

**CRIMINAL LAW FINAL EXAMINATION
FALL 2023
H. JOHNSON**

STUDENT HONOR PLEDGE

By taking this examination, you promise to abide by the MSLAW honor code and the following:

You are not permitted to receive or give any unauthorized assistance on this examination.

This is a closed-book examination. You are not permitted to use papers, personal effects, electronic devices or any other matter to provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination.

You are not permitted to speak or communicate with any other person taking this examination or anyone during the taking of the examination until all of your classmates have completed the examination, with the exception of the proctor.

You promise only to identify yourself by student number and not frustrate the anonymous grading system in any way.

You promise that you have no knowledge of the specific contents of the examination other than any instructions or information that may have been given out by your professor in advance.

The inclusion of your student number on your examination by you is your acknowledgement that you understand these requirements and promises and will abide by them.

STUDENT IDENTIFICATION NUMBER:

GENERAL INSTRUCTIONS

The exam is lengthy. Take note of the point value of each section when budgeting your time. The basis of your analysis, unless otherwise specified, should be the Common Law and general American law, including statutes and differing positions and the Model Penal Code.

Discuss the Massachusetts law only where specifically asked for, unless otherwise specified, for extra credit.

NOTE: There are THREE SECTIONS: MULTIPLE CHOICE (30%), DIRECTED ESSAY QUESTIONS (70%), EXTRA CREDIT (UP TO 10%).

-TRY TO LIMIT YOUR ANSWER TO TWO BLUE BOOKS, OR THE EQUIVALENT ON YOUR COMPUTER. IF YOU NEED TO EXCEED THIS LENGTH, YOU MAY.

RELAX AND GOOD LUCK

PART I: MULTIPLE CHOICE: 30 PERCENT. Answer all ten multiple-choice questions. Do not explain your answers. No credit will be awarded for explaining your answers.

1. A man and his friend were watching a televised football game at the man's home. Upset by a penalty called by the referee, the friend threw a bottle of beer at the man's television, breaking the screen. Enraged, the man picked up a nearby hammer and hit the friend on the head with it. The friend died from the blow.

The crimes below are listed in descending order of seriousness.

In a jurisdiction that follows Common Law principles, what is the most serious crime of which the man could properly be convicted?

- A. Murder.
- B. Voluntary Manslaughter.
- C. Involuntary Manslaughter.
- D. Assault.

2. A woman wanted to kill her business competitor. She contacted a man she believed was willing to commit murder for hire and offered him \$50,000 to kill the competitor. The man agreed to do so and accepted \$25,000 as a down payment. Unbeknownst to the woman, the man was an undercover police officer.

In a jurisdiction that has adopted the unilateral theory of conspiracy, is the woman guilty of conspiracy to murder the business competitor?

- A. No, because the man did not intend to kill the competitor.
- B. No, because it would have been impossible for the woman to kill the competitor by this method.
- C. Yes, because the woman believed that she had an agreement with the man that would bring about the competitor's death.
- D. Yes, because the woman took a substantial step toward bringing about the competitor's death by paying the man \$25,000.

3. A librarian and a teacher were customers in a bar, and late in the evening, they got into a large shouting match. After trading a number of insults, the librarian raised a full beer bottle above his head and shouted, "I ought to teach you a thing or two!" A former student of the teacher was a customer in the bar. The former student called out, "Do it! Hit him with that bottle! That guy's needed a beating for years!" The librarian then struck the teacher on the head several times with the beer bottle. The librarian was subsequently convicted of Assault and Battery with a Dangerous Weapon, a statutory felony, against the teacher.

If the former student is prosecuted for the same offense on the teacher, how should the court rule?

- A. Not guilty, because his words alone were not sufficient to imply any agreement between him and the librarian to attack the teacher.
- B. Not guilty, because mere presence at the scene of a crime and oral encouragement, whether or not the former student had the requisite intent, is not sufficient as an aider and abettor.
- C. Guilty, because he encouraged the librarian to attack the teacher.
- D. Guilty, because the former student's actions created an implied agreement with the librarian to attack the teacher.

4. Three brothers decided to commit armed robbery of a bank. The brothers agreed that, although they would be armed with guns, none of them would kill anyone. During the robbery, one of the brothers panicked when police arrived at the scene, and shot at the officer, missing him. The police officer shot back, hitting and killing the brother that fired on him.

In a jurisdiction that applies the majority rule of the agency theory, will the two surviving brothers be guilty for the felony murder of the third brother?

- A. Yes, because the police officer was justified in killing the third brother.
- B. Yes, because the third brother was killed during the commission of a dangerous felony.
- C. No, because the brothers agreed prior to the felony that they would not use deadly force.
- D. No, because the police officer was a non-felon.

5. A homeowner lived with his 19-year-old son in a house next to a police officer's house. The son, who never left the house, had the bad habit of playing his drum set at all hours of the night, in violation of local noise ordinance. The police officer, who was extremely annoyed at the drum playing but did not think enforcing the noise ordinance would do any good in the short term, showed up at the homeowner's door and told the homeowner he needed to do something about his son. The homeowner said he would like to physically punish his son but was afraid of his son overpowering him or suing him. The police officer told the homeowner he needed to physically punish his son or that he, the police officer, would physically punish both the son and the homeowner far more severely than anything the homeowner could do to his son. The homeowner did what he was told and used a belt to strike his son as punishment for playing the drums.

If the homeowner is charged with battery, what is his best defense?

- A. Duress.
- B. Domestic Authority.
- C. Entrapment.
- D. Public Duty.

6. A defendant is charged with an offense under a statute that provides as follows: "Any person who, while intoxicated, appears in any public place and manifests a drunken condition by obstreperous or indecent conduct is guilty of a misdemeanor."

At trial, the evidence shows that the defendant was intoxicated when police officers burst into his house and arrested him pursuant to a valid warrant. It was a cold night, and officers hustled the defendant out of the house without giving him time to get his coat. The defendant became angry and obstreperous when the officers refused to let him go back into the house to retrieve his coat. The officers left him handcuffed outside in the street, waiting for a special squad car to arrive. The arrest warrant was later vacated or removed.

Can the defendant properly be convicted of violating the statute?

- A. No, because the police would not allow the defendant to get his coat.
- B. No, because the statute requires proof of a voluntary appearance in a public place.
- C. Yes, because the defendant voluntarily became intoxicated.
- D. Yes, because the defendant voluntarily behaved in an obstreperous manner.

7. A woman awoke one morning from a dream she had killed her neighbor. The thought had never crossed the woman's mind before, although the two had been on bad terms for several years. The thought of killing the neighbor lingered in her head for several weeks. One day the woman accidentally backed over the neighbor with her car. She was horrified that she hurt the neighbor and immediately called the police.

What crime can the woman be charged with?

- A. Voluntary Manslaughter.
- B. Attempted Manslaughter.
- C. Conspiracy to Commit Manslaughter.
- D. None of the Above.

8. An elderly man was driving a pickup truck when he had a seizure and careened into a brick wall. Good Samaritans stopped to assist the man prior to paramedics arriving. The man began convulsing again, striking one of the women assisting him and breaking her jaw. When paramedics and law enforcement arrived, the woman was irate and wanted the elderly man charged with battery.

Is the elderly man criminally liable?

- A. Yes, because he injured a rescuer.
- B. Yes, because he was suffering from a medical condition.
- C. No, because the woman was a Good Samaritan.
- D. No, because he acted involuntarily.

9. The defendant planned to break into a home, steal any valuables that he could easily pawn and then burn down the home using gasoline from his lawnmower. When the defendant got to the home that night, he realized that he had forgotten the gas at home. Nonetheless, the defendant broke into the home through a basement window. Unbeknownst to him, the police were alerted by a silent alarm and arrested the defendant just as he was leaving the home with a sack filled with valuables.

At Common Law, the defendant has committed:

- A. Burglary and Attempted Larceny.
- B. Burglary, Attempted Larceny and Attempted Arson.
- C. Burglary and Larceny.
- D. Burglary, Larceny and Attempted Arson.

10. A customer asked to see an expensive watch in a jewelry store. In conversation with the clerk, the customer falsely claimed to be the son of the mayor. When handed the watch, he asked if he could put it on, walk around a bit so he could see how it felt on his wrist, and then briefly step outside to observe it in natural light. The clerk agreed, saying, "I know I can trust someone like you with the merchandise." The customer walked out of the store wearing the watch and never returned. A week later, the clerk was at a gathering when she spotted the customer wearing the watch. She told him he must either pay for the watch or give it back. He hissed, "I'll knock your block off if you mess with me." Intimidated, the clerk backed off. The following list of crimes is in descending order of seriousness.

What is the most serious crime the customer can be convicted of?

- A. Robbery.
- B. Larceny.
- C. False Pretenses.
- D. Embezzlement.

SECTION II: DIRECTED ESSAY QUESTIONS – 70 Percent: After each hypothetical fact pattern below, you will be asked a number of specific questions. Be sure to answer each of the questions. Be complete but be concise. Extra credit may be awarded based on the quality of your writing and analysis. Extra credit may be awarded for a correct discussion of Massachusetts law, but only where specifically asked for.

