

**UNIVERSITY OF UTAH  
COLLEGE OF LAW**

**EXAMINATION COVER SHEET**

Student Examination Number: \_\_\_\_\_

**Law XXXX - X**

**CRIMINAL LAW**

**PROFESSOR PAUL CASSELL**

**SPRING 2009**

**EXAM DATE & TIME**

⌚ **Time Allowed: 4 HOURS**

**Authorized Materials:** The casebook (Kaplan et al., *Criminal Law: Cases and Materials*); any materials distributed during the class; any student-prepared outlines.

**Special Instructions:**

This examination begins at 8:30 a.m. It is designed to be a three-hour examination with three questions of one hour each. Each of the three questions will be given equal weight in determining the final grade. You are given an extra hour to allocate as you see fit. You must turn in your examination by 12:30 p.m.

This is essentially an open-book examination. You may have the following materials with you: your textbook, any supplemental materials distributed during the course, and any outline that you may have prepared by yourself or with other students. You may not have the following materials: any commercial publications, hornbooks, or the like, in either printed or electronic form.

In accordance with standard law school procedure, do not write your name (or any other information that could be used to identify you) anywhere on your exam. Write your exam number on your exam. This permits evaluation without knowledge of your identity.

As discussed in class, there is no specific page limit or word count limit. Nonetheless, I would appreciate it if you could avoid filibustering@ me. As a rough guide, I would expect answers to fit within about two bluebooks (one side of each page, every other line) or about nine double-spaced typed pages.

**GENERAL INSTRUCTIONS FOR ALL EXAMS:**

1. Exams do not leave the exam room! Write your exam number on your copy of the examination questions, and return it to the proctor at the end of the exam.
2. Students may NOT take any bluebooks or scratch paper from the examination room, whether blank or used. Return to proctor.
3. If you are using a bluebook print your exam number, the title of the course and the instructor's name on the front of each bluebook.
4. Number each bluebook (1 of 3, 2 of 3, 3 of 3, etc.) and place all bluebooks and examination questions inside the first numbered bluebook.
5. If the examination utilizes a computer answer sheet (Scantron):
  - You must use BLACK or BLUE INK only; no pencils
  - You may use CORRECTION TAPE only; no liquid paper
  - Print your examination number in the box found in the lower left-hand section of the form. Write the number in the first 4 spaces, and zero-fill any remaining spaces.

For example, if your examination number is 2983:

**IDENTIFICATION NUMBER**

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Fill in the bubbles corresponding to the numbers written.

### Question I (one hour)

Zed Zookeeper recently traveled to Australia, where he fell in love with two saltwater crocodiles – each 15 feet long with incredible sharp teeth and extremely dangerous to humans. Zookeeper decided to bring them back to his home in Calizona in keep them in his large, backyard swimming pool. He made the necessary logistical arrangements with the help of his business assistant, Athena Assistant. He told Assistant that he wanted her to arrange for the shipment of two large crates that would contain thoroughbred horses. Athena made the necessary arrangements and helped Zookeeper drive the forklift truck that moved the crates into Zookeeper’s backyard. She never looked inside the crates, but was suspicious that something other than horses was in there when she heard low grumblings and growling coming from inside. Rather than peak through the holes in the crates, however, she averted her eyes and left quickly. Zookeeper was ultimately able to unload the crates by himself and soon the two “cros” were swimming happily in Zookeeper’s backyard. The pool has nothing but a standard, four-foot high fence surrounding it.

Tragically, the next day, a five-year-old boy wandered into Zookeeper’s backyard, unlatched the gate to the fence around the pool, and fell into the pool, where he was eaten and killed by the cros. Zookeeper soon saw what had happened to the boy, but did not report the death to the authorities. The boy’s mother, however, found the remains of her son the following day and called the police, who quickly arrested Zookeeper.

Calizona’s homicide statutes are identical to those found in Kansas, reprinted in your casebook at pp. 311-12.

Calizona also has a statute that also reads as follows: “Any person who has knowledge that a death has occurred under suspicious circumstances but willfully fails to call law enforcement authorities within a reasonable time to report the death is guilty of a felony.”

Federal law, 18 U.S.C. § 1010, provides:

“Whoever transfers or imports any dangerous or venomous animal into the United States without a license from the United States Department of Commerce shall be guilty of a felony and shall be fined not more than \$2,000 or imprisoned not more than two years, or both.” Commerce Department regulations define Australian saltwater crocodiles as dangerous animals and provide a licensing procedure for importing the animals – a procedure that neither Zookeeper nor Assistant were aware of. Indeed, neither of them knew about § 1010.

Calizona follows all of the “default” rules of the Model Penal Code as well as MPC § 2.01(3). As discussed in class, federal courts do *not* necessarily follow MPC principles and instead look to relevant federal case law on legal issues that arise.

Calizona authorities have charged Zookeeper with first degree murder and with failing to report the death of the boy.

Federal prosecutors have charged Zookeeper and Assistant with violating § 1010.

Discuss Zookeeper and Assistant’s criminal liability to these charges and any defenses that they might raise.

