

**Criminal Law 6100-002
Final Examination
Spring 2011**

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Distributed: Wednesday, April 27, 8:00 a.m.
Due: Wednesday, April 27, 5:00 p.m.

Student Examination Number: _____

INSTRUCTIONS

1. This examination is open-book. You may refer to any of the course materials or any notes that you have prepared, but you may not refer to any external sources. You may not discuss the exam with anyone at any time during the exam period.
2. This exam consists of seven (7) pages, including this cover page. Please make sure that you have all of the pages.
3. The exam includes two (2) questions. You must answer both questions. **Question I is worth two-thirds (67%) of your grade; Question II is worth one-third (33%) of your grade.** How you divide your time is up to you.
4. You must type your answer. Your answer should be single-sided, with 1-inch margins, **single-spaced, in 13-point font, with page numbers on the top of every page.**
5. Your name may not appear anywhere on your answer. **You must put your Exam Number (not your name) on the top of every page.**
6. This examination has a total word limit of **6,000 words**, approximately 13 single-spaced pages. Any violation of the word limits will be penalized in grading.
7. **At the end of your examination answer, you must indicate the total number of words contained in your answer.** You can calculate the number of words by highlighting the whole document and using your word processor's "Word Count" in the "Tools" menu. You must include all words—including headings and citations—in your word count.
8. If you think that you need more facts to answer one of the questions, you should clearly state your assumptions and explain how they affect your answer.
9. You may use shorthand references to refer to cases, statutes, constitutional provisions, or other sources, so long as I can clearly understand them.
10. You must submit a paper copy of your final answer—**along with any hard copies of the exam questions**—to the Registrar's Office by Wednesday, April 27, at 5:00 p.m.

GOOD LUCK!

QUESTION I
(67%)

A Night at the Museums

Amy is an art dealer. She buys and sells paintings. Times are tough, and her business is not doing well. She decides to supplement her income by buying and selling stolen paintings.

Ben is a thief. Ben is neither trustworthy nor intelligent, but Amy is fond of him, and they are old friends. One day, when they are having coffee together, Amy makes Ben the following offer: If he steals two paintings from a museum, she will buy them for \$10,000.

Ben says “OK,” but he has another idea. The following day, he digs around in his basement, and he pulls out two cheap, forged paintings that he bought at a flea market. He brings the paintings to Amy, claiming that he stole them from a museum the previous night. Amy recognizes that the paintings are forged, and she refuses to buy them. She informs Ben that her offer is no longer good, and she tells him to get out of her house.

Ben feels a bit badly about trying to trick his old pal, so he drives to the Museum of Natural History to look for paintings. Inside the museum, he sees a lot of dinosaur bones, but he does not see any paintings. He quickly becomes distracted by the dinosaur bones, and he decides to steal one. He pulls a bone from one of the exhibits, and he looks for the exit.

On his way toward the door, however, Ben notices an advertisement for the Museum of Fine Art that depicts several paintings. Remembering Amy’s offer, he drops off the dinosaur bone at the museum’s front desk. Rather than stealing the bone, he gets in his car and drives to the Museum of Fine Art.

Before entering the Museum of Fine Art, Ben pulls a gun from his glove compartment, and he places it in his pocket. After wandering around the museum a bit, he quickly finds two paintings that he plans to steal. While he is planning the theft, he chats idly with Chuck, the museum’s tall, muscular security guard. When Ben learns that Chuck enjoys smoking marijuana, he asks if Chuck would like to smoke a joint with him. They walk into the restroom and smoke marijuana together. After they are finished, Chuck thanks Ben and returns to his post. Within a few minutes, Chuck falls asleep in his chair, overcome by the effects of the marijuana.

Ben waits in the restroom until the museum is closed. When he no longer hears any guests, he sneaks back into the gallery and grabs the two paintings. As soon as he touches them, a loud alarm bell goes off. Ben draws his gun and aims it at Chuck, preparing to defend himself—but Chuck is still sound asleep, blissfully unaware of the alarm bell or Ben’s actions.