1. Clem is a longtime client of Attorney Addie. Clem is extremely upset with Addie's representation of him regarding a corporate tax matter and believes that her error cost him millions of dollars. Clem decides to visit Addie to hash the matter out. Clem, after placing his handgun in his waistband, goes to Addie's office. Addie's paralegal, Hermione, shows Clem into Addie's private office and leaves, closing the door. Inside, Clem screams, "Addie, you ruined my life, you incompetent bozo! I shall make sure you never practice law again in this state." Incensed, Addie reaches into her desk drawer, extracts her handgun, points it at Clem and fires. Addie is an expert shot. Clem is struck in the upper fleshy part of his left arm. Clem, who is right-handed, extracts his handgun from his waistband and aims it at Addie. At that instant, Hermione, who had heard the shot and the commotion, bursts into the office, carrying her ceremonial Samurai sword, which she grabbed from its spot on the wall. Seeing Clem with the gun pointed at Addie, Hermione swings the sword at Clem, and thereby severs Clem's right hand. Clem dies before emergency personnel can arrive.

Please answer the following questions based on the hypothetical:

- A. Assume that Addie is charged with Murder and that the jurisdiction defines the crime as at Common Law. What is the general Common Law definition of Murder? Describe and define the different mens rea forms and discuss whether or not they would apply in the factual scenario, assuming Addie is a legal cause of the death. Please explain.
- B. Would it be a viable argument for Addie to claim that she acted in the heat of passion and therefore should be found guilty only of Voluntary Manslaughter in a state that treats the issue as does the Common Law? What are the standards? Apply the facts to the law and conclude. Again, assume for purposes of this question that Addie's actions are the legal cause of the death. Please explain.
- What would be the law and analysis be different in a Model Penal Code state? Please state the MPC standard and analyze and conclude whether or not the result with respect to Manslaughter would be any different under the Code on the Code's version of "heat of passion."
- C. Suppose, alternatively, there is a statute in the jurisdiction that defines First Degree Murder as a "willful, deliberate and premeditated killing...." Would Addie be guilty of First Degree Murder, again assuming she is the legal cause of the death. Define the crime and elements and apply the facts and conclude.
- D. Assume that Hemione is charged with Murder as well, again assuming that legal cause is not an issue. Hemione raises a defense of "Defense of Others." What is that defense? If the law is applied as at early Common Law will she be successful? Why or why not? State the standard and analyze the facts and conclude. Would the result be any different under the modern majority position in the United States? What is the standard? Please explain.
- E. Attorney Addie argues that the death of Clem was not attributable to her as a matter of legal cause. Will the argument succeed? State and explain the standards and apply the facts to the law and conclude.
2. Jed is observed walking down Main Street with a brick in his hand by Officer Observo. Observo observes Jed throw the brick through a storefront window belonging to a building which houses "Wanda's Woolens," with which Jed has no association. Jed then moves away from the scene, giggling. Officer Observo then arrests Jed. Jed is charged with violating a statute that reads as follows: "It is a crime to willfully and maliciously break glass in a building, not one's own." The statutory maximum penalty is a \$500 fine and/or six months in a county jail. Jed, at the police station, exclaims, "I didn't want to break the window. I had to. I was ordered to by a space alien, Roderick. It had to be done to save the world. I like Wanda. Some of those woolens are very nice."
- A. Jed's attorney wants to raise the Defense of Insanity. What are the various tests used to determine whether the defense is applicable? Define them. Apply the facts of the hypothetical to tests and analyze and conclude whether or not Jed should be found Not Guilty by Reason of Insanity under the individual test.
- B. Was the arrest by Officer Observo lawful, based on the statutory "Breaking Glass" offense as described? Why or why not?

For extra credit, what test for "Not Guilty by Reason of Mental Illness" does Massachusetts use?

3. Will is standing at a bus stop. Will is approached by his longtime enemy, Zeb. Zeb hurriedly moves towards Will. Will becomes wary. Zeb pulls a knife from his pocket and lunges at Will with it, just barely missing Will's abdomen. Will then pulls his own knife from his pocket and stabs Zeb in the heart, killing him.

Will is prosecuted for Murder.

Will raises the Defense of Self Defense.

- A. Setting aside the issue of retreat, what is the legal standard for the use of deadly force in Self Defense? Please explain the standard, including definitions, and apply the facts of the above hypothetical and determine whether or not Will was justified. What is the Model Penal Code View?
- B. Though the hypothetical is silent on the issue, suppose the evidence indicates that Will had a clear path of escape, which he could have used in complete safety before resorting to deadly force. Would Will be justified in using deadly force before retreat?
1. At Common Law? Please explain.
 2. Under the majority United States view? Please explain.
 3. In a "Retreat State?" Please explain.
 4. In a Retreat State, what, if any, difference would it make if the approach by the assailant, Zeb, took place inside Will's residence? Please explain.
 5. How about in a "Stand Your Ground" state?
 6. What is the Model Penal Code's position on retreat in deadly force?

For extra credit, how does Massachusetts view the issue with respect to Retreat?

4. Suds Microbrewery, Inc., [hereinafter SMI], is legendary. Its India Pale Ale is considered one of the very best in a crowded field. One of the founders of SMI often says, "It's the hops. We use the best." Across town is a strong competitor though, Bubbles Microbrewery, Inc., [hereinafter BMI]. The corporate officers of BMI are Aldo, who is President, Bean, who is Vice President, Chip, who is Treasurer and Dudd, who is Secretary. The four get together over, what else, a beer. Aldo says, "Let's go into Suds' cold warehouse and steal some of their supposed great hops. That may help us up our market share." Bean burps, having been at the beer for some time and Chip says, "Hey Man, I don't know." Dudd, who also had a few, says nothing. After the meeting, Bean goes to the local hardware store and buys a flashlight just in case the warehouse is dark inside.

The next day Bean and Chip go to the SMI warehouse. Dudd is nowhere to be found. Bean walks into the open cold warehouse door and sneak up to a large bag marked "HOPS." Chip remains just outside the building and keeps watch. Bean picks up the bag and carries it outside. Bean and Chip then run from the warehouse. Aldo, who is waiting about one-half mile away, out of sight from the warehouse in a car, opens the doors and Bean and Chip jump in. Aldo drives away. The three are later apprehended by police in the process of hiding the hops.

Aldo, Bean, Chip and Dodd are charged with Conspiracy to Commit Larceny and Larceny.

- A. Have the four entered into a Conspiracy? What are the elements of Conspiracy? Define the crime and apply the facts to the law and conclude as to each of the four whether or not each entered into a conspiracy.
- B. What, if any, significance is it that Bean bought a flashlight for the job? At Common Law? In general American law? Does the act have any other significance as to Bean? Please explain.
- C. Could conspirators be convicted of both the conspiracy and the substantive crime at early Common Law? Under Modern American law? What is Wharton's Rule? Does it apply in these circumstances? Why or why not?
- D. Describe, define and analyze the positions of Aldo, Bean, Chip and Dodd as to whether or not they are parties to the crime of Larceny, and if so, what parties. Use Common Law terminology. Discuss the definitions and the legal standards involved and conclude as to each, applying the facts of the hypothetical.
- E. Would the corporation, BMI, be guilty of the crime of Larceny? At early Common Law? How about generally in modern American Law? What are the legal standards? Apply them to the facts in the hypothetical and conclude. How does the Model Penal Code treat the issue of corporate liability?

5. A. Abner approaches Boxcar on the street. Abner has an extremely realistic toy gun in his hand and points it at Boxcar. Abner says, "Give me three-hundred and eighty-eight dollars and eighteen cents, you worm!" Boxcar, after a careful count, tenders the exact amount requested to Abner. Abner is later charged with Robbery in a jurisdiction that defines the crime as it is defined at Common Law.

At trial, Abner testifies that he honestly believed that Boxcar had swindled him out of the exact amount demanded in an investment scheme at the time of the event but later learned that Boxcar had indeed invested the money as agreed.

What are the elements of Robbery? If the jury believes Abner, will it be of help in his defense? What element of the crime of Robbery does Abner's testimony go to? What type of defense is it? Describe the standards and, based on the facts and the law, what the outcome should be assuming Abner is believed. Please explain. Does it matter that Abner was wrong about the use of the money? Why or why not? Please explain.

B. Tippy is a teller at Bumbles Bank. Vern, a longtime customer, approaches Tippy's window and hands Tippy his deposit slip for his savings account in the amount of \$100 as well as the \$100 in cash. Tippy takes the money, puts \$50 in the cash drawer and \$50 directly into his pocket. After closing time, Tippy goes back into the cash drawer and takes the remaining \$50 that he had earlier received from Vern as well.

What crime(s) has Tippy committed? What are the elements? Apply the facts of the hypothetical to the elements of the crime(s) and explain your conclusions.

SECTION III: EXTRA CREDIT: UP TO 10 POINTS: Extra credit will be awarded, up to 5 points per question, for a correct answer on Massachusetts law.

1. Under the Massachusetts version of Involuntary Manslaughter, what is the standard with respect to the awareness by the defendant of the risk?
2. Does Massachusetts accept the *Pinkerton Doctrine* in Conspiracy? Please explain.

CRIMINAL LAW MIDTERM EXAMINATION 2023

15 PERCENT OF TOTAL CLASS GRADE

H. Johnson, Instructor

STUDENT HONOR PLEDGE

By taking this examination, you promise to abide by the MSLAW honor code and the following:

You are not permitted to receive or give any unauthorized assistance on this examination.

