

EXAM NO. _____

CRIMINAL LAW
Section A1

Final Examination
December 21, 2005

2½ Hours
9:00-11:30

THIS EXAMINATION MUST BE RETURNED WITH YOUR BLUEBOOKS



*"I'm sorry. The beef Wellington has to be ordered
twenty-four hours in advance."*

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:

“Andrew Jackson met Bovi Combs and Shecora Clanton while riding buses in Kansas City, Missouri. Combs wanted to kill a woman named Delesha Williams because he believed she was involved in his sister’s death. Clanton, who was Combs’ girlfriend, agreed to help. They planned to steal items from Williams’ house after the murder. Combs and Clanton initially planned to poison Williams with strychnine but were unable to make such a purchase over the counter.

“Clanton rented a U-Haul truck to carry the stolen property from Williams’ house. Combs and Clanton then drove to Jackson’s apartment to pick him up. When Combs and Clanton arrived, Jackson produced a syringe and a white chemical substance he had prepared for them. Jackson told them to stick Williams with the syringe and she would die. Although Jackson initially refused to go with Combs and Clanton because he thought they had waited until too late at night, he changed his mind and accompanied Combs and Clanton to Williams’ house in Kansas City.

“When they knocked on the door, Williams invited them in. She did not have anything for them to drink, so Jackson walked to a nearby convenience store and purchased soda and cigarettes. After visiting with Combs, Clanton, and Jackson for a while, Williams decided to go to bed. She invited the trio to spend the night at her house.

“When Williams was asleep, Jackson hit Williams with a mallet and then jumped on top of her and started strangling her. Williams struggled with Jackson. The two fell off the bed and continued fighting on the floor. Jackson eventually subdued Williams and told Combs to get his syringe from the car.

“Combs retrieved a syringe and Jackson injected Williams. Combs then went and woke up Clanton and the three of them loaded Williams’ big-screen TV, two smaller TVs, a VCR, several telephones, and all of the living-room furniture into the back of the U-Haul. They then threw Williams into the back of the U-Haul, too.

“When the trio stopped briefly at a service station to use the restrooms, Williams regained consciousness and managed to get out of the U-Haul and call the police. It turned out that Williams had been injected with botox, Combs having mistakenly retrieved a syringe belonging to Clanton instead of Jackson’s syringe which contained botulinum toxin type A, a drug causing botulism, which is sometimes, but not usually, fatal.”

Cf. State v. Jackson, 118 P.3d 1238 (Kan. 2005).

Jackson, Combs and Clanton have each been charged with attempted murder of Williams, conspiracy to murder and rob Williams, and possession of botulinum (a felony in Kansas). You are now a criminal defense attorney in Kansas City, having moved there after graduation in order to be close to the Harley-Davidson motorcycle assembly plant and the Hallmark Cards corporate headquarters which are both located there. You have been appointed to represent these three defendants. What are your chances of successfully defending against these charges? Explain.

II. (60 minutes)

The Hell’s Shmangels Motor Cycle Club is headquartered in the city of Shamokin, Shpennsylvania. The President of the Hell’s Shmangels, Shmindy Crawford, grew increasingly concerned about the inroads that another motorcycle gang, the Blind Justices, was starting to make into the Shmangels’ narcotics-distribution operation. The Shmangels peddle black-market botox, commonly known as “shmotox.” (That’s where Shecora Clanton in Question #1 got her supposed botox. It was actually shmotox.) Crawford and another Hell’s Shmangel, Shmyra Banks, decided to pay a visit to the Blind Justices’ President, John Shroberts, to “talk” him out of selling shmotox on the Shmangels’ turf. In order to bolster their courage in confronting Shroberts, Crawford and Banks each drank three double “cosmolitos,” cocktails that consist of tequila, Grand Marnier™, cranberry juice, and fresh lime juice. Very refreshing.

