

CRIMINAL LAW  
Section A3

Final Examination  
December 10, 2001

2½ Hours  
1:00-3:30



OPEN BOOK  
Instructions

The three problems are of unequal weight in grading. Each is worth a point value proportionate to its suggested time. Budget your time accordingly.

Answer all the questions reasonably raised in each problem even though your resolution of a prior issue in the same problem may technically make decision of the other issues immaterial. If you believe that you need more facts than are presented to adequately resolve an issue, indicate specifically what facts you believe you need and why.

Specific citations to cases are welcome but not as a substitute for thinking, i.e. do not use case citations instead of clearly stating the relevant point of law.

## I. (60 minutes)

Consider the following factual scenario:

“On the evening of October 2, 1998, Andrew Martin, Mark Wolfe and victim Jason O. Johnson met at a Joplin restaurant. After eating dinner and drinking beer, they decided to go to a downtown nightclub. Martin and the victim got into Martin’s 1996 Ford F-150 pickup, while Wolfe followed in his Camaro. En route, they stopped at a convenience store. Martin and Wolfe remained in their vehicles while the victim entered the store and purchased a 40-ounce bottle of beer and a can of chewing tobacco. While in line, the victim stood behind Tammy S. Lawson.

“Lawson was the girlfriend of defendant Gary W. Black, who was also parked outside the store, sitting in his car, smoking marijuana. When the victim exited the store, Lawson pointed him out to the defendant. (Lawson later testified that she was upset and told defendant—falsely—that the victim made ‘a pass’ at her.) The victim and Martin then left the store in the pickup, with Wolfe following in his Camaro. Defendant and Lawson were in defendant’s car, close behind the Camaro.

“When Martin stopped at the stoplight at 5th and Joplin, defendant pulled alongside in the right lane. Defendant began to ‘exchange words’ with the victim, accusing him of ‘messing with my woman.’ Defendant got out of his car, reached through the passenger window of the pickup, and stabbed the victim in the neck, nearly severing his carotid artery and completely severing his jugular vein.

“Defendant immediately returned to his car. Victim left the pickup, staggered over to defendant’s car, and threw the bottle of beer at him. It is unclear whether the bottle struck defendant. Defendant then fled to Oklahoma.

“The stab wound—4.5 to 6 inches deep—bled profusely. Bystanders attempted to slow the bleeding with clothing and towels. Paramedics arrived to find the victim unresponsive, from massive blood loss. Blood drained into the victim’s airway, depriving him of oxygen. The victim died three months later. The cause of death was said to be from an infection in the area of the stab wound.”

*Cf. State v. Black*, 50 S.W.3d 778 (Mo. 2001).

You are an Assistant District Attorney in Joplin, Missouri, where the facts recited above took place. You moved to Joplin after your law school graduation in hopes of settling in a peaceful town where there were no homicides. Good move! The Joplin District Attorney, John Burkoff (played by Harrison Ford), has asked for your opinion whether and what homicide charges can be pursued successfully against Gary Black and Tammy Lawson. Describe for him the likelihood of success of all possible charges and how they would fare against any tenable defenses.

## II. (60 minutes)

Elizabeth Corday was walking in County General Park one evening when she noticed that she was being followed by a stranger, Mark Greene, who was dressed only in a dirty black raincoat. Corday began to walk faster, tripping into tree branches as she picked up her pace. Greene, a doctor, who was simply out for an evening's walk in the park, saw white powder on Corday's jacket, thought that it could be anthrax, and ran after her to tell her his suspicions. When Corday heard Greene running behind her, she began to run as well. As it had rained earlier, the ground was slippery and Corday slipped to the ground and Greene fell on top of her. As he fell, his raincoat opened, revealing that he was naked underneath.

Corday then began screaming: "Help! Help!" Hearing that, Greene jumped off of Corday and looked around to see what and where the emergency was. When he turned his back to her, Corday struck him over the head with a large tree branch.

