

CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW

TAKE HOME FINAL EXAM

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CRIMINAL LAW

December 2006

TIME: 24 hours

INSTRUCTIONS

You have 24 hours to work on this exam from the time you pick it up. You will be graded on how well you apply the rules and materials we covered in the course. You are allowed to consult whatever research sources you wish. However, do not cite or quote any materials other than those found used in our course. You are not expected to do any legal research. No credit will be given for such research and you may not cite nor quote such research in your answer.

In preparing your answer, you are not allowed to consult or collaborate with anyone. You may not copy the exam. You may not inform anyone of its contents until after December 24, 2006. You must return the exam with your answer.

Your answers should be typed and double spaced. The format requirements are: 1) no more than 25 lines on a page; 2) Times New Roman or Courier font at least 12 points in size; and 3) at least one inch margins at the top, bottom, right and left of each page. Your answer must be limited to 8 single sided pages. Your exam number should be typed on the first page of your answer. Your name should not appear anywhere on the exam.

The questions vary in complexity and point value. The number of points assigned to each question is noted at the beginning of each question in parenthesis. You must exercise judgment about how much space to devote to each question.

Good luck and enjoy your winter break!

(new page)

There are a total of 150 points available on this exam

QUESTION 1
50 points

After graduating from law school you decide to go into elected politics. As a believer in the “one step at a time” principle, you set your eyes on the Ohio State Legislature. In numerous conversations with other politicians, consultants, former professors, classmates and voters, you have identified two issues as the core of your campaign. You have identified them in part because you feel very strongly about them and also because they play into your natural strength, which is criminal law and statutory interpretation.

In the past year, a terrible crime occurred in your district and the voters are angry, anxious and willing to vote for you, depending on your stance.

In the first instance, a woman, Mary, who had been the victim of spousal abuse for twenty years took matters into her own hand. There is no doubt that she was abused; however, there is clear evidence that the murder was premeditated, she hired a hit man (Rick) to poison her husband (Martin) ensuring that he die a slow and painful death. The facts are the following: she lured her husband to a hotel room, promising him a romantic evening away from their noisy children who, when he was drunk, only exacerbated his violent mood swings. She left the door slightly ajar, enabling the hit man to enter at the pre-arranged time—after Martin had fallen asleep.

As she stood to leave the room, Mary awakened Martin out of his drunken stupor and told him he was about to get “his due.” Before he knew what had happened, Mary unplugged the phone, took his cell phone and Blackberry, and taped his mouth with masking tape. At this point, she introduced Rick to Martin: “This is the man who is going to kill you...it will be slow and painful. You are totally helpless - I unplugged the phone, took your cell and “crackberry,” you cannot move (Rick had quickly tied Martin’s hands and legs, therefore immobilizing him).

With that Mary walked out of the hotel room while Rick injected Martin with rat poison, per their pre-arranged plan.

The Prosecutor charged Mary with first degree murder. Her lawyer argued spousal abuse, provocation and self-defense. A jury convicted her. Your efforts to dodge the issue, by arguing that because the appeal is before the Ohio Supreme Court it would be inappropriate to comment, are killing your poll numbers.

The relevant Ohio Statute is worded as follows:

“Murder in the first degree is the pre-meditated homicide of another individual.”

You have been asked (as has your opponent) to prepare full-length memos as to the following questions: **(10 points per question below)**

- 1) Was Mary provoked?
- 2) Did Mary act in self-defense?
- 3) Was this first degree murder according to the statute (statutory interpretation)?

- 4) What punishment theory is relevant to this case?
- 5) What should be the standard for arguing “battered woman syndrome”?
- 6) Is this case appropriate for the death sentence?

QUESTION 2
(30 points)

The evening before for the annual Michigan-Ohio State football game (won by Michigan!), Buckeye Bob and Buckeye Tom decide to rob a store in Columbus that has “Go Blue” signs plastered all over it. The store has been under their surveillance for sometime.

They drive to the store, park their car in front of it and walk into the store when only the store owner is present (they had made sure that no other customers were inside and knew that only the owner works in the evening).

As they walk in, Buckeye Bob uses a pistol to scare the owner, while Buckeye Tom opens the cash register and begins removing the cash from it. Unbeknownst to the two Buckeyes, the owner’s wife is in the back of the store. Hearing the commotion, she looks out into the store, sees what is happening and presses a silent alarm button connected to the Columbus Police Department.

A police cruiser patrolling the area receives a call from the dispatcher that the alarm at the store has been activated. Officer Jones stops his cruiser, parks it around the corner from the store and cautiously approaches. When he looks in and sees the robbery in progress, he radios it in and asks for back-up.

Hearing the police sirens, the two Buckeyes decide to quickly leave the store through the front door. As they leave the store, Officer Jones, who is standing just outside the front door, yells at them to raise their hands, drop the gun and lay face down on the street.

Buckeye Bob fires a shot from his pistol in the direction of Officer Jones. Both Buckeyes make a mad dash to their car, get in and beginning driving away. Officer Jones, uninjured by the shot, runs to his police cruiser, all the time talking with the dispatcher, giving a description of the Buckeyes’ car and updating as to the direction the Buckeyes are headed.

Two police cruisers who were responding to the initial request for assistance, spot the getaway car (according to Officer Jones’s description), and begin chasing after the two Buckeyes.

As one of the cruisers approaches the getaway car, Buckeye Bob rolls down the car window and shoots at the officer. A gun battle begins as the Buckeyes lead the three cruisers on a high speed chase (Officer Jones has joined the fray).

The cruisers overtake the Buckeyes and force them off the road, onto a sidewalk filled with football fans excited about the impending Michigan victory. The Buckeyes get out of their car and start shooting at the three officers, who were alone in their respective cruisers.