This is a closed-book examination. You are not permitted to use papers, personal effects, electronic devices or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination.

You are not permitted to speak or communicate with any other person taking this examination, or anyone else, during the taking of the examination or until all of your classmates have completed the examination, with the exception of the proctor.

You promise only to identify yourself by five-digit student number and not frustrate the anonymous grading system in any way.

You promise that you have no knowledge of the specific contents of the exam other than any information or instructions that may have been given out by your professor in advance.

The inclusion of your student number on the examination by you is your acknowledgement that you understand these requirements and will abide by them.

STUDENT IDENTIFICATION NUMBER:

GENERAL INSTRUCTIONS:

Unless otherwise specified the basis of your answer should be the Common Law and general American law including majority, minority and/or differing positions in the United States' jurisdictions, as well as the Model Penal Code for contrast where it is asked for specifically.

Extra credit will be awarded for contrasting Massachusetts law only where specifically asked for.

In sections two and three some extra credit will be awarded where warranted for your writing and analysis.

Good luck with it.

PART I: MULTIPLE CHOICE QUESTIONS

40 POINTS

ANSWER ALL FOUR OF THE FOLLOWING MULTIPLE CHOICE QUESTIONS. THERE IS NO CREDIT FOR EXPLAINING THE ANSWERS. DO NOT EXPLAIN THE ANSWERS.

1. A serial killer attacked his victims by hiding in dark street corners and slitting his unsuspecting victims' throats. One evening the serial killer was waiting in a dark corner when an unsuspecting college student walked past. As the student rounded the corner, the serial killer grabbed her by her hair and slit her throat, killing her.

What type of murder is most appropriate?

- A. First Degree Murder
- B. Second Degree Murder
- C. Felony Murder
- D. Voluntary Murder

2. A hunter drove to one of his old spots for target shooting. When he arrived at the spot, he noticed that an adjacent area that had formerly been an open field now contained a new housing tract with a playground where children were playing. The hunter tacked a paper target to a tree that was located between the playground and the point from which he planned to shoot. He fired a number of shots at the target, and all but one hit the target. The one shot that missed went wide of the target, ricocheted off a tree, and flew into the playground striking a child in the head, killing the child.

If the hunter is tried for the death of the child, the most serious crime he can be convicted of is:

- A. Murder, because the hunter's intent to shoot the child can be inferred from his conduct.
- B. Murder, because the hunter acted in a highly reckless way when he chose to shoot the gun in the direction of the nearby area where the children were playing.
- C. Manslaughter, because he did not intend to kill the child.
- D. Neither murder nor manslaughter, because the shooting in the direction of an occupied nearby playground is mere negligence and cannot support a criminal conviction of any kind in the death.

3. A convicted felon on parole entered a bookstore and ordered the owner into the closet stating, "I'm going to rob this joint and lock you in here, if you come out, I will beat you to death with the Restatement Second!" The owner entered the closet and remained there for two days until she realized the door was unlocked and the felon was gone.

What crime may the felon properly be convicted of?

- A. Battery
- B. False Imprisonment
- C. Mayhem
- D. Rape

4. An angry lawyer wanted to burn down the law office of a recent opposing counsel who had successfully won a large civil verdict against his client. The angry lawyer went to the local gas station and purchased a canister of gasoline and a box of matches. The angry lawyer poured the gasoline on mulch that surrounded opposing counsel's law office, lit a match dropping it onto the gasoline saturated mulch, and ran away. Unbeknownst to the angry lawyer, the mulch was coated with a fire retardant, and while the match smoldered for a short time, the flame died before spreading the fire. The only evidence of the angry lawyer's actions was the used matchstick laying on the mulch.

May the angry lawyer be properly convicted of arson?

- A. Yes, because he intended to start a fire.
- B. Yes, because he lit a match to start a fire.
- C. No, because there was no burning of the property.
- D. No, because there was no witness to the crime.

PART II: SHORT ANSWER ESSAY QUESTIONS

30 POINTS (ANSWER ONLY TWO OF THREE QUESTIONS)

ANSWER *ONLY TWO (2) OF THREE (3) QUESTIONS, WHERE APPROPRIATE NOTING THE ISSUES, RULES OF LAW AND APPLYING THE FACTS OF THE HYPOTHETICAL TO THE LAW AND CONCLUDING. SOME CREDIT MAY BE ADDED FOR YOUR ANALYSIS AND WRITING. BE SURE TO ANSWER ALL OF THE INDIVIDUAL QUESTIONS INCLUDED IN THE EACH QUESTION YOU SELECT. ANSWER IN ESSAY FORM. BE CONCISE BUT BE COMPLETE. NO CREDIT WILL BE AWARDED FOR ANSWERING AN EXTRA QUESTION.

1. Chip is walking down the street at midnight in New England. Chip, a locksmith, decides, just for the fun of it, to pick the lock of a residence, which happens to be owned by Pops, who is asleep in the upstairs bedroom. Chip picks the front door lock, opens the door and walks into the foyer, satisfied that he had accomplished his only purpose, to test his locksmith skills. In the foyer, however, Chip observes a small sketch by the noted artist, Van Goof. The sketch is valued at two-million dollars. Chip decides to take the sketch and does, leaving through the open door. *Note: Larceny is defined as at Common Law. The theft of an item of which is of \$1,200 in value or higher is deemed a felony in the jurisdiction.

Chip is charged with the crime of Burglary in a Common Law jurisdiction. What are the elements? Analyze the elements and the facts. Will Chip be convicted? Why or why not?

2. Elsie is a sex worker. Elsie approaches Ingmar, a potential customer, on the street. Elsie says, "For two hundred, I'll show you a real good time." Ingmar removes two apparent one-hundred-dollar bills from his wallet and hands them to Elsie. The two then engage in sexual intercourse as defined in the Common Law era. It turns out that the bills were counterfeit, which Ingmar well knew at the time he gave them to Elsie.

Elsie reports the matter to the local police department. Ingmar is charged with Rape, which defines the crime as at Common Law. What is definition of Rape at Common Law? What are the elements? Analyze the elements and the facts and conclude as to whether or not Ingmar will be convicted. Please explain your answer.

3. Members of the state legislature are at wit's end. The fentanyl crisis, which has resulted in numerous deaths, has reached epic proportions. A bill is proposed that reads as follows:
"It is a crime, in a public place, to be Addicted to Fentanyl. A conviction is punishable by a period of incarceration in the county jail for six months."

Would the proposed crime described be a Felony or a Misdemeanor under a Common Law analysis? Why or why not? Under the Model Penal Code? Why or why not? For extra credit, would the crime be a Felony or a Misdemeanor under Massachusetts law? Why or why not?

Is the proposed crime in accord with the Constitution? What provisions of the Constitution are involved in your analysis? Please explain your answer.

PART III: HYPOTHETICAL

30 POINTS

FOLLOW THE FACTS AND DISCUSS THE LAW IN THIS CLASSIC (IF SHORT) ISSUE HYPOTHETICAL. SEE INSTRUCTIONS FURTHER BELOW. ANSWER IN ESSAY FORM.

The Yammering Tiger Inn (hereinafter YTI), is located in lovely Beechwood City in the state of Catatonia, the fifty-first state in the Union. The YTI is as old as the hills. It was founded before the Republic as a coaching inn, which catered to travelers on their long treks through the colonies. It has since become one of those fashionable hotels where modern vacationers put their feet up before the fire and dream of more agreeable days of yore with an almost pathological nostalgia.

The innkeeper, Rattles, is also, almost, as old as the hills. For many years, Rattles has been in a state of open hostility with the next-door neighbor, Terry, regarding the hotel's expansion. Terry is about to take action.

Meanwhile, in the Babbling Bobolink Pub, inside the hotel, two patrons are the worse for drink. Arnie and Beavis, well intoxicated, argue heatedly about the existence of the climate crisis. Incensed, Arnie throws a punch at Beavis. Beavis ducks. Arnie falls to the floor. Beavis slowly walks over to a nearby table and picks up an empty beer bottle, breaks it on the bar, and stabs the prone Arnie in the eye with the broken bottle. The two are separated. Arnie is taken to nearby Dracula General Hospital, where, after he loses his eye, he dies as a result of the injury.

Just before sunset, Terry, after grabbing matches and a full can of gasoline, jumps a fence onto the YTI property, and opens the closed back door of the YTI. Terry climbs the stairs to the second floor and opens a window. Terry pours the gasoline out the window onto a tool shed, which is about 10 feet from the YTI, as he had planned. Terry throws a match out the window onto the shed. The shed is engulfed in flame. Terry flees. Rattles runs outside, fire extinguisher in hand. Regrettably, the aging Rattles' sleeve catches fire and he is burned to death.

Terry, in a full panic, jumps into his sports car and drives at great speed down the picturesque Main Street. Terry, suffering from a severe thirst, pulls into Beechwood Convenience Store and purchases a soft drink. He sits for a moment on a bench. He then jumps back into his car and accelerates away, at high speed and, while sipping on his soft drink and holding his phone in an attempt to call his wife, loses control of the car, which careens onto the sidewalk and drives over Carrie, who is on her way to the local "Pumpkinfest." Carrie is killed instantly. After his arrest, Terry says, "I didn't mean to hurt anybody. I just hate that damn inn. All that colonial crap. And they wanted to make it bigger."