Dazed and bleeding from a scalp laceration, Greene staggered further into the park where he came across Kerry Weaver, skating along on roller blades. Because his vision was blurred from his injuries, Greene thought that Weaver was actually Corday and he screamed at her: "Why did you hit me! I was just trying to help you! I'll teach you a lesson you'll never forget!" Turning to the man standing next to him (who was not actually a man, but instead a very large dog, Rover, dressed in a man suit), Greene said: "Help me out here. I'm going to teach this lowlife a lesson. You watch for cops." The dog merely growled, which Greene took as Rover's way of assenting to the plan.

Greene then grabbed a large rock from the ground and threw it at Weaver's head. The rock struck Weaver between the eyes, knocking her unconscious and sending her careening into Peter Benton, another roller blader who was just rolling along, sending Benton into John Carter, another roller blader, who then rolled into Abby Lockhart, who then rolled over Robert Romano, who was laying on the ground, minding his own business, asleep in a dog suit. Romano suffered major cranial injuries from the roller blade injuries and shortly thereafter died.

You are an Assistant Public Defender in Spittsburgh, Spennsylvania, the place where all of these events occurred. Greene has been charged with the crimes of: indecent exposure; assault (of Corday); attempted rape (of Corday); attempted murder (of Weaver); conspiracy to assault (Weaver); cruelty to faux animals (of Romano); and involuntary manslaughter (of Romano). Corday has been charged with assault (of Greene). Lockhart has been charged with involuntary manslaughter (of Romano). Your boss, the Chief Public Defender, John Burkoff (played by Ru Paul), has asked you to defend Greene, Corday and Weaver on all of these charges. What tenable defenses do you have? Discuss your chances of success with these defenses.

## III. (30 minutes)

Consider the following observations:

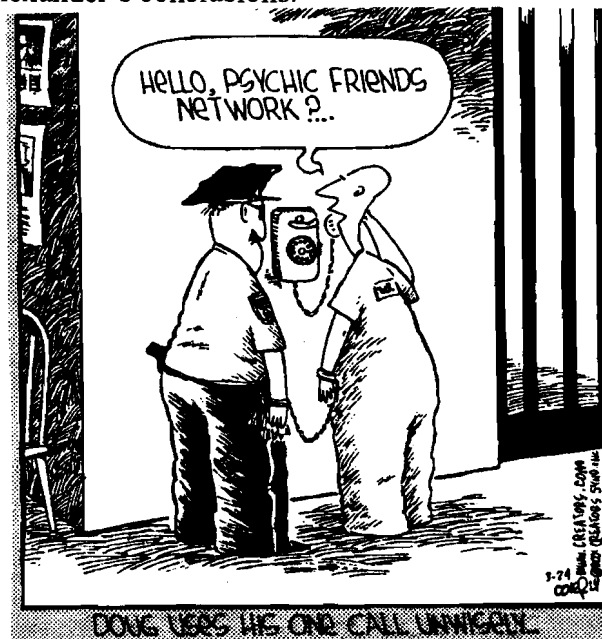
“Most criminal law theorists and the criminal codes on which they comment posit four distinct forms of criminal culpability: purpose, knowledge, recklessness, and negligence. Negligence as a form of criminal culpability is somewhat controversial, but the other three are not. What controversy there is concerns how the lines between them should be drawn and whether there should be additional forms of criminal culpability besides these four.

“[I want] to make the case for fewer, not more, forms of criminal culpability. Indeed, I [believe] that purpose and knowledge can be reduced to recklessness because, like recklessness, they exhibit the basic moral vice of insufficient concern for the interests of others. I . . . also argue that additional forms of criminal culpability are either unnecessary, because they too can be subsumed within recklessness as insufficient concern, or undesirable, because they punish a character trait or disposition rather than an occurrent mental state.

“Finally, I . . . argue that negligence cannot be subsumed within the single form of criminal culpability that can encompass all the other forms, but that is because negligence does not reliably track the moral vice of insufficient concern that all the other legitimate forms of criminal culpability display. Although one who is negligent on a particular occasion may in fact be one who would act recklessly when given the opportunity, only when he does act recklessly can we deem him to have acted culpably.”

Larry Alexander, *Insufficient Concern: A Unified Conception of Criminal Culpability*, 88 Calif. L. Rev. 931 (2000).

Referring specifically to matters discussed in this course, discuss why you do or do not agree with Professor Alexander’s conclusions.



Dean Burkoff