Officer Jones turns on the cruiser's loudspeaker and instructs all the fans to lay on the ground, not to raise their heads and demands that the two Buckeyes throw their handgun down, lay down on the ground and not move.

The two Buckeyes respond by shooting directly at the policemen. The policemen respond by firing their police-issued handguns.

Suddenly, one of the fans panics, stands up and starts running in the direction of the shooting. He was wearing a scarlet and gray shirt.

The fan is hit by a bullet fired by Buckeye Bob's pistol (this was verified by police reports and the pathology report); the fan dies later that night.

Are Buckeye Bob and Tom liable for homicide based on the fan's death? Assume a non-Model Penal Code jurisdiction.

QUESTION 3 **(30 points)**

On the evening before she is to get married, Sue leaves her two children with baby-sitter Tammy so she can attend a small party given on her behalf. Tammy has taken care of the two children (aged 3 and 5) a number of times previously and proved herself highly reliable and popular with the kids, Alice and Billy (who don't like other babysitters as much).

On this particular night, Tammy decides to invite her new boyfriend, Wally, to come over after the kids are in bed. She has never done this before as Sue has explicitly forbidden her from doing so. However, Tammy is smitten with Wally and as she is not allowed to bring boys home, this is a wonderful opportunity. In her excitement that she and Wally can spend some time alone, she quickly rushes the kids off to bed, failing to notice that Alice is crying that her stomach hurts a lot and that she feels like she is going to vomit.

Tammy tells her "Don't worry, you'll be alright" and gives her four tablets of what she believes to be Bayer Aspirin for children. Alice tries to chew the tablets, expecting them

to be sweet like the Aspirin Sue gives her when she does not feel well. These are not sweet and she yells at Tammy “Gross, these aren’t sweet; what have you given me?” Tammy, who is too busy text-messaging with Wally as to where he should park his 1967 Mustang convertible (so the neighbors won’t suspect anything), ignores Alice’s crying other than to express irritation at the noise.

As Alice goes to bed—actually pushed to bed by Tammy-- she continues to cry loudly about being nauseous and the bad taste of the aspirin. Billy is already sleeping.

Tammy hears the door bell ring, leaves Alice to her crying and runs downstairs to open the door for Wally, who is wearing his shiny new leather jacket that fits the ’67 Mustang look. As Tammy falls into Wally’s arms, she does not hear Alice’s increasingly hysterical crying.

As the evening progresses, it is increasing quiet...the Mustang couple is together and the children are silent. Actually, the children are pretty much forgotten by Tammy.

At 2 a.m. Sue comes home. She finds Wally and Tammy sound asleep on the couch and quickly goes upstairs to check on the children. All is well with Billy but when she goes into Alice’s room she is overcome by the smell of vomit. Tammy quickly turns on the light and to her horror sees 5 year old Alice face down in her own vomit. She screams in hysteria (waking Tammy, but not Wally), rushes Alice to the bathroom to wash her, all the time talking to her. She quickly realizes the child is unresponsive and yells at Tammy to call 911.

All efforts by the paramedics go for naught; Alice suffocated on her own vomit.

Discuss the issues pertaining to Tammy’s liability. Assume a non Model Penal Code Jurisdiction.

QUESTION 4 **(20 points)**

Steve Johnson was charged and convicted in a California court on petty theft counts and received—in accordance with the three strike rule articulated in *Ewing*—two consecutive terms of 25 years to life. He shoplifted food products from grocery stores in the hope of selling them to support his heroin addiction. While the offenses would otherwise be treated as misdemeanors, because of his prior record the thefts were treated as felonies. Petty theft is a wobbler offense.

His prior offenses included residential burglaries and misdemeanor thefts.

Does the sentence violate constitutional principle of proportionality? Also, analyze and apply the punishment theories we discussed.

QUESTION 5
(20 points)

Your neighbor---you reside in an apartment building—is a 25 year old fellow student. When you moved into the building, you were really excited to see that a classmate was your next door neighbor as you took Guiora’s crim law class together. Because Guiora emphasized (and re-emphasized) the benefits that can be gained from study groups, you thought to yourself, “Wow, this is great....we can meet either before class or in the evening in our apartment and prepare for class. Perfect.”

What started as a classic two person study group quickly went south. It turns out that your study partner/next door neighbor is a sleep-walker. How did this come to your attention? One night—after you had finished prepping for class—you headed off to sleep only to be awakened by strange noises coming from the apartment next door.

You didn’t know what to make of the noise and so you put pillow over your head, counted sheep and tried every other trick you knew.

After five straight nights of this increasingly untenable situation, you decided enough is enough and that the time had come to confront the matter. So, after finishing yet another night of prep for yet another crim law class, you said to your neighbor “I need to ask you a question: is everything okay; I mean there are strange and loud noises coming out your apartment every night and I’m wondering what the deal is.”

Your study partner/next door neighbor looks at you as if you had just arrived from Mars (well, actually you’re from Columbus; close enough) and says “what are you talking about? Are you imagining noises? Is Guiora’s class getting to you that much?”

In order not to make the situation unpleasant you say, “well I am hearing noises....” and leave it at that. After five additional days, you decide to check the municipal code which states:

“Making an unreasonable amount of noise in an apartment building between 1-6 a.m. is unlawful. The person found to be in violation of this ordinance will be liable for a fine not too exceed \$150”

Armed with the ordinance and with the resolve of someone determined to be a U.S. Attorney, you call the Law Officer of Cleveland Heights to discuss the matter.

Will the Law Officer press charges? If so, what will your erstwhile friend and study partner argue? What would the judge decide?