov. 11, Able, a resident of County X went hunting. He was aware of the seasons for the two counties. He was unaware that he was in County Y, rather than County X, at the time he was hunting. On Nov. 11, Baker, a resident of County Y, also went hunting. He was unaware of the seasons for the two counties. He was also unaware that he was in County X, rather than County Y, at the time he was hunting.

New Catanoia statute 150.990 provides, "Any person who violates a regulation of the Department established pursuant to 150.025 shall be fined not more than $500 and imprisoned for not more than six months.

Discuss the liability of Able and Baker for hunting violations.
Question 3 (20 points)

After five stormy years of marriage and two children, Wanda and Harry divorced, with Wanda granted custody of the children. Wanda and Harry continued to battle over the children and, on three occasions, Harry struck Wanda when he came to pick up or visit the children. After the third occasion Wanda sought and was granted an "Emergency Protective Order," which ordered Harry to stay away from Wanda and the house in which Wanda and the children lived.

The EPO was served on Harry at 5 pm. After drinking for the next three hours, Harry went to Wanda's home and demanded that she allow him in to see the children. She would not open the door. He continued to bang on the door and said he was going to break the door down and that he would "make her pay when he got in." By this time Wanda had retrieved a loaded pistol from the bedroom. Distraught, Wanda yelled that she had a gun and would shoot if Harry didn't leave. Harry yelled back that she "couldn't keep her from seeing his kids," and that he "would fix her good for this."

Wanda fired three shots through the wood door. Because the door was solid (no glass) she could not see Harry on the other side. The bullets struck Harry in the chest and killed him.

Wanda has been indicted for murder under the New Catanoia homicide statutes which are identical to the Model Code provisions. (p. 15 of the handout). Discuss her liability for murder (or, if applicable a lower level of homicide), including any defenses she might have. Her testimony would be that she thought he was going to break the door down, hurt her, and take the children, that she was frightened and upset, but that she hadn't intended to kill him when she fired through the door.

The New Catanoia burglary statute provides as follows:

One who breaks and enters a dwelling house with intent to commit a crime therein is guilty of burglary, a Class B felony.

Question 4 (20 points)

Andy and Bob decided to rob a grocery store. They borrowed Charlie's car. When Charlie asked what they wanted it for, Andy said, "to rob a grocery store." After Andy and Bob left Charlie had second thoughts and called the police. He told the police that Andy and Bob were going to rob a store and described his car. Because Charlie didn't know the intended location the police were unable to stop the robbery.

Bob gave Andy a loaded pistol and waited in the car while Andy entered a Convenient store and robbed the store of $500 by pointing the gun at clerk David. Andy also robbed a customer of $200. As Andy was leaving the store, David, the clerk, shot and killed him.

Bob and Charlie have been indicted for:

1) conspiracy to rob the grocery store
2) accomplices to the robbery of the store
3) accomplices to the robbery of the customer
4) murder of Andy.

Discuss the liability of Bob and Charlie. Assume the following statutes are applicable:

- 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 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.

**Question 5 (10 points)**

Barbara, nine months pregnant, asked Andy, her husband, to take her to the hospital. Andy made Barbara wait for an hour until the football game (an excellent game) was over. By that time Barbara's labor pains were severe and she demanded that he "hurry up;" and said she would "kill him" if she had the baby in the car. In response, Andy ran red lights and drove as fast as he could. In running a light he struck a car coming out of a side street and killed the driver. Andy has been indicted for negligent homicide under a statute identical to the Model Code section on p. 15. His defense is that he "had to get his wife to the hospital." (Barbara was fine; the labor was false and the baby was delivered two days later).

Andy defends his conduct (running the light at a high rate of speed) on the ground that he had to drive as he did because his wife was in labor. Evaluate this defense.

**6) Short answer (10 points). Answer briefly.**

1. What is the M'Naghten test?

2. What was the minimum age for criminal responsibility at common law?

3. At common law, what mental states were encompassed by the term "malicious?"

4. What is the modern analogue to "heat of passion?"

5. What is a "coincidental" intervening cause? Give an example.

6. Under what circumstances, may a police officer, consistent with the U.S. Constitution, shoot and kill a fleeing felon?

7. Under the Model Code, what is the defendant's burden when the substantive statute labels a matter an "affirmative defense?"

8. What is meant by the "unilateral" approach to conspiracy?

9. What is the "battered woman syndrome?"

10. Would it be Constitutional for a state to make it a crime to "be an alcoholic?" Why or why not?