

EXAM NO. _____

CRIMINAL LAW
Section A1

Final Examination
December 19, 2002

2½ Hours
9:00-11:30

THIS EXAMINATION MUST BE RETURNED WITH YOUR BLUEBOOKS



"Stop—or I'll have a heart attack!"

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 facts:

“On the evening of November 24, 1996, Herman Shaw was driving around when he spotted his friend Lacue and agreed to take him to find someone who owed him money. When that person did not have Lacue’s money, Shaw and Lacue continued driving around, during which time Lacue showed Shaw he had a gun. At some point, they also discussed taking Lacue to get drugs in order to sell them and make money.

“Lacue eventually decided that they should rob a Subway due to its lack of security cameras. Lacue gave Shaw money and instructed him to walk inside and buy a sandwich; Shaw complied. A few minutes later, Lacue walked in, pointed his gun at the Subway employee, and requested money. When the employee ran in the back, Shaw and Lacue ran out of the store.

“Still needing money and looking for someone to rob, Lacue advised Shaw that he planned to call a taxi, get inside, and rob the driver. Shaw responded, ‘I’m not with that. I’m not fixing to get in no car with nobody, you know, with no cab driver I just follow you.’ They stopped at a 7-Eleven, where Lacue used a pay phone to call a taxi. The taxi arrived and Lacue got in. Although Shaw followed, he eventually lost the taxi. In a taped statement to the police, Shaw said that he and Lacue never discussed what would happen after the robbery; Shaw simply understood that he would pick up Lacue and take him wherever he wanted to go.

“As Shaw looked for Lacue, he finally found him near his residence. Lacue told Shaw that when he pulled the gun, the taxi driver started acting crazy and refused to give him the money. When the driver reached at his pants, Lacue shot him in the chest. As Lacue fled, he took the taxi driver’s cellular phone. Lacue injured his hand during the incident, so they went to Shaw’s house for Lacue to clean up.”

Cf. Shaw v. State, 824 So. 2d 265 (Fla. Dist. Ct. App. 2002).

The taxi driver mentioned in these facts died from the gunshot wound. You are an Assistant District Attorney in Fort Lauderdale, where these facts took place, having left the cold north behind in your quest for the perfect tan (and eventual skin cancer). The District Attorney (elected by a plurality of three chads) has asked you to write a memorandum on the likelihood of success of: (1) homicide charges (taxi driver) to be filed against Shaw and Lacue; (2) attempted robbery charges (Subway) to be filed against Shaw and Lacue; (3) robbery charges (taxi driver) to be filed against Shaw and Lacue; and (4) separate conspiracy charges relating to the Subway robbery, the taxi robbery, and the shooting of the taxi driver to be filed against Shaw and Lacue. Write the memo.

II. (60 minutes)

Condoleeza Spice (“Spice”) had previously eaten at Colin Spowell’s restaurant, Food For Your Colin, and had had a violent and unpleasant reaction to the food. Nonetheless, she thought that she would give the restaurant one more try and she drove there, ordered, and ate the house specialty, “Colin’s No-Fat, No-Foul Burrito.” Ten minutes after leaving the restaurant, while driving home in her car, Spice had a very bad reaction to this food, suffering from what was later diagnosed by a medical expert (Dr. Ruth) as “bad burrito intoxication,” and she briefly lost consciousness. While unconscious, Spice’s car veered off of the road and struck Kofe Spannan (“Spannan”), a student mime, who was doing a (very bad) sidewalk performance of a dog barking silently when he was struck by the side of Spice’s car, which ultimately crashed into a light pole. The blow to Spannan was only glancing, but nonetheless very painful, and caused him to run away from the scene, screaming in pain.

Donald Strumsfeld (“Strumsfeld”), Spannan’s mime teacher, did not see Spice’s car strike Spannan, but did see—and, more importantly, *heard*—Spannan screaming. Strumsfeld became enraged at the fact that Spannan was screaming when he was supposed to be performing silently as a mime. Strumsfeld reached into his mime bag, picked up his gun and angrily shot at Spannan. Fortunately, Strumsfeld picked up the wrong gun. Instead of the handgun he carried with him everywhere in his bag (mimes are often in danger from bystanders who do not like mimes), which he intended to fire at Spannan, Strumsfeld picked up instead a toy gun which “shot” out a small red flag which unfurled with the word “BANG” on it, instead of a bullet.

Spannan, seeing what had happened, and enraged that Strumsfeld would try and shoot him, picked up a large stick from the ground and threw it at Strumsfeld’s head. Strumsfeld ducked and the “stick,” which was actually a little boy, Saddam Shussein (“Shussein”), dressed in a stick costume, struck and killed John Smashcroft, another mime-in-training who had just been standing on the sidewalk, minding his own business, posing as the Statue of Liberty.