WHAT, IF ANY, POSSIBLE CRIMES ARE THERE IN THE HYPOTHETICAL. IDENTIFY AND DEFINE THE CRIMES AND THE ELEMENTS OF EACH. DISCUSS THE ISSUES, THE RULES OF LAW AND APPLY THE FACTS TO CONCLUDE. BE COMPLETE BUT BE CONCISE.

THE BASIS OF YOUR ANSWER SHOULD BE THE COMMON LAW, WITH MODERN UNITED STATES LAW, INCLUDING MAJORITY, MINORITY AND DIFFERING POSITIONS AND THE MODEL PENAL CODE FOR CONTRAST.

SOME EXTRA CREDIT WILL BE AWARDED FOR A CORRECT DISCUSSION OF MASSACHUSETTS LAW IN CONTEXT. CREDIT MAY ALSO BE ADDED FOR ASPECTS OF YOUR WRITING AND ANALYSIS.

CRIMINAL LAW MIDTERM EXAMINATION 2022

20 PERCENT OF TOTAL CLASS GRADE

H. Johnson, Instructor

STUDENT HONOR PLEDGE

By taking this examination, you promise to abide by the MSLAW honor code and the following:

You are not permitted to receive or give any unauthorized assistance on this examination.

This is a closed-book examination. You are not permitted to use papers, personal effects, electronic devices or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination.

You are not permitted to speak or communicate with any other person taking this examination, or anyone else, during the taking of the examination or until all of your classmates have completed the examination, with the exception of the proctor.

You promise only to identify yourself by five-digit student number and not frustrate the anonymous grading system in any way.

You promise that you have no knowledge of the specific contents of the exam other than any information or instructions that may have been given out by your professor in advance.

The inclusion of your student number on the examination by you is your acknowledgement that you understand these requirements and will abide by them.

STUDENT IDENTIFICATION NUMBER:

GENERAL INSTRUCTIONS:

Unless otherwise specified the basis of your answer should be the Common Law, majority, minority and/or differing positions in the United States' jurisdictions, as well as the Model Penal Code for contrast where it is asked for specifically.

Extra credit will be awarded for contrasting Massachusetts law only where specifically asked for.

In sections two and three some extra credit will be awarded where warranted for your writing and analysis.

Good luck with it.

PART I: MULTIPLE CHOICE QUESTIONS

40 POINTS

ANSWER ALL FOUR OF THE FOLLOWING MULTIPLE CHOICE QUESTIONS. THERE IS NO CREDIT FOR EXPLAINING THE ANSWERS. DO NOT EXPLAIN THE ANSWERS.

1. A hunter drove to one of his old spots for target shooting. When he arrived at the spot, he noticed that an adjacent area that had formerly been an open field now contained a new housing tract with a playground where children were playing. The hunter tacked a paper target to a tree that was located between the playground and the point from which he planned to shoot. He fired a number of shots at the target, and all but one hit the target. The one shot that missed went wide of the target, ricocheted off a tree, and flew into the playground striking a child in the head, killing the child.

If the hunter is tried for the death of the child, the most serious crime he can be convicted of is:

- A. Murder, because the hunter's intent to shoot the child can be inferred from his conduct.
 - B. Murder, because the hunter acted in a highly reckless way when he chose to shoot the gun in the direction of the nearby area where the children were playing.
 - C. Manslaughter, because he did not intend to kill the child.
 - D. Neither murder nor manslaughter, because the shooting in the direction of an occupied nearby playground is mere negligence and cannot support a criminal conviction of any kind in the death.
-
2. A writer was enraged when he learned that his editor was having an affair with the writer's wife. Late one night, while the editor was on a business trip out of town, the writer went to the editor's home, kicked in the back door that led to the editor's photography studio and darkroom, and used volatile chemicals to build an intense fire, intending to burn down the house and destroy several years' accumulation of the editor's irreplaceable negatives and photographs. As the flames leaped to the ceiling and began to burn and char the structure, the writer realized that his marriage had been loveless and empty for some time and that he had unconsciously transferred his feelings of frustration and anger to the editor. The writer grabbed the editor's fire extinguisher and quickly put out the flames before they had destroyed any photographic materials. The writer returned the next night with tools and materials with which he completely repaired the broken door and replaced all burned portions of the ceiling in the studio. As he was completing the work, police officers who had been summoned by neighbors arrived and arrested the writer.

The writer could be convicted of which of the following crimes in connection with the described events?

- A. Arson and Burglary.
- B. Trespassing only.
- C. Burglary only.
- D. Arson only.

3. A stagehand decided to play a practical joke on an actor. The stagehand went to the storage room where the props were stored and took what he believed to be a fake stage gun from the locker where such fake stage guns were always kept. In fact, a week before, an actress had put her real pistol in the stage gun locker and borrowed the stage gun for an amateur theatrical her church group was putting on.

The actress had forgotten to remove the bullets that her husband always kept in the gun. The stagehand went to the actor's dressing room and yelled, "You've stolen the part I always wanted to play, now die for it!" The actor knew the stagehand liked to play practical jokes, and after an initial frightened reaction, the actor broke out laughing. The stagehand laughed too, shouted, "Bang, you're dead!" and pulled the trigger. A bullet hit the actor in the heart, killing him.

Which of the following best describes the stagehand's criminal liability?

- A. He is guilty of Second-Degree Murder.
 - B. He is guilty of Voluntary Manslaughter.
 - C. He is guilty of Involuntary Manslaughter.
 - D. He has committed no crime.
4. In her prosecution for murder of a police officer, a defendant claimed that she acted in an extreme heat of passion because the officer had beaten her with a nightstick while making an otherwise lawful arrest on an outstanding warrant for numerous parking violations. The defendant introduced evidence supporting her claim and argued that she should be convicted only of voluntary manslaughter, rather than murder. The jurisdiction uses the Common Law definition of Murder, "the killing of another human being with malice aforethought, which is not justified, mitigated or excused."

What is the burden of proof on the defendant's claim that her killing of the police officer was mitigated by the heat of passion?

- A. The prosecution must prove by clear and convincing evidence that the defendant was not acting in the heat of passion when she killed the police officer.
- B. The prosecution must prove beyond a reasonable doubt that the defendant was not acting in the heat of passion when she killed the police officer.
- C. The defendant must prove by clear and convincing evidence that she was acting in the heat of passion when she killed the police officer.
- D. The defendant must prove by a preponderance of the evidence that she was acting in the heat of passion when she killed the police officer.

PART II: SHORT ANSWER ESSAY QUESTIONS

30 POINTS (ANSWER BOTH QUESTIONS)

ANSWER BOTH QUESTIONS, WHERE APPROPRIATE NOTING THE ISSUES, RULES OF LAW AND APPLYING THE FACTS OF THE HYPOTHETICAL TO THE LAW AND CONCLUDING. BE COMPLETE BUT BE CONCISE. SOME CREDIT MAY BE ADDED FOR YOUR ANALYSIS AND WRITING. BE SURE TO ANSWER ALL OF THE INDIVIDUAL QUESTIONS INCLUDED IN THE EACH QUESTION. ANSWER IN ESSAY FORM. BE CONCISE BUT BE COMPLETE.

1. Chippy dislikes Del. Chippy approaches Del in the “Rockem Sockem Pub.” Chippy swings his fist towards the head of Del, who is suitably astonished. Answer the following questions, illuminating and varying the facts surrounding the event.

Assume Chippy stops his swing just short of striking Del in the head and exclaims, “Ha, ha! I scared ya, Del!” Del, in fact, was apprehensive that he was about to be hit by Chippy. What crime has Chippy committed? What are the elements? Please explain.

Assume Chippy swings his fist with the intent of striking Del, however Del ducks and Chippy misses him. What crime has Chippy committed? What are the elements? Please explain.

Assume Chippy, instead of a bare fist, holding a beer bottle in his hand, strikes Del in the face and causes a deep scar on Del’s left cheek as the bottle breaks. Chippy did not intend to scar Del. Has Chippy committed Mayhem as defined in the Common Law era? Please set out the elements of the crime and explain. Briefly describe any other crimes, both at Common Law and under modern statutory law, that would be applicable to the facts. Please explain.

How does the Model Penal Code treat Mayhem?

2. A state has a statute defining Murder as follows:

“First Degree Murder is the willful, deliberate premeditated Killing of a Human Being. All other Murders are Second Degree Murders.”

Amy and Brenda are ping-pong rivals. Amy, far too competitive for her own good, decides to end the rivalry. Amy grabs her favorite hatchet and visits Brenda at the local ping-pong club. Amy approaches Brenda and removes her hatchet from its holster. Amy swings the hatchet at Brenda’s “racket hand,” her right. Brenda sees the hatchet swing and jerks her hand back, leaning towards Amy. Amy misses the racket hand, striking Brenda in the chest, killing her.

On these facts, will Amy be convicted of First or Second Degree Murder under the state’s statutory scheme? Explain your answer.

PART III: HYPOTHETICAL

30 POINTS

FOLLOW THE FACTS AND DISCUSS THE LAW IN THIS CLASSIC (IF SHORT) ISSUE HYPOTHETICAL. SEE INSTRUCTIONS FURTHER BELOW. ANSWER IN ESSAY FORM.

