

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

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.

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.

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 other materials that we read in this course.

For each question, please select the best answer. Some questions continue on the next page; please be sure you have read all the possible choices before you select your answer. If you believe that a multiple choice question is ambiguous, you may label a section of your bluebook (or typed essay response) "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.

**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 and 5 of the Model Penal Code that were assigned in this course, as well as MPC § 4.01 (without the bracketed terms of that section). The state legislature has also enacted the following statutes:

§ 101. Murder.

- 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.
- d) Degrees.
  - (1) All murder which is perpetrated by means of a destructive device or explosive, poison, lying in wait, torture, or any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, or kidnapping, is first degree murder. To prove a killing was “deliberate and premeditated,” it is not necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.
  - (2) All other murder is second degree murder.
  - (3) First degree murder is punishable by any term of years. Second degree murder is punishable by a term of years up to 50 years.

§ 105. Manslaughter.

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.

§ 238. Burglary.

- a) A person is guilty of burglary if he or she enters a building or occupied structure with purpose to commit a crime therein. It is an affirmative defense to burglary that the building or structure was abandoned.
- b) Burglary is a felony punishable by a term of years up to 10 years in prison.

§242. Assault.

A person is guilty of assault, punishable by a term of years up to 5 years, if he or she

- a) intentionally causes bodily injury to another, or
- b) attempts by physical menace to put another in fear of imminent serious bodily injury.

§4109. Armed felonious conduct.

- a) A person is guilty of armed felonious conduct if, during and in relation to any violent felony, a firearm in his or her possession is discharged.
- b) A person guilty of armed felonious conduct shall be sentenced to a term of imprisonment not less than 15 years, in addition to any sentence for the underlying violent felony.

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

Financial woes caused great stress for Mary Barker and her husband Pete, longtime residents of Levelland. Their marriage was never very happy, but the recent economic downturn made them even more miserable. Pete was laid off in January, and the couple struggled to pay their rent and other bills. After Mary received eleven calls from collection agents in one day, she said to Pete, “We can’t go on like this. You need to get some cash for us, quickly. I don’t care how you do it, but one way or another, do it.” Pete had a history of paranoia and depression, and he was also afraid of his wife. The next morning, Mary said to Pete, “Don’t forget. Get the money for the rent, or else.” Looking at her in terror, Pete said, “Do you mean you want me to...” and trailed off into silence. Mary replied, “We need a couple thousand right away. You do whatever it takes. And don’t forget you’re supposed to see Mrs. Astin today.” She then took a small pistol from her purse, placed it in front of Pete, and left the house.

Since being laid off, Pete had cut grass and performed other chores for his wealthy and very elderly neighbor, Mrs. Astin. Mrs. Astin sometimes offered to pay him, but Pete had always refused in the past. On this day, Pete decided to ask Mrs. Astin for \$5000 in exchange for his past and present services to her. “She might say yes,” Pete muttered to himself. “But just in case, I’ll bring this pistol. It looks really scary and I can wave it at her if I need to make myself understood.” Pete went to Mrs. Astin’s house. No one answered his knock, but he entered through the unlocked door and called to Mrs. Astin. “In here, dear,” she replied from one of her many sitting rooms. Pete found her and made his request for \$5000. “Don’t be silly, Pete,” said Mrs. Astin. “I can give you only this.” She opened her purse and removed a \$20 bill from a large wad of cash. At that moment, Mary’s voice rang distinctly in Pete’s ears: “A couple thousand right away. Whatever it takes.” Pete lunged toward the cash in Mrs. Astin’s hand, and as he moved, the pistol in his coat (a pistol with a defective safety mechanism, it turned out) suddenly discharged. The bullet hit no one, but Mrs. Astin, shocked by the sound of the pistol shot, had a heart attack and slumped to the floor. Pete stared at her in horror. Flashing lights and a piercing noise filled his head, and he realized suddenly that Mary was a cruel and evil woman who would continue to orchestrate criminal violence unless he stopped her. He ran out of Mrs. Astin’s home and toward his own house. He saw Mary walking up the driveway. Yelling, “Somebody has to protect the people of Levelland,” he fired several shots at her. He then rushed to the police station and told the police all that had happened.

As it turned out, Mary was hit by only one bullet and was not seriously wounded. She recovered fully from her injuries. Mrs. Astin was less fortunate; she was pronounced dead on arrival at the local hospital. A medical examiner’s report revealed that she had an enlarged heart, advanced kidney and liver diseases, and hypertension. The report listed the cause of death as “heart attack due to stress exacerbated by external factors (home invasion).”

Due to Pete’s erratic behavior at the police station and after his arrest, the state requested a psychiatric evaluation of Pete. The psychiatrist’s preliminary report explained that Pete

suffered delusions produced by acute schizophrenia and paranoia, but also that he knew that stealing and inflicting physical injury were prohibited by law.

- A. (55 points) What criminal charges, if any, should the prosecutor bring against Pete and/or Mary? What arguments are likely to be raised by the defense? Based on the information available here, which side is likely to prevail?
- B. (10 points) Now, assume that you are an aide to Ronnie Davis, a member of the Levelland state legislature. Mrs. Astin's death is all over the news, and Davis tells you, "All the publicity about this crime could be a good opportunity to reform our criminal code. I think we might need to amend our insanity defense, or perhaps change our approach to felony murder. Do you think I should propose legislative reform now?" Pick one of these two issues and explain how you would advise Mr. Davis. Be sure your answer explains and evaluates likely arguments in favor of the rule in question as well as any applicable arguments for changing it. If you think Davis should modify the provision of the criminal law in question, explain how you think the law should be modified, and why.

\* \* \* End of Part One \* \* \*