Ben puts the paintings in his car, and he races back to Amy’s house. Because Ben is intoxicated, he does not realize that he runs a red light. He hits a pedestrian named Dave, who is instantly killed. As Ben drives off, he sheds a tear for Dave. After taking a deep

breath, he thinks, "Oh well, I guess life is short," and continues on his way to Amy's house. When he arrives, Ben apologizes to Amy for trying to trick her. Amy accepts his apology and buys the two paintings for \$10,000.

The next morning, Ben drives to the Fells Wargo bank to deposit the proceeds of his theft. As he enters the bank, he is surprised to see Chuck, the museum's security guard. The museum has already fired Chuck for falling asleep on the job, and he quickly found a new position as the security guard at Fells Wargo.

When Chuck sees Ben enter the bank, he is furious. In a fit of rage, Chuck draws his gun and fires wildly at Ben. Ben ducks. One of Chuck's stray bullets hits a bank teller named Esther, instantly killing her.

Chuck drops his gun, horrified by what he has done. Advancing toward Ben, Chuck rolls up his sleeves and says, "You just cost me my second job in two days. I'm going to kill you." Amid all of the chaos, Ben does not realize that Chuck is no longer armed. Fearing for his life, Ben draws his own gun and shoots Chuck in the chest. Chuck falls to the ground. He is wearing a bulletproof vest. He survives.

In a panic, Ben drops the bag of money that he came to deposit, and he flees from the bank. Frank, the bank manager, sees Ben's bag on the floor, and he looks inside it. When a police officer arrives, Frank tells the officer what happened. He asks the officer what he should do with the money that Ben left at the bank. Knowing that Ben is a notorious thief, the police officer tells Frank that he can keep the money, because it is very likely to be the product of one of Ben's thefts. Frank is delighted. He immediately quits his job and takes the money home with him.

Neither Amy nor Ben realizes that the paintings that Ben stole from the Museum of Fine Art were forgeries, just like the paintings that Ben bought at the flea market. Taken together, the two paintings were worth significantly less than \$1,000.

* * *

All of these events took place in a jurisdiction that has adopted the following statutes:

- Theft: It is a felony of the third degree to take and remove the property of another from a building with the purpose of stealing.
- Grand Theft: It is a felony of the second degree to take and remove the property of another from a building with the purpose of stealing, causing a loss in excess of \$1,000.
- Robbery: It is a felony of the first degree to use force or the threat of force during the commission of theft.

- **Duty to Prevent Crimes:** Any person who is employed as a security guard must make a reasonable effort to prevent the commission of crimes. The failure to discharge this duty is a violation punishable by a fine no greater than \$1,000.
- **Receipt of Illegal Proceeds:** It is a felony of the third degree to wilfully receive money earned from illegal activities.
- **Speeding:** It is a misdemeanor to drive a vehicle faster than the speed limit. This offense is punishable by a fine no greater than \$100.

In all other respects, this jurisdiction has adopted the Model Penal Code – i.e., the sections of the Model Penal Code that have been assigned in this course.

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Instructions: Write a memorandum that explains: (1) the offenses for which Amy, Ben, Chuck, and Frank may be charged; (2) the evidence that the prosecution will use to prove each of the charges; (3) the defenses that each of these individuals will assert; and (4) the verdict that the jury is likely to reach on each of the charges.

QUESTION II
(33%)

Lucky at Cards

Hana, Ivan, and James often play poker with each other. Recently, Ivan and James have enjoyed an unprecedented streak of good luck. In the last few games, Hana has lost several hundred dollars to each of them.

Hana is nearly broke, and she is fed up with losing. She comes up with a plan to get her money back by stealing from Ivan and James. She invites them to her house to play poker. She lays out playing cards and poker chips, so that they will have everything that they need to play the game when the two men arrive.