The state of Morgan*, the fifty-first state in the Union, borders the sea. Its rocky shores once served as a haven for piracy. Long-told tales of swashbuckling adventure have infected the minds of the inhabitants like a plague of locusts infests the land. Captain Featherhead, who is an expert on the "Golden Age of Piracy," lives at 1607 Bluebeard Boulevard in the city of Batten. He has, himself, told numerous tales of the pirate treasure he has recovered off the coast. Most of the tales are nonsense, but he often refers to "The Golden Goose," which he claims to have found while diving and he describes it as a priceless artifact of "gold, and history."

Sam, a local resident, has heard the tales. Sam decides to act. Sam wants the Golden Goose. Sam goes to Featherhead's house at 7:00 P.M. on an early Fall night. Just as the sun is setting, Sam climbs up a drainpipe to a second-floor window. Sam slips in through the open window into Featherhead's bedroom. Sam looks about for a safe. He sees one attached to the wall. Sam, an accomplished safecracker, fiddles with the combination and quickly opens the safe. Inside he finds a small golden goose, about three inches long. Sam is just about to grab the item when the bedroom door bursts open. A woman rushes into the darkening room. She reaches out and grabs Sam. Sam pushes her onto the bed. After a short struggle, Sam subdues the woman, who seems familiar to him, forcibly removes her clothing, and engages in sexual intercourse with her. The woman says, "No...stop," on at least three occasions during the course of the event. Following intercourse, Sam gets off from the bed. It is only then that he recognizes that the woman is his wife, Samantha. Samantha also, then, recognizes him. Samantha exclaims, "Sam, I'm leaving you for Captain Featherhead. Scram! The two of us have been sleeping together for weeks." Sam grabs the golden goose, and, after pausing for a moment, strikes Samantha on the head with it, instantly killing her. He then, the "Goose" in hand, jumps out the window, slides down the drainpipe and jumps into his sports car. He rapidly accelerates away from the Featherhead residence, traveling quickly with his lights not illuminated so as not to draw attention to himself. After a brief stop at a convenience store to grab a latte, Sam gets back in the car and, regrettably, some three miles from the scene, drives over a pedestrian, Hal, who is an ancient survivor of the 1960's, wearing beads, tie-dies, the whole bit. Hal is instantly killed. At the speed he was driving and with the lights out, Sam did not see Hal.

*Larceny, the trespassory taking and carrying away of the personal property of another with the intent to steal, is a felony in Morgan.

WHAT, IF ANY, POSSIBLE CRIMES ARE THERE IN THE HYPOTHETICAL. IDENTIFY THE CRIMES, DISCUSSING THE ISSUES, THE RULES OF LAW AND APPLY THE FACTS TO CONCLUDE. BE COMPLETE BUT BE CONCISE.

THE BASIS OF YOUR ANSWER SHOULD BE THE COMMON LAW, WITH MODERN UNITED STATE LAW, INCLUDING MAJORITY, MINORITY AND DIFFERING POSITIONS AND THE MODEL PENAL CODE FOR CONTRAST.

SOME EXTRA CREDIT WILL BE AWARDED FOR A CORRECT DISCUSSION OF MASSACHUSETTS LAW IN CONTEXT. CREDIT MAY ALSO BE ADDED FOR ASPECTS OF YOUR WRITING AND ANALYSIS.

**CRIMINAL LAW FINAL EXAMINATION
FALL 2021
H. JOHNSON**

STUDENT HONOR PLEDGE

By taking this examination, you promise to abide by the MSLAW honor code and the following:

You are not permitted to receive or give any unauthorized assistance on this examination.

This is a closed-book examination. You are not permitted to use papers, personal effects, electronic devices or any other matter to provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination.

You are not permitted to speak or communicate with any other person taking this examination or anyone during the taking of the examination until all of your classmates have completed the examination, with the exception of the proctor.

You promise only to identify yourself by student number and not frustrate the anonymous grading system in any way.

You promise that you have no knowledge of the specific contents of the examination other than any instructions or information that may have been given out by your professor in advance.

The inclusion of your student number on your examination by you is your acknowledgement that you understand these requirements and promises and will abide by them.

STUDENT IDENTIFICATION NUMBER:

GENERAL INSTRUCTIONS

The exam is lengthy. Take note of the point value of each section when budgeting your time. The basis of your analysis, unless otherwise specified, should be the Common Law and general American law, including statutes and differing positions. Also, include the Model Penal Code for contrast.

Discuss the Massachusetts law only where specifically asked for, unless otherwise specified, for extra credit.

NOTE: There are **FOUR SECTIONS:** MULTIPLE CHOICE (30%), HYPOTHETICAL (30%), SHORT ANSWERS (40%), EXTRA CREDIT (UP TO 10%).

-TRY TO LIMIT YOUR ANSWER TO TWO BLUE BOOKS, OR THE EQUIVALENT ON YOUR COMPUTER. IF YOU NEED TO EXCEED THIS LENGTH, YOU MAY.

RELAX AND GOOD LUCK

PART I: MULTIPLE CHOICE QUESTIONS: 30 POINTS-ANSWER ALL FIVE QUESTIONS.

NOTE: EACH MULTIPLE CHOICE QUESTION IN PART ONE IS WORTH A POSSIBLE SIX POINTS. DO NOT EXPLAIN YOUR ANSWER. ADDITIONAL CREDIT WILL NOT BE GIVEN FOR EXPLANATIONS.

1. A drug dealer agreed with another individual to purchase heroin from the individual in order to sell it on a city street corner. Unknown to the drug dealer, the other individual was an undercover police officer whose only purpose was to arrest distributors of drugs. The drug dealer made a down payment for the heroin and agreed to pay the remainder after he sold it on the street. As soon as the undercover officer handed over the heroin, other officers moved in and arrested the dealer.

The jurisdiction follows the common law approach to conspiracy.

Could the dealer properly be convicted of conspiring to distribute drugs?

- A. No, because there was no overt act.
 - B. No, because there was no plurality of agreement.
 - C. Yes, because neither an overt act nor plurality of agreement is required at common law.
 - D. Yes, because the dealer believed all the elements of conspiracy were present and cannot take advantage of a mistake of fact or law.
-
2. A state statute divides murder into degrees and defines murder in the first degree as murder committed willfully with premeditation and deliberation. The statute defines murder in the second degree as all other murder at common law and defines voluntary manslaughter as at common law.

A man hated one of his coworkers. Upon learning that the coworker was at a neighbor's house, the man grabbed his gun and went to the neighbor's house hoping to provoke the coworker into attacking him so that he could then shoot the coworker. After arriving at the house, the man insulted the coworker and bragged that he had had sexual relations with the coworker's wife two weeks earlier. This statement was not true, but it enraged the coworker, who grabbed a knife from the kitchen table and ran toward the man. The man then shot and killed the coworker.

What is the most serious homicide offense of which the man could properly be convicted?

- A. Murder in the first degree.
- B. Murder in the second degree.
- C. Voluntary manslaughter, because he provoked the coworker.
- D. No form of criminal homicide, because he acted in self-defense.

3. A state statute provides as follows: "In all criminal cases, whenever the Constitution permits, the burden of proof as to a defense claimed by the defendant shall rest on the defendant, and the magnitude of the burden shall be as great as the Constitution permits."

The same state defines the crime of forcible rape as follows: "Forcible rape consists of sexual penetration inflicted on an unconsenting person by means of force or violence. Consent of the victim is a complete defense to a charge of rape."

At a defendant's trial for forcible rape, he testified that the alleged victim had consented to having sexual intercourse with him.

How should the trial judge instruct the jury regarding the issue of consent?

- A. The burden of proving that the victim consented, by a preponderance of the evidence, rests on the defendant.
 - B. The burden of proving that the victim consented, by clear and convincing evidence, rests on the defendant.
 - C. The burden of proving that the victim consented, by proof beyond a reasonable doubt, rests on the defendant.
 - D. The burden of proving that the victim did not consent, by proof beyond a reasonable doubt, rests on the prosecution.
4. A college student was the sole lifetime beneficiary under a large trust administered by a banker. The student received a large monthly distribution from the trust, and whenever he ran short, he simply called the banker for extra funds, because the trust provided that the student was to receive whatever he needed from income or principal. The student's roommate found out about the trust arrangement and decided to see if he could make it pay off for him. The roommate sent a telegram to the banker, which appeared to be from the student, and which asked for several thousand dollars to cover medical expenses. The telegram further stated that, since he was in the hospital, the student would send his roommate to pick up the cash. The next day, the roommate showed up at the banker's office and obtained the money on the promise that he would take it to the student. The roommate absconded with the funds.

When the roommate obtained the cash from the banker, he committed:

- A. False pretenses.
 - B. Embezzlement.
 - C. Larceny by trick.
 - D. No Crime.
5. A blacksmith ran a small forge in a tourist attraction depicting village life in the 1800's, and produced small metal trinkets for sale as souvenirs. A tourist came into the forge and started ridiculing the blacksmith, telling him that he was foolish for practicing such an out-of-date trade when modern equipment could produce the same trinkets faster and far more cheaply. Although he maintained a calm demeanor, the blacksmith was enraged by the time the

customer finished and headed back out the door. He picked up an anvil and hurled it in the general direction of the customer. The anvil fell harmlessly to the ground after traveling maybe a foot.