#### Question II (one hour)

Danielle Defendant and her unreliable but close friend, Freeda Friend, attend Transylvania University together and are roommates in a one-room college dormitory room. On May 3, 2009, Friend brought into their room what was in fact ten ounces of “crack” cocaine – a controlled substance. Friend showed it to Defendant. Friend then stated that she wanted to sell

it to pay her way through school, and then placed it in a small refrigerator located in the middle of the room. Defendant thought that Friend was playing some kind of joke, and that the white powder was actually crystallized sugar. Both Defendant and Friend use the refrigerator to store food.

On May 4, 2009, Friend brought a small caliber pistol into the room, and handed it to Defendant. Defendant took the gun, examined it briefly, and then handed it back to Friend; Friend then placed the gun under her pillow on the bed. How Friend obtained the pistol is unclear. But it is clear that one month earlier, the pistol had been stolen from owner – a fact not known by Defendant.

Friend has “cut a deal” with the prosecutor and agreed to testify to all of the foregoing facts. Because she has pled guilty, it is not necessary for you to discuss her individual criminal liability in your answer.

The laws of Transylvania provide have several criminal provisions that may be relevant to these events. Transylvania Code § 841 provides: “It is a first degree felony to knowingly possess more than one ounce of a controlled substance with the intent to distribute that substance.” Transylvania Code § 842 provides: “It is a second degree felony to knowingly possess more than one ounce of a controlled substance.” Transylvania Code § 944 provides: “It is a second degree felony for anyone to possess a stolen firearm. In any prosecution under this section, the State is not required to prove that the defendant knew or was otherwise should have been aware that the gun was stolen.” Transylvania Code § 371 provides that: “If two or more persons conspire to commit an offense against the laws of Transylvania, they shall be guilty of a first degree felony.” Transylvania follows all of the “default” rules of the Model Penal Code and defines “possession” in the same way as the MPC (i.e., in the same way as MPC § 2.01(4)).

Discuss the criminal liability of Defendant, and any defenses she might raise, for (1) possession of crack cocaine with intent to distribute; (2) a lesser included offense – possession of crack cocaine; (3) possession of a stolen firearm; and (4) conspiracy to possess crack cocaine with intent to distribute.

### Question III (one hour)

International Celebrity movie superstars Brad Pitt and Angelina Jolie were married in the state of California on January 1, 2005. While the marriage was, at first, a happy one, things begin to turn acrimonious after several years. Pitt began to suspect his wife of infidelity, based on various tabloid media accounts of her sexual escapades with other men.

On the afternoon of April 15, 2009, things had degenerated to the point where Pitt was willing to do anything to escape the marriage. That night, as Angelina and her child (Shahd) descended the stairs in their mansion carrying an antique, lighted oil lamp, Pitt threw a heavy beer glass in their general direction. While Pitt claims that he was trying to throw the glass out the window, it in fact struck the lighted oil lamp, scattering flaming oil on Jolie and Shahd, causing them both to be horribly and painfully burned to death. Pitt admits that he was happy that Jolie died, but is heartbroken his child Shahd died as well.

Pitt was taken into custody that evening. In the course of their investigation, police officers learned that Pitt had been preparing his state tax returns to California during the afternoon of the day of Jolie's death and that Pitt had mailed in a his signed tax return that did not report any income from his movies during the previous year (the relevant tax year covered by the returns). He genuinely believes that it is unconstitutional under the United States Constitution for the state to tax income made by movie stars overseas in foreign countries and that money made during filming of movies in foreign countries is not "income" under the tax

statute of Left Coast. Volie had disagreed with him over these interpretations and Zitt and Volie had quarreled about them immediately before her death.

Left Coast has a statute that provides: “Any person required to report income on a tax return who willfully fails to report income is guilty of a felony.” The relevant regulations from the Left Coast Tax Commission implementing this statute clearly provide that monies earned by movie stars living in Left Coast, even during the filming of movies overseas, is taxable “income” that must be reported. The courts of Left Coast have interpreted these tax statutes in the same way that federal courts have interpreted federal tax statutes.

The State of Left Coast has the following homicide statutes (listed in order of the severity of the punishments):

Section 101. A person is guilty of murder in the first degree when:

- (1) The person intentionally causes the death of another person with premeditation; or
- (2) While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person recklessly causes the death of another person.

Section 102. A person is guilty of murder in the second degree when:

- (1) The person intentionally causes the death of another person; or
- (2) The person causes the death of another person under circumstances manifesting extreme indifference to human life.

Section 103. A person is guilty of voluntary manslaughter when:

- (1) The person intentionally causes the death of another person upon a sudden quarrel or in the heat of passion; or
- (2) The person intentionally causes the death of another person upon an unreasonable but honest belief that circumstances existed that justify deadly force.

Section 104. A person is guilty of involuntary manslaughter when:

- (1) The person unintentionally kills a human being recklessly; or

(2) While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any misdemeanor, the person negligently causes the death of another person.

Left Coast also has a death penalty statute that is identical to the Wyoming death penalty statute found at pp. 462-63 of your case book.

The prosecutor has charged Zitt with first degree murder for his involvement in the two deaths and has filed notice that she intends to seek to the death penalty for both deaths.

Discuss Zitt's criminal liability (if any) for failure to report income on his tax return and for the death of Volie and Starstruck, including whether he can be prosecuted under the Wyoming death penalty statute. Please also discuss any defenses that Zitt might raise.