When Ivan and James show up at her house, Hana offers them beer, which they gladly accept. She walks into the kitchen and grabs a bottle of sleeping pills, which her doctor prescribed to her. After secretly placing a sleeping pill into each of the beers, she brings the beers back to the table. The three friends begin drinking and chatting with each other.

While they are talking, James pulls a bottle of pills from his pocket. He swallows a pill, washing it down with his beer. Hana asks, "What was that?" James explains that he suffers from depression, and the pill that he took is an antidepressant that his doctor prescribed to him. Hana is worried about how the sleeping pill may interact with the antidepressant, but she does not say anything to Ivan or James.

Before they have a chance to start playing poker, both Ivan and James fall asleep at the table. While they are sleeping, Hana takes \$500 from each of them. An hour later, Ivan wakes up at the table. He is perfectly sober, but he is confused. He has no money left, but he does not remember playing poker. Hana laughs and says, "I guess you had a little too much to drink tonight, and it cost you." She shows Ivan the \$1,000 that he took from Ivan and James, but she tells him that she won the money from them fair and square playing poker.

When Ivan notices that James is asleep at the table, he becomes suspicious. He accuses Hana of drugging them and stealing the money, and he demands that she give it back. Hana refuses. She says, "If you want this money, come and get it." Ivan picks up his beer bottle and advances toward her. He says, "You're going to give me back that money, one way or another." Ivan charges at her, raising the bottle to strike her.

Nothing stands between Hana and her front door, but she has a gun in her pocket, so she stands her ground. As Ivan approaches, she draws her gun and fires it several times, but she misses him. Ivan runs from the house and jumps in his car.

On his way from Hana's house, Ivan remembers that James is still passed out at the poker table. He begins to worry, and he decides to send a text message to James on his cell phone.

One block from his house, he accidentally runs over Katie, his girlfriend, while he is looking down at his phone. Katie is badly injured, but she is still breathing. Ivan calls 911.

Unfortunately, the town has only one ambulance, and it has just arrived at Hana's house, where paramedics are caring for James. Because of the interaction between Hana's sleeping pill and his antidepressant, James slips into a coma and dies.

One hour later, the paramedics finally arrive at Ivan's house, but they are too late. Katie is already dead. If they had arrived ten minutes earlier, they could have treated her for her injuries, and she would have lived.

* * *

All of these events took place in a jurisdiction that has adopted the following homicide statutes:

- **Murder:** Murder is the unlawful killing of another human being with malice aforethought.
- **Degrees of Murder:** Any murder perpetrated by poison or lying in wait, by any other kind of willful, deliberate, and premeditated killing, or in the commission of, the attempted commission of, or the flight from arson, rape, robbery, or burglary, is murder in the first degree. All other kinds of murder are murder in the second degree.
- **Manslaughter:** Manslaughter is the unlawful killing of another human being without malice aforethought.
- **Types of Manslaughter:** Any intentional killing committed in a sudden heat of passion as the result of adequate provocation is voluntary manslaughter. Any unintentional killing committed in a reckless manner, a grossly negligent manner, or in the commission of, the attempted commission of, or the flight from an unlawful act, is involuntary manslaughter.

In addition, the jurisdiction that has adopted the following other statutes:

- **Theft:** It is a felony to take the property of another with the intent to steal.
- **Gambling:** It is a felony to play a game of chance for something of value.
- **Unauthorized Distribution of Prescription Drugs:** It is a felony to distribute prescription drugs to any person to whom the drugs have not been prescribed.

In all other respects, the jurisdiction follows common law doctrines.

Instructions: Write a memorandum that explains: (1) the offenses for which Hana and Ivan may be charged; (2) the facts that the prosecution will use to prove each of the charges; (3) the defenses that each of these individuals will assert; and (4) the verdict that the jury is likely to reach on each of the charges.

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END OF EXAM

CONGRATULATIONS!