All of the foregoing events took place in the City of Spittsburgh, a sleepy little town in the southwestern corner of the state of Spennsylvania. You are an Assistant Public Defender in Spittsburgh, and you have been asked by your boss, the Public Defender, John Burkoff (played by Harrison Ford), to assess the likelihood of success of the various charges that have been filed by the District Attorney, Al Kaida (played by Eminem), based upon the facts set out above. Spice has been charged with involuntary manslaughter in the death of Smashcroft. Strumsfeld has been charged with attempted murder of Spannan and first-degree murder of Smashcroft. Spannan has been charged with assaulting Shussein and with first-degree murder of Smashcroft. Shussein has been charged with first-degree murder of Smashcroft and with impersonation of a stick (a strict liability summary offense in Spennsylvania). What are you waiting for? So go assess.

III. (30 minutes)

Consider the following observations:

“[R]epributivism justifies punishment, or the suffering by the punished, not on [the basis of] any actual good consequences that might be attained, but solely because the punished deserve it. From its roots in vengeance, bloodlust, revenge, retaliation, and an eye for an eye, retributivism is pitched as the only theory which, in justifying punishment, does justice by . . . not using persons as mere means to attain other goals, . . . giving a principled account of the requisite degree of desert and punishment, and [by] justifying punishment of only those who are morally culpable.

“The principal alternative [justification for] punishment—consequentialism—is claimed by retributivists to be morally inferior to retributivism on . . . four counts. Consequentialist theories justify punishment not on the desert due the offender but on the actual, good consequences that are attained, for example, [by] deterrence of crime, incapacitation of the offender, and rehabilitation of the offender. Until the recent retributivist revival, consequentialist theories of punishment had enjoyed the mantle of being humane, merciful, rational, enlightened, and morally sensitive from Plato onward. Retributivism was dismissed as irrational, ‘taking blind vengeance like a beast.’ * * * But the tables have now turned; it is retributivism which now claims to reflect our aspiration to higher moral principles and it is consequentialism that is widely considered morally unpalatable. * * *

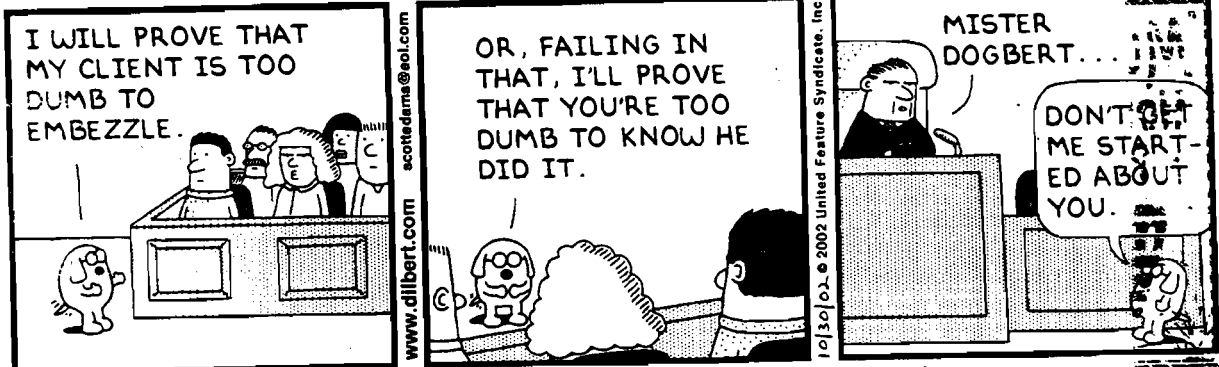
“Why do we [even] need to justify punishment? After all, crime and punishment seem to go together, as the old Frank Sinatra song goes, like ‘love and marriage’ and a ‘horse and carriage.’ To doubt the legitimacy of punishment would seem to cast doubt on the enterprise of criminal law itself. Why would we bother to promulgate the prohibitions of the criminal law if they could be violated with impunity? For violations of the norms of criminal law, punishment seems to be an obviously fitting response. But punishment does require justification, for the same reason we consider conduct violating the core prohibitions of our criminal law to be wrong. Punishment involves the deliberate infliction of pain, suffering, and deprivation, which is *prima facie* wrong. So too, committing homicide or causing grievous bodily damage, under ordinary circumstances, is *prima facie* wrong. But just as the *prima facie* wrong of homicide may be justified or negated when committed under circumstances of self-defense as a response to a criminal attack, so also the state’s infliction of the suffering and deprivation constituting punishment may be susceptible to justification as a response to the commission of a crime. Punishment might be conceived in this way as an institutionalized form of self-defense by the state against crime.”

Russell L. Christopher, *Deterring Retributivism: The Injustice of "Just" Punishment*, 96 NORTHWESTERN U. LAW REV. 843, 847-49, 852-53 (2002) (footnotes omitted).

Referring specifically to matters discussed in this course, discuss why you do or do not agree with Professor Christopher's observations.

Dilbert

By Scott Adams



Dean Burkoff