

General instructions:

This is an OPEN BOOK exam consisting of 17 pages including this page. Please check now to be sure that you have all the pages.

Please put your examination number on your bluebooks and scantron sheet now.

The total time allowed for this exam is 3 hours and 15 minutes. The exam is designed to take three hours to complete, with approximately 110 minutes allotted to the essay and 70 minutes allotted to the multiple choice questions. You have an extra 15 minutes to allot as you see fit.

The exam consists of one essay and 35 multiple-choice questions. The essay is worth 65% of your grade and the multiple-choice questions are worth 35%.

Multiple choice instructions:

Many multiple choice questions will specifically refer to the Model Penal Code. If a question does not refer to the Model Penal Code, you should answer it on the basis of the cases that we read in this course.

For each question, please select the best answer. If you believe that a multiple choice question is ambiguous, you may label a section of your bluebook “Multiple Choice Questions.” Write the number of the multiple choice question and explain why you think the question is ambiguous and why you chose the answer that you did. If you mark the right answer but your explanation makes clear that you have chosen it for the wrong reason, you will not receive credit for that question.

Essay instructions:

You must answer both Parts A and B. Be aware that the question may present multiple issues. You should allocate your time and written response on the basis of relative importance of each issue and the depth of analysis required for that issue. If you think that you need more facts to address any issue, identify the additional facts and explain how they would affect your answer.

There is no page limit or word limit for the essay. Keep in mind, however, that well-organized and succinct responses are likely to receive more points than repetitive, meandering, or otherwise disorganized responses.

Be sure to include your exam number on your bluebook or typed exam. In accordance with standard law school procedure, do not write your name anywhere in your essay or on your exam.

If you are writing the essay by hand, please use a pen with blue or black ink, and please write legibly. I cannot give you credit for responses I cannot read. If you are writing your exam on computer, please follow the Registrar’s instructions.

This exam must be returned with your bluebooks, scantron sheet, and all scrap paper.

Part One
Essay (65 points)
Recommended time: 110 minutes (1 hour 50 minutes)

Applicable Law for Part One only (Essay)

Levelland is a state in the United States. It has codified all the provisions from Articles 3, 4, and 5 of the Model Penal Code that were assigned in this course. (The Levelland state legislature has considered enacting a modified version of Article 2 of the Model Penal Code, but it has not yet been able to agree on the precise language.) The state legislature has also enacted the following statutes that may be relevant to Part One of this exam.

§ 101. Murder, defined.

- a) Murder is the unlawful killing of a human being with malice aforethought.
- b) Express malice is the deliberate intention to take away the life of a fellow creature.
- c) Malice is implied when no considerable provocation appears or when the circumstances of the killing show an abandoned and malignant heart or a reckless indifference to human life.

§ 102. Murder, degrees.

- a) Murder by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing is first degree murder, punishable by 15 years to life in prison.
- b) Murder committed in the perpetration of, or attempt to perpetrate, a felony is first degree murder, punishable by 30 years to life in prison.
- c) All other murder is second degree murder, punishable by 10 years to life in prison.

§ 105. Manslaughter, defined.

Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

- a) Voluntary manslaughter: the unlawful killing of a human being upon sudden quarrel or heat of passion, punishable by 3 to 10 years in prison.
- b) Involuntary manslaughter: the unlawful killing of a human being in the commission of an unlawful act not amounting to a felony; or in the commission of a lawful act without due care and circumspection, punishable by 1 to 5 years in prison.

§ 873. Endangerment of a minor.

It is a felony to knowingly encourage, aid, or cause a child less than 16 years old to engage in any conduct injurious to the child's welfare or to the welfare of others, punishable by 1 to 5 years in prison.

§ 1193. Controlled substances.

- a) It is a felony to knowingly and intentionally manufacture, distribute, or possess with intent to distribute, any controlled substance, punishable by 1 to 25 years in prison. This provision shall not apply to the lawful manufacture and distribution of controlled substances by pharmaceutical companies and pharmacists.
- b) It is a misdemeanor offense to possess any controlled substance, punishable by a jail sentence of up to 300 days. This provision shall not apply to the possession of lawful prescription medication by an individual with a valid prescription.

Levelland's list of controlled substances is updated periodically to coincide with federal law; it currently includes cocaine, heroin, marijuana, and codeine, among other substances. The

state courts of Levelland are known to consult caselaw from other U.S. states and from the federal government as a useful source of basic criminal law principles.

Floyd lives in Levelland. He was recently released from the state prison after serving a sentence for drug offenses. Floyd was able to get a shorter sentence by providing law enforcement authorities with information about a powerful and busy drug dealer named Donald. Worried about retaliation from Donald or his associates, Floyd asked the police whether he should go into protective custody. The police told Floyd not to worry and that they would keep an eye on him. A few days later, Floyd received a phone call. The caller didn't identify himself, but warned Floyd, "stop talking to the cops, or we will give you a thrashing you won't forget." Floyd reported this call to the police, but again the police declined to take Floyd into protective custody. They did promise to monitor Floyd's home closely.

Nervous, Floyd borrowed a revolver from a friend. He began keeping the gun under his pillow every night. He was not sleeping well. One evening at about midnight, he was lying in bed, worrying about the anonymous phone call. He pictured an attacker coming through the bedroom window, and practiced drawing the gun quickly. Floyd thought, "In some ways, I wish Donald would send someone. I know that if I defended myself, they'd respect me and leave me alone." A moment later, Floyd heard a noise outside the window. Floyd grabbed the gun and bolted upright, terrified. He saw a man wearing a mask and gloves outside the window, and fired several shots. One of the shots killed the masked man, later identified as Max, one of Donald's henchmen. In Max's pocket was a note in Donald's handwriting that read, "I think you know what I want. Don't forget to wear your mask."

The other bullets missed Max, and one of them struck Abby, a two-year-old child sleeping in a bedroom of the home next door to Floyd's. Abby's parents, Rex and Donna, were out for the evening. Abby was home with her baby sitter, a teenage girl named Sally. Donna didn't like to leave Abby with anyone who wasn't old enough to drive, and Sally (who was really 15) had told Donna that she was 16 and had a driver's license. Unfortunately, in addition to being a liar, Sally was a drug abuser. Sally had helped herself to prescription codeine pain relievers that she'd found in the bathroom medicine cabinet; she had washed them down with some of Abby's father's prize Scotch whisky. (Donna, who was a bit nervous about strangers in her house, had asked Rex to make sure the liquor and medicine cabinets were locked, but Rex forgot.) Shortly before Floyd fired his shots, Sally had passed out downstairs. She did not hear the gunshots.

When Abby's parents returned home around 2 am, they found Sally still unconscious. Abby was in her crib, soaked with blood. Abby was rushed to the hospital, where she was pronounced dead. The doctors said she probably would have survived had she been taken to the hospital immediately after being shot.

A. (50 points) You are a newly-minted assistant district attorney. Your boss, the District Attorney, says to you, "We've got two corpses here. Who can we charge for these deaths? On what theory? What kind of arguments are we likely to hear from the defense attorneys? Are we likely to obtain convictions?" Explain how you would respond to the D.A.'s questions.

B. (15 points) Now, assume that you are an aide to a member of Levelland's state legislature. Your boss is considering amendments to the Levelland criminal code. Select one of the Levelland statutes listed above and explain why you think it should be abolished or how you think it should be amended. Your answer should refer to at least one of the following considerations: constitutional due process, cruel and unusual punishment, vagueness, the principle of legality, and the purposes of punishment.