

UNIVERSITY OF MARYLAND
SCHOOL OF LAW

Criminal Law
(3 hours and 30 minutes)

Day Div., Secs. A, B, C, and D
Professor John Brumbaugh

Monday, Dec. 12, 1994
9:10 A.M.--12:40 P.M.

No. _____

Print Name: _____

MECHANICS: (1) Print your name above; it should appear nowhere else on your examination papers or envelope. (2) Fill out the form on the examination envelope, and place near the center of the upper half of each bluebook cover or on a separate cover sheet for a typed examination, only the following information: (a) your examination number, which may be followed by a bluebook number if you use more than one bluebook, (b) the words, "Criminal Law, 1994", and © my name. (3) The answers should appear in order, each answer beginning on a new page. (4) At the end of the examination, put your answers in the envelope, fasten the flap with the clasp, and hand in the envelope to the exam administrator; hand in the questions separately to the administrator. Typists should also (1) leave at least a two inch left margin throughout; (2) double or triple space answers; (3) type on only one side of the page; (4) repeat the examination number in the upper right hand corner of every page after the cover sheet; (5) number the pages of the examination (not counting the cover sheet) in the center of each page, top or bottom. Non-typists should (1) write their answers legibly in ink, and (2) remove no pages from their bluebooks.

EACH STUDENT IS RESPONSIBLE FOR ENSURING THAT ALL OF THE COMPLETED EXAMINATION PAPERS AND THE EXAMINATION QUESTION SHEETS ARE HANDED IN TO THE EXAMINATION ADMINISTRATOR. NO EXAMINATION PAPERS WILL BE ACCEPTED AFTER THE EXAMINATION ADMINISTRATOR HAS COLLECTED THE MATERIALS. YOU WILL BE GRADED ONLY ON EXAMINATION PAPERS RECEIVED AT THE ANNOUNCED TIME.

TIME AND WEIGHTING: The four questions are weighted according to the time limits suggested at the beginning of each question. Sub-parts of a question are not necessarily of equal weight. If you observe the suggested time limits, you will have thirty minutes for use at the end of the examination to review and revise your answers.

INSTRUCTIONS: This is a closed book examination. Do not consider problems of proof of the facts. To the extent that time allows, consider alternatives in the law and facts (within the stated conditions of the problem). Consider crimes and defenses suggested by the problem even if some elements are missing. Give your reasons. Do not omit the obvious; I may not assume that you are aware of it. You may use initial letters of names given as abbreviations. Applicable law is given on the next page.

APPLICABLE LAW: Some relevant statutes, omitting penalty provisions, are given here. Assume that there are no other homicide or theft statutes applicable. The common law is in force as to murder, manslaughter, robbery, larceny, and forgery, except as it may be modified by the statutes below. Unless the question quotes a statute or states otherwise, either the common law or some commonly enacted statute may be in force as to other crimes.

Chapter 400--Homicide

401. Murder. All malicious killings, committed with premeditation, deliberation, and purpose to kill, and all killings in the course of the commission of, or in the course of any attempt to commit, any rape, robbery, kidnapping, burglary, or arson, are murder in the first degree. All other murders are murder in the second degree.

Chapter 700--Larceny and Related Offenses

700. Property. "Property" includes anything of value.

701. Larceny and robbery. Larceny and robbery are felonies, except that larceny of property worth less than \$200 is a misdemeanor.

702. Relationship of larceny to other offenses. Nothing which is larceny at common law is prohibited by any of the following sections in this chapter.

703. Obtaining property by false pretenses. Whoever, with intent to defraud any person, shall by means of false token or false pretense obtain any property from that person is guilty of the misdemeanor of obtaining property by false pretenses.

704. Embezzlement. Whoever, being under a fiduciary duty to another person, shall misappropriate any property previously lawfully received for that person is guilty of the felony of embezzlement.

705. Larceny after trust. Whoever, being under a fiduciary duty to another person, shall misappropriate any property previously lawfully received from that person is guilty of the felony of larceny after trust.

706. Larceny by bailee. Whoever, being a bailee of property, but not a fiduciary with respect to it, shall misappropriate such property, is guilty of the misdemeanor of larceny by bailee.

[QUESTION I BEGINS ON THE NEXT PAGE.]

I (50 minutes)

Rake, a man of forty, driving his Jeep through a wilderness park, pauses beneath a mountain and at the edge of a ravine and sits in the driver's seat to admire the scenery. He is surprised to see his next door neighbor Gran on the other side of the ravine. Rake calls out to Gran: "Congratulations! You're about to be a grandmother. Your fourteen year old daughter and I are madly in love, and I've got her pregnant!" Gran immediately pulls out her gun, for which she has a license, and fires it at Rake, wounding him seriously and rendering him unconscious. She then tries to toss the gun into the ravine, but it lands on the other side, beside the Jeep.