When they met with Shroberts, Crawford and Banks, slurring their words a bit from the effects of the cosmолitos, demanded that the Blind Justices give up their shmotox sales. But Shroberts simply laughed at them. He made it clear that the Blind Justices intended to continue selling shmotox, and that he did not consider the fact that the Hells’ Shmangels had been selling shmotox in Shamokin since 1973 a precedent that was binding on him.

Hearing that, Crawford and Banks became furious. After shrieking at Shroberts that he would “pay dearly” for taking that position, they both leaped on their pink Vespa scooters and began to ride off. But as they were leaving, a Blind Justice gang member, Samuel Shalito, began yelling after them, calling them names like “Loose Constructionists,” “Evolutionists,” and “Flaming Liberals.” Further enraged by these taunts, Crawford and Banks steered their scooters around and, accelerating, headed straight toward Shalito, wailing savagely. But, because their scooters were not very fast, Shalito easily avoided being hit by them simply by sidestepping to

his left. As a result of Shalito's quick move, however, Crawford missed him but ended up hitting and running over another Blind Justice gang member, Harriet Shmiers, who was standing right behind Shalito. Crawford's scooter also bumped into Banks' scooter, causing Banks to veer off to the right and to hit and run over the Blind Justices' mascot, a pet goat named Clarence.

Actually, Crawford didn't realize that she had hit a person as Shmiers was dressed in a dog suit at the time since she was on her way to the Annual Blind Justice M.C. Costume Ball. Crawford simply thought that she had hit a dog, and—no animal lover—she just scooted right off without stopping. Banks, on the other hand, thought that Clarence, who she hit, wasn't a goat at all, but was a person, albeit a very small, stooped and hairy person. But, like Crawford, Banks nonetheless just scooted right off without stopping.

Shalito just stood there and stared at Shmiers and Clarence, who were both writhing, bleeding profusely, and moaning and/or bleating on the ground. But Shalito did nothing to help either one of them. Shroberts, on the other hand, ran right over to them, picked up and threw both Shmiers' and Clarence's battered bodies into the back of his Honda Civic, and rushed them both off to the emergency room. Unfortunately, although Shmiers was badly injured from her scooter injuries, she would have recovered fully from them except that when Shroberts heaved her in the back of his car along with Clarence, one of Clarence's horns punctured her left eyeball. Shmiers ultimately died from a combination of that wound to her eye and her scooter injuries. The emergency room doctors refused to treat Clarence since he was a goat, and he subsequently died from his injuries as well, bleating pathetically to the very end.

You are an Assistant District Attorney in Shamokin and the District Attorney, John Burkoff (played by Keith Richards), has asked you to assess for him the likelihood of successful prosecution of the following people on the following charges: vehicular homicide charges against Crawford (in the death of Shmiers); conspiracy to commit aggravated assault charges against Crawford and Banks (in the running over of Shmiers); involuntary manslaughter charges against Shroberts and Shalito (in the death of Shmiers); and both cruelty to animals charges and attempted murder charges against Banks (in the death of Clarence who Banks thought was a human). What is your response to Burkoff?

III. (30 minutes)

Consider the following observations:

"I propose to consider what to make of a doctrine of the criminal law that seems to me not rationally supportable notwithstanding its near universal acceptance in Western law, the support of many jurists and philosophers, and its resonance with the intuitions of lawyers and lay people alike. This is the doctrine—the 'harm doctrine,' I'll call it—that reduces punishment for intentional wrongdoers (and often precludes punishment for negligent and reckless wrongdoers) if by chance the harm they intended or risked does not occur.

“[Consider] crimes of culpable risk creation—crimes in which a person is punished, not for attempting a harm, but for culpably risking it. The punishment of these crimes depend[s] on chance. Take the case of Mr. Malone. He and his friend decided to play a game of Russian Roulette in which each took turns spinning the chamber of a revolver, with one round in it, and firing at the other. When Malone’s turn came to pull the trigger, the gun fired and killed his friend. Malone was convicted of second degree murder, based on the egregious risk to life he needlessly created.