If the blacksmith is charged with assault, which of the following statements would be most helpful for his defense:

- A. The blacksmith did not succeed in hitting the customer with the anvil, and he knew that it was impossible to do so.
- B. The blacksmith knew that it was impossible to hit the customer with the anvil.
- C. The customer did not see the blacksmith throw the anvil, and the blacksmith knew that it was impossible to hit the customer with the anvil.
- D. The customer did not see the blacksmith throw the anvil.

PART II: HYPOTHETICAL: 30 POINTS

INSTRUCTIONS:

FOLLOW THE FACT PATTERN IN THIS CLASSIC ISSUE HYPOTHETICAL. SPOT THE ISSUES, STATE THE RULE(S) OF LAW, ANALYZE AND APPLY THE FACTS TO THE LAW AND CONCLUDE. DISCUSS ALTERNATIVE ANALYSES AND CONCLUSIONS AS WELL, ALONG WITH THEIR IMPLICATIONS. DO NOT FORGET TO ISOLATE THE PARTIES AND THEIR POSSIBLE CRIMES, WHETHER OR NOT THEY SURVIVE THE HYPOTHETICAL, AND TO DISCUSS ANY POSSIBLE DEFENSES RAISED BY THE HYPOTHETICAL AND THEIR APPLICABILITY AND TO ASSESS THEIR LIKELIHOOD OF SUCCESS. USE ESSAY FORM.

IN THIS SECTION LIMITED EXTRA CREDIT WILL BE AWARDED FOR APPROPRIATELY COMPARING AND CONTRASTING MASSACHUSETTS LAW.

NOTE: SOME EXTRA CREDIT MAY BE ADDED IN THIS SECTION FOR THE CLARITY OF WRITING AND/OR ANALYSIS.

Gripped, like a vice, by the “Holiday Season,” the town of Remote, nestled in the mountainous area of the state of Bliss, the fifty-first state in the Union, is all decked out in wreaths, garland and lights. One thing that approaches certainty is that the “Season of Giving” can run into money. Most would try to solve this financial issue by obtaining a part-time job, perhaps. Others make much poorer choices.

Jack, Ken and Larry are terribly short of cash. The three visit the local pub, "The Hoppin' Hyena," to drown their sorrows. As the boozy night rolls on, Larry says, "Fellas, I got a plan. We need money, right? The Remote National Bank has money. Let's hit the place and take it. I'll get the guns." Ken says, "I'm with ya. Let's do it." Jack, a little the worse for drink, nods, though he does not understand what is being suggested.

The following morning, the plan goes into action. Larry goes to the local gun shop, "Gil's Guns." Larry approaches Gil at the counter and says, "Gil, my friend, we need three guns for a job." Gil quickly responds, "Don't say anything else. I don't want to know. I know you guys are broke." Gil sells Larry the guns and says, "Good luck, Larry," as Larry leaves the store. Meanwhile, Ken goes to the local general store, "Fleece and Such," picks up three ski masks, three pairs of gloves and a first aid kit. Ken approaches the owner, Byron, behind the counter, with the items in-hand. Byron looks quizzically at Ken and asks, "What are you three geniuses going to do, knock off a bank?" Ken quickly pays for the items and exits.

Later that day, around noon, Larry drives his ancient pickup truck to get Ken and then Jack at their houses. At Jack's residence, Ken approaches the front door and knocks. Jack comes out and Ken says, "C'mon, let's go." Jack leaves the residence and asks, "Okay, where we goin'?" The two get into the pickup with Larry, who drives immediately to the Remote National Bank. Larry stops the pickup and puts on his ski mask. Ken puts on his mask as well. Jack asks, "What are you guys doin'?" I know we need the money but...." Larry responds, "In or out?" Jack puts his ski mask on, but does not take his gun from Larry, who tries to hand it to him. Larry says, "Get ready to drive." Jack slips behind the wheel as Ken and Larry get out of the pickup.

Ken and Larry enter the bank. Larry quickly approaches the teller, Ted. Larry says, "Put all the money in the bag, as he raises the gun and points it at Ted. Ted immediately steps on the silent alarm and slowly begins to put the money in the bag. The bag is almost full and Ted prepares to hand the bag to Larry. Sirens are suddenly audible outside the bank. Ted says, "Larry, we all know it's you. You're goin' to jail for a long time. By the way, the bank's gonna repossess your house, too." Larry exclaims, "Take this for my house!" Larry slowly raises the gun and shoots Ted, killing him. Larry reaches over the counter and takes the bag of money. Ken had watched the entire episode from a few feet away, also masked, gun drawn.

Larry and Ken run from the bank. As they exit, they are met by the police led by Captain Crush. Larry and Ken fire at the police. One of the police bullets, fired by Captain Crush himself, strikes a shopper on the crowded street, Helene, in the head, severely injuring her.

Ken and Larry jump into the pickup and Jack accelerates away. Jack stops at his sister Jill's house and knocks on the door. Jill answers and Jack hands her the masks and guns saying, "We just robbed a bank, get rid of this, the police are after us."

Jack runs back to the truck which will not start, undoubtedly a function of its age. At that moment, the police arrive and the three flee. Officer Pinpoint, a sharpshooter, takes aim and fires, striking Jack in the spine as he runs away. Jack survives but is paralyzed. The other two are forcibly tackled in their arrest; Officer Frick on Ken and Officer Frack on Larry.

Meanwhile, Helene is in the process of being transported by ambulance to the Lotsa Luck Hospital, nearby. Helene, suffering great pain and loss of reason due to her headwound, bolts from the stretcher, past Officer Annie who is there to guard her. Helene tumbles out the back door of the ambulance. She then pitches down a long cliff, with a scenic overlook, and dies from her injuries in the fall.

PART III SHORT ANSWER QUESTIONS: 40 POINTS-ANSWER ONLY 4 OF 5.

CHOOSE ONLY 4 OF 5 QUESTIONS. BE COMPLETE BUT BE CONCISE. SOME EXTRA CREDIT WILL BE AWARDED FOR MASSACHUSETTS LAW ONLY WHERE SPECIFICALLY ASKED FOR .

1. Albert decides to act. Albert had given Bobby one-thousand dollars a few years before. Albert honestly remembers the conversation ending with Bobby's promise to repay him the sum. Albert has never received the money and has become angry. Albert, at midnight in winter, goes to Bobby's residence, a lovely three-bedroom gambrel on a cul-de-sac, opens the closed but unlocked front door and ascends the stairway to Bobby's bedroom, carrying a knife. Albert awakens Bobby, holds the knife to Bobby's throat and quietly says, "Gimme the thousand." Bobby reaches into his nearby sock-drawer and extracts one-thousand dollars and hands it to Albert, who leaves. The actual conversation was not as Albert remembered. In fact, Albert said Bobby could keep the money as a gift.

In a Common Law jurisdiction, has Albert committed Robbery? How about Burglary? What are the elements of each? Explain your conclusions, applying the facts to the law. Would it make any difference if the jurisdiction had a statute which made assault by means of a weapon (including a knife) a felony? Please explain your answer.

2. Masthead and Rigging leave the "Salty Dog Tavern" at closing time. The two had been arguing about, what else, politics inside the bar. Rigging exclaims, "Masty, your candidate is a drip!" Rigging pushes Masthead as he says this. Masthead, for no logical reason, believes that Rigging is about to kill him, even convincing himself that Rigging has a knife, though there is obviously none. Masthead, taking a step toward Rigging, pulls out his gun and shoots Rigging, killing him, exclaiming, "My candidate is my hero!"

Masthead is charged with Murder. Masthead wishes to raise the issue of self-defense. Will Masthead be successful? Why or why not?

Separate from the hypothetical, as a general principle, when is a person required to retreat in the context of self-defense? At Common Law? In the majority U.S. position? In the minority U.S. positions? Under the Model Penal Code?

For extra credit, how would Massachusetts treat the retreat question?

3. Marcus is a thief for hire. Marcus has been contacted by Nils to steal the "Stuffy Sapphire," so named because it is about the size of a large stuffed clam and "stuffies" are the Rhode Island name for stuffed clams. Marcus breaks into the "Gems-Is-Us" store and takes the Stuffy Sapphire. At that instant, the local police swoop in and arrest Marcus. Marcus agrees to work with the police, which he believes is in his best interest, to help secure the arrest of Nils.

Marcus meets Nils, as prearranged, in a dark parking lot. Marcus hands over the Stuffy Sapphire. Nils exclaims, "At last, the Stuffy is mine! Thanks for stealing it." For the second time in our hypothetical, the police swoop in, this time arresting Nils.

Nils is charged with Attempted Receiving or Concealing Stolen Property. What are the elements of the crime of Attempted Receiving or Concealing Stolen Property?

Would the defense of Impossibility be of avail to Nils in jurisdictions which follow the California position as described in *People v. Rojas*, 55 Cal. 2d 252 (1961)? How about those that follow the minority view as described in *People v. Jaffee*, 185 N.Y. 497 (1906)? Explain the concepts and your answer.

4. Will suspects that his wife, Zelda, is having an affair with their neighbor, Victor. Will approaches Victor on the street and exclaims, "Victor, you cad! I know you have been sleeping with Zelda." Victor responds, "I haven't. Zelda's a great person, but I haven't." Victor turns to walk away and Will notices Victor chuckle as he walks. Incensed, Will takes his gun from its holster and fires once, hitting Victor in the back of the head, killing him.