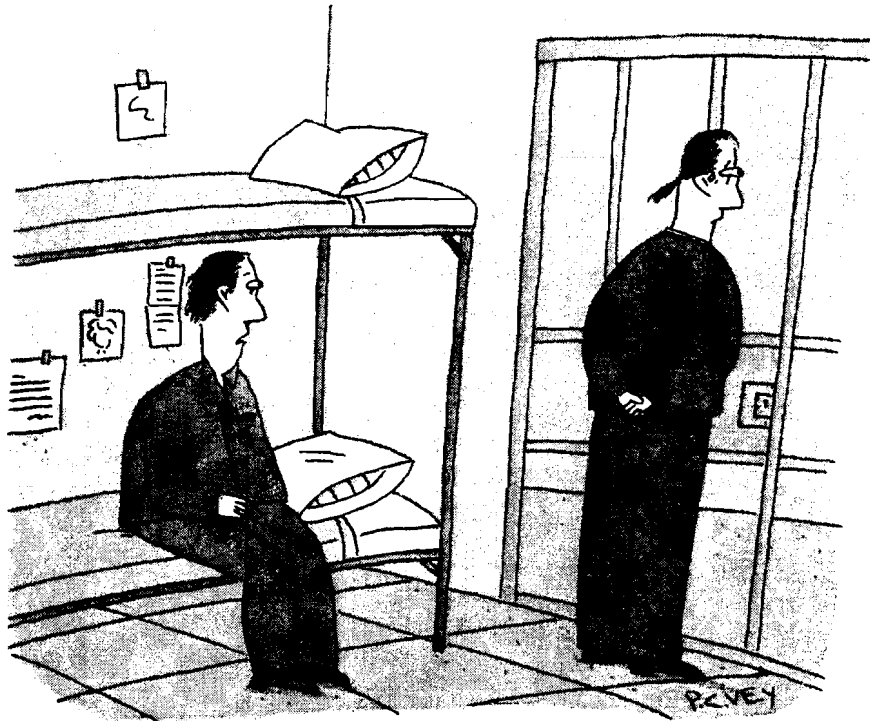
“That sounds fair enough. But suppose instead, that the bullet only inflicted a flesh wound, or that the bullet was not in the firing chamber when Malone pulled the trigger. Could Malone then have been convicted of any crime? Perhaps he could have been convicted of some statutory offense concerning firearms, but such an offense would carry nothing like the penalty for murder. And if there had been no special statute of this kind, he could not be convicted of any crime at all, since traditionally just recklessly endangering another was itself not criminal—except in specific contexts, like driving a car.

“[This] prevailing punishment practice with respect to results is no different than a penal lottery in which the amount of punishment for a crime depends on some chance event as the drawing of long and short straws. [We] need to cease thinking of the lesser punishment for failing to complete the crime as attributable to lesser guilt, and think of it merely as the chance event that determines the losers and winners of the lottery. Thought of as a penal lottery, then, there is no unfairness, for in leaving punishment to chance all attempters are treated alike. They all, in effect, draw straws. If they draw the short straw (that is, they succeed) they get the greater punishment. If they draw the long straw (that is, they fail) they get lesser punishment. There is no unfairness in treating the winners better than the losers so long as the lottery is unrigged.

“But even unrigged, the basic injustice of a lottery in allocating punishment remains: to allow one of two offenders equally deserving of punishment to receive less punishment if she wins a lottery detaches punishment from desert. It would be the same if we allowed every equally guilty offender a throw of the dice—a throw of six or less and we halve the punishment. The two offenders end up being punished differently even though they are identical in every non-arbitrary sense. That is what is crucial, not the fact that they both had an equal chance of getting a lesser punishment when they threw the dice.”

Sanford Kadish, *The Criminal Law and the Luck of the Draw*, 84 J. CRIM. L. & CRIMINOLOGY 679, 679, 682, 691 (1994).

Referring specifically to topics discussed in this course, discuss why you do or do not agree with Professor Kadish’s observations.



"You can't blame everything on being home-schooled by bank robbers."

Professor Burkoff