Will is charged with Murder in a Common Law state. Will wishes to raise the mitigation of "heat of passion," hoping to reduce what would otherwise be Murder to Voluntary Manslaughter. What are the four requirements for such a mitigation, generally, in a Common Law jurisdiction? What are the issues raised by the hypothetical? Will Will be successful? Why or why not?

How would your analysis be different in a Model Penal Code jurisdiction? Please explain.

5. Edwin has a history of psychiatric hospitalizations. He has suffered from schizophrenia for most of his life. Edwin approaches Frederick on the street. Edwin is, at that moment, suffering the delusion, due to his illness, that Frederick is an evil warlord about to conquer earth itself. Edwin picks up a large rock and purposely strikes Frederick in the head, severely injuring him. Though Edwin knew the act was illegal and wrong in itself, he actually believed, again due to his illness, that the rock strike would remove all of the evil from Frederick and that the blow would not injure Frederick.

Edwin is charged with the statutory offense of "Assault and Battery by Means of a Deadly Weapon." The terms "assault and battery" are defined as they are at Common Law. The rock used qualifies under the statute as a "deadly weapon."

Edwin is likely to enter a "Not Guilty by Reason of Insanity" plea. Discuss the various tests and approaches, including their components and definitions, for the Insanity Defense. Apply each of the

tests to the facts of the hypothetical, analyze and conclude as to whether or not Edwin will be successful.

SECTION IV: EXTRA CREDIT: POSSIBLE 10 POINTS.

EACH OF THE FOLLOWING TWO QUESTIONS PROVIDES AN OPPORTUNITY FOR UP TO 5 POINTS OF EXTRA CREDIT.

1. What is Massachusetts law with respect to Felony Murder as described in *Commonwealth v. Brown*, 477 U.S. 805 (2017).
2. What is the Massachusetts mens rea requirement, including with respect to awareness of the risk, in Involuntary Manslaughter?

CRIMINAL LAW

2020 MAJOR EXAMINATION

60 % OF THE CLASS GRADE

Instructor: H. Johnson

TIME ALLOTTED: 3 HOURS STANDARD TIME

STUDENT HONOR PLEDGE

By taking this examination, you promise to abide by the MSLAW honor code and the following:

You are not permitted to receive or give any unauthorized assistance on this examination.

This is a closed-book examination. You are not permitted to use papers, personal effects, electronic devices or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination. You may use blank scrap paper.

You are not permitted to speak or communicate with any other person taking this examination, or anyone else, during the taking of the examination or until all of your classmates have completed the examination, with the exception of the proctor.

You promise only to identify yourself by five-digit student number and not frustrate the anonymous grading system in any way.

You promise that you have no knowledge of the specific contents of the exam other than any information or instructions that may have been given out by your professor in advance.

The inclusion of your student number on the examination by you is your acknowledgement that you understand these requirements and will abide by them.

STUDENT IDENTIFICATION NUMBER: _____

You must be logged into Zoom for proctoring purposes.

GENERAL INSTRUCTIONS:

The exam is lengthy. Take note of the point value of each section when budgeting your time. The basis of your analysis, unless otherwise specified, should be the Common law and general American law, including statutes and differing positions.

Discuss the Model Penal Code and Massachusetts law only where specifically asked for, unless otherwise specified, for extra credit.

GOOD LUCK WITH IT.

PART I: MULTIPLE CHOICE SECTION: (15 POINTS).

Answer ALL THREE (3) QUESTIONS. EACH QUESTION IS WORTH 5 POINTS FOR THE CORRECT ANSWER.

(No credit will be added for explaining your answers.)

1. A woman drove her car through the drive-through lane at a fast-food restaurant in the afternoon. When she reached the microphone used to place her order, she said. "There's a man across the street with a rifle. He can see everything you do. If you do not do exactly what I tell you, he will shoot you. Put all the money from the register into a sack and give it to me when I drive up to the window." The clerk did not see anyone across the street and was unsure whether anyone was there. However, unwilling to risk harm to himself, put \$500 in a paper bag and handed it to the woman when she drove up to the delivery window. The woman drove off with the money but was arrested a short time later. She had lied about the man with a rifle and had acted alone.

Of what crime or crimes can the woman be convicted?

- (A) Embezzlement.
- (B) Obtaining Property by False Pretenses.
- (C) Common Law Kidnapping.
- (D) Robbery or Larceny.

2. Upset by his ten-year-old-son's lack of effort on the football field, a father began to methodically withhold food from his son in an effort to persuade him to try harder in the off-season. Although his son became extremely sick from undernourishment, the father did nothing.

In time, the boy died. An autopsy revealed that the boy had suffered severely from hunger, and that a treatment plan could have alleviated some of the suffering. The autopsy also revealed that, although the child would have died in a few months from malnutrition, the child actually died from an untreatable spider bite.

The father was prosecuted for Murder, defined in the jurisdiction as, "the unlawful killing of a human being with malice aforethought."

Is the father guilty of murder?

- (A) No, because he did not kill the boy.
- (B) No, because he thought he was helping the boy.
- (C) Yes, because the father showed a reckless indifference to the value of life.
- (D) Yes, because the child would have died from malnutrition had he not been bitten by the spider.

3. A wife decides to kill her husband because she was tired of his infidelity. She managed to obtain some cyanide, a deadly poison. One evening she poured wine laced with the cyanide into a glass, handed it to her husband, and proposed a loving toast. The husband was so pleased with the toast that he set the wine glass down on table, grabbed his wife, and kissed her passionately. After the kiss, the wife changed her mind about killing the husband. She hid the glass of wine behind a lamp on the table, planning to leave it for the maid to clean up. The husband did not drink the wine.

The maid found the glass of wine while cleaning the next day. Rather than throw the wine away, the maid drank it. Shortly thereafter, she fell into a coma and died from cyanide poisoning.

In a Common Law jurisdiction, of what crime(s), if any, could the wife be found guilty of?

- (A) Attempted Murder and Murder or Manslaughter of the Maid.
- (B) Only Attempted Murder of the husband.
- (C) Only Murder or Manslaughter of the maid.
- (D) No crime.

PART II: ANSWER TRUE OR FALSE ON THE FOLLOWING. ANSWER ALL FIVE (5). (15 POINTS).

EACH QUESTION IS WORTH 3 POINTS.

(No credit will be added for explaining your answers.)

1. Abner dislikes Bob. Abner approaches Bob and exclaims, "Bob, you scoundrel!" Abner swings his fist towards Bob's face. Bob shrieks in terror. Abner, as he had always planned, stops his swing just one inch before striking Bob's nose. Abner, laughing, says, "You're a chicken, Bob. Cluck, cluck, cluck."

Abner is charged with Assault. Abner argues he should be found Not Guilty because he was not really trying to hit Bob.

On Abner's argument, Abner should be found "Not Guilty."

TRUE OR FALSE

2. Abby dislikes Ben. Abby sneaks up to Ben's house. Abby places some paper and kindling wood a few inches from Ben's house and lights them on fire. Smoke blackens the side of the dwelling, but the flame never touches, damages or chars the dwelling.

On these facts Abby can be convicted of Arson in a Common Law jurisdiction.

TRUE OR FALSE

3. Digby has always wanted to buy a classic Model-T automobile. He speaks to Cal, who owns such a vehicle. Cal agrees to sell Digby the vehicle at a price of twenty-thousand dollars. Digby gives Cal a bundle of apparent cash in the amount of twenty-thousand dollars. In fact, the "cash" is counterfeit and worthless. Cal fills out a Bill of Sale, signing over title to the Model-T to Digby. Digby also signs. Digby says, "Cal, old bean, I'll leave the keys and the car with you for a few days. I need to visit my aging father in the rest home." Digby leaves. However, before Digby returns, Cal discovers that the cash is counterfeit. Cal calls the police. The cherished Model-T never leaves Cal's garage.

Digby is charged with the crime False Pretenses.

Digby cannot be convicted since he never actually took possession of the car.

TRUE OR FALSE

4. Nils and Margaret are university students. Nils visits Margaret in her dorm room. Nils attempts to kiss Margaret and Margaret, pulling away, says, "No. Not tonight. I don't want to." Using a minimal amount of force, Nils pushes Margaret onto the bed, gingerly removes her clothing and engages in sexual intercourse with Margaret. Though she said nothing at that point, Margaret still did not wish to engage in sexual intercourse with Nils. Nils is subsequently charged with Rape.

In a Common Law jurisdiction, Nils should be convicted of Rape because there was some force used.

TRUE OR FALSE

5. Greg is being pursued by Inspector Humbug in an investigation involving the Larceny of the famed "Dope Diamond." Greg sees Inspector Humbug behind him on a busy street and slips the Dope Diamond into the jacket pocket of Ichabod, a passerby. Ichabod is unaware that the Dope is in his jacket pocket. Shortly thereafter, Ichabod is apprehended by Humbug and is suitably astonished when the Dope Diamond is extracted from his pocket. Ichabod is charged with "Receiving Stolen Property: The Dope Diamond."

Ichabod should be convicted since he had the Dope Diamond on his person.

TRUE OR FALSE

PART III: SHORT ESSAY SECTION: (40 POINTS). ANSWER ONLY 4 OF 7. EACH ANSWER IS WORTH 10 POINTS. (NO CREDIT WILL BE ADDED FOR ADDITIONAL ANSWERS.)

INSTRUCTIONS: WHERE ASKED FOR, STATE THE LAW CONCISELY BUT COMPLETELY. IF THE QUESTION ASKS FOR YOU TO ANSWER BASED ON THE FACT PATTERN, BE SURE TO DISCUSS THE KEY CONCEPTS AND ISSUES, ANALYZING THE FACTS AND APPLYING THE LAW TO SUPPORT YOUR CONCLUSION(S); BE COMPLETE AND CONCISE. SOME EXTRA CREDIT MAY BE ADDED IN THIS SECTION FOR THE CLARITY OF YOUR WRITING AND/OR ANALYSIS.

1. Chip, Chap and Chump are the President, Vice President and Treasurer of Upstart, Inc., a new firm trying to break into the highly competitive widget sales market. Chip, Chap and Chump are also the sole members of the Board of Directors of the Corporation. Chip, Champ and Chump call in Sam, the head of the Sales Department. Chip says, "Sam, old sport, the company is in deep financial trouble. I want you and the sales team to go into Walt's Widget Warehouse and steal some widgets. That way we can sell them and everything will be profit." Champ and Chump nod in agreement. Sam, following orders, steals the widgets. Sam is later charged with "Larceny."

Penny, the prosecutor, wants to charge the company itself with the crime of Larceny.

Could such a charge be made at Common Law?

How about in the modern United States, generally? If so, discuss the modern standards and their application to the facts.

For extra credit, does the Model Penal Code address this point? If so, how?

2. What is a unilateral conspiracy?

Were unilateral conspiracies recognized at Common Law?

*For **extra credit**, what is the Massachusetts' law position on unilateral conspiracies?*

3. Babbles and Rabbit Ears are at the "Laughing Loon Pub." Babbles says, "Hey Rabbit, I hear your wife is sleeping with Snowshoe. She's too good for you anyway."

Rabbit Ears, who has always been highly sensitive, immediately grabs an ornamental oar hanging on the wall and strikes Babbles, instantly killing him.

Rabbit Ears is charged with Murder in a jurisdiction which accepts the Common Law. Rabbit Ears argues that he should only be found guilty of Voluntary Manslaughter.

Discuss the issues. Will Rabbit Ears be successful? Why or why not?

*For **extra credit**, what would the standard be under the Model Penal Code? Would the M.P.C. be better for the government or the defendant on the issue on these facts?*

4. Telly is a teller at the Moneybags National Bank. Bigbucks, a longtime Moneybags customer, approaches Telly's window. Bigbucks hands Telly three-thousand dollars in cash with a deposit slip. Telly smiles, apparently innocently, and immediately places the three grand in his pocket. Telly later uses the money to buy a hard-to-find fire pit.

Penny, the prosecutor, is trying to decide whether Telly should be charged with Embezzlement or Larceny.

What are the elements of each crime? What is the correct charge? Explain your answer.

5. Sandy is a world-renowned swimmer, famous for crossing the English Channel using only the backstroke. Sandy is walking on the beach and hears screams. Sandy looks to the sea and observes her enemy, Dribbles, in obvious distress, near drowning. Sandy ignores the screams, though it would have been easy for Sandy to swim out and save Dribbles. Dribbles drowns.

Can Sandy be charged with a homicide crime, such as Involuntary Manslaughter, in a Common Law jurisdiction? Why or why not?

6. Magpie is approached by Norbert on the street. Norbert pulls out a gun and says, "Magpie, I'll blow your brains out if you don't walk up to Oscar over there and kill him with this knife." Norbert produces the knife. Magpie takes the knife and approaches Oscar, stabbing him, killing him.

Magpie is charged with Murder in a jurisdiction that follows the Common Law. Magpie wants to raise the defense of Duress or Coercion. What is required, generally, to raise the defense? Will the defense be successful in this case? Why or why not?

7. Describe the Insanity Defense. Define and differentiate the various tests used in the United States, including the Model Penal Code test. (No extra credit will be awarded for discussion of the M.P.C test in this question.)

For extra credit, what is the Massachusetts test?

PART IV: ESSAY QUESTION: 30 POINTS.

INSTRUCTIONS:

FOLLOW THE FACT PATTERN IN THIS CLASSIC ISSUE HYPOTHETICAL. SPOT THE ISSUES, STATE THE RULE(S) OF LAW, ANALYZE AND APPLY THE FACTS TO THE LAW AND CONCLUDE. DISCUSS ALTERNATIVE ANALYSES AND CONCLUSIONS AS WELL, ALONG WITH THEIR IMPLICATIONS. DO NOT FORGET TO ISOLATE THE PARTIES AND DISCUSS THEIR POSSIBLE CRIMES, WHETHER OR NOT THEY SURVIVE THE HYPOTHETICAL. USE ESSAY FORM.

IN THIS SECTION LIMITED EXTRA CREDIT WILL BE AWARDED FOR COMPARING AND CONTRASTING MODEL PENAL CODE LAW AND/OR MASSACHUSETTS LAW.

SOME EXTRA CREDIT MAY BE ADDED IN THIS SECTION FOR THE CLARITY OF WRITING AND/OR ANALYSIS.

As have many states, the state of Agitation, the fifty first state in the Union, has suffered through difficult times, which have hindered many of the state's businesses. But there are certain occupations which seem to continue to thrive as if there are no other issues.

Alphonse, Bagpipe and Charlemagne meet at the outside dining area of the "Preening Pelican Pub." Over the first course, Alphonse says, "Fellas, you know where Posh Peter lives, over on Lotsadough Drive? In that mansion, the Whooping Willows. Well, I heard his security guard, Simon, is out sick. Posh Pete's got that painting, "Andover Spring." Sort of an impressionist thing. We could steal it. It's worth a fortune. You two should meet at Whooping Willows at ten tomorrow night and do the job. I'll take care of selling the painting afterwards." Bagpipe, after a moment, smiles and nods in the affirmative. Charlemagne, stares blankly at Alphonse, repeatedly blinking, but says nothing. The three depart after dessert.

Charlemagne immediately heads to Lotsadough Drive. Charlemagne, hiding behind a tree, looks over Whooping Willows. He notices that there are no security cameras and no one is in the Security Guard Hut. Charlemagne sneaks away.

At 10:00 P.M. the following night, Bagpipe and Charlemagne meet at the Whooping Willows.

Bagpipe heads toward the house, as he, using a screwdriver, pries open the locked gate to the fence surrounding the house. Charlemagne climbs a tree, just inside the gate, and establishes a position from which he can see the entire house and the street. Bagpipe approaches the ornate front door. The door is closed but unlocked, and Bagpipe opens it. Bagpipe walks, quietly, into the living room. There, in all its glory, he sees what appears to be "Andover Spring." He grabs the painting from the wall and heads, quietly, towards the front door to depart.

At that very instant, Posh Peter emerges from a closet and exclaims, "Ah ha, now I have you, you thief!" Bagpipe punches Posh Peter in the mouth. Posh Peter is dazed by the blow and flails his arms about. Bagpipe runs for the door and escapes with the painting. Posh Peter, still dazed, is approached by his wife, Posh Priscilla. Posh Peter strikes Posh Priscilla in the nose, flailing, and she falls and hits her head on the brick fireplace and suffers a severe head injury.

At that instant, Charlemagne hears sirens approaching. Charlemagne drops from the tree and runs through the gate, followed by Bagpipe with the painting. After running for twenty-minutes, they stop to rest, and have a quick beer, at the Preening Pelican Pub. Then they run for another twenty-minutes and finally reach the prearranged meeting place and jump into a car, which is driven by Del, who is Alphonse's brother. Del speeds away. Del takes a sharp turn onto a pedestrian walkway, cobblestones and the whole bit. Pedestrians scatter as Del accelerates. Del loses control of the car and it goes through the window of "Myrtle's Toy Shop." Myrtle is run over just as she is finishing stacking a huge display of blocks. Myrtle is killed. Del, at that instant, is approached by Molly, a clerk in the store, who exclaims, "You ran over Myrtle!" Del grabs a nearby large wooden doll, and thinks to himself, "I'll get rid of her as a witness." He strikes Molly, violently, on the head with the doll, instantly killing Molly. Bagpipe and Charlemagne had already run off. Del stumbles from the wreckage and, bloodied, makes it to Alphonse's residence and hands Alphonse the painting. Alphonse, an art expert, exclaims. "You idiot! This is just a copy of "Andover Spring." It's not worth more than nine-hundred dollars. Still, I'll make sure the police never find it and tie you guys to the crime at Posh Peter's." Alphonse hides the painting in his refrigerator.

Meanwhile, Posh Priscilla is placed in an ambulance driven by Elwood, the Emergency Medical Technician. She is to be taken to the nearby Count Dracula Memorial Hospital. Regrettably, the ambulance suddenly stops en route. Elwood had forgotten to check the fuel level and the vehicle runs out of gas. Though she could have been saved if there was a prompt arrival at the hospital, Posh Priscilla succumbs to her injury and dies. The Medical Examiner opines that the cause of death was "Blunt Trauma," the blow to her head from the fall on fireplace.