At this moment, hiker Sally comes on the scene on Rake's side of the ravine. Gran calls out to her: "You'd better drive away. If you are found here, everyone will think you shot him." Sally looks around wildly, pushes Rake from the driver's seat to the passenger seat, gets in the Jeep, and drives off rapidly. As she moves away, Rake falls out of the passenger seat to the ground and regains consciousness. Sally notices this, but does not stop. A few moments later an avalanche rushes down the mountain on Rake's side of the ravine and crushes Rake to death, as he almost succeeds in crawling out of its path. Sally escapes the falling rocks, and drives off in the Jeep.

(a) As State's Attorney, what charges might you consider bringing against Sally, and what results would you expect? Explain. (Remember that you are to assume you can prove the facts.)

(b) As State's Attorney, what charges might you consider bringing against Gran, and what results would you expect? Explain.

[QUESTION II BEGINS ON THE NEXT PAGE.]

II (50 minutes)

Cook is grilling hamburgers in his back yard late one evening, when an extraordinary and unexpected wind comes up and blows the flame into some nearby brush. Cook realizes that the brush fire is headed for the ranch of his enemy Rich, and hopes that Rich's valuable horses will be frightened, escape from Rich's barn, and run off to join a herd of wild horses on the prairie. Cook therefore takes no steps to put out the fire or call the fire department.

Meanwhile, Bilk, aware that Rich is away, independently determines to get into Rich's house, in order to send a faxed order in Rich's name to Rich's Tokyo broker to sell Rich's stock and remit the proceeds to a Swiss bank account (which Bilk controls). Bilk knows that the broker will not accept the order unless it originates from Rich's fax machine. To get in, Bilk stuffs plastic explosive into the keyhole of Rich's front door and lays a gunpowder trail from it. As he lights a match and puts it to the gunpowder, the brush fire sweeps on the scene, reaches the gunpowder, and the gunpowder ignites the explosive, blowing off the door. The wind shifts and blows the tire away from the house. Bilk goes to the fax machine and carries out his plans, obtaining the fund transfer. The brush fire has set the barn ablaze, just after the frightened horses have escaped to the wild herd.

If it matters to your answer, assume that the laws of Japan and Switzerland are identical to the laws of the jurisdiction where the problem arises. Do not discuss whether or not it does matter.

(a) What crimes have been committed by Cook? Explain.

(b) What crimes have been committed by Bilk? Explain.

III (30 minutes)

The following is a draft of a section of a proposed statute, part of a Criminal Code enactment. The section is the sole provision dealing with mistake, and reads as follows:

(1) The mistake of a person accused of crime prevents conviction when and only when the mistake is both honest and reasonable.

(2) The accused person shall have the burden of persuasion by a preponderance of the evidence on the issue of mistake.

(a) Comment on changes that these two subsections might make in the common law, discussing a few specific examples. Discuss at least one change produced by subsection (1).

(b) Give your opinion as to the desirability of one of the changes in subsection (1) you discuss.

[QUESTION IV BEGINS ON THE NEXT PAGE.]

IV (50 minutes)

Dim is moderately mentally retarded. He has assisted living arrangements and is able to hold a job as a floor sweeper in a factory a few blocks from the facility in which he lives. On the way home from work one afternoon, passing through an alley, he comes upon Kopp, a uniformed policeman, who has had a heart attack and is lying on the ground. Kopp calls out to Dim for help, and the following conversation takes place:

Dim: Are you a policeman?

Kopp: Yes.

Dim: I'll help. I like policemen

Kopp: There's a phone booth at the end of the alley. Call 911.

Dim: I think they taught us how to do that, but I don't remember very well. I think I need money and I don't have any.

Kopp: Take a quarter from the coin purse in my pocket.

Kopp then lapses into unconsciousness. Dim takes a quarter from Kopp's coin purse and notices the belt that Kopp has loosened is lying on the ground. The belt has a number of attachments, including Kopp's shield. Dim puts on the belt and says, "I'll be the policeman while you're sick."

Dim walks to the end of the alley and turns the corner, where he finds Smash vandalizing a car. Dim says, "Stop. You're under arrest." Smash runs away. Dim fumbles at the belt. A pouch comes free, revealing Kopp's handgun inside. Dim grabs the gun and waves it about. The gun fires and the bullet kills Smash.

Dim sees a gum machine and puts the quarter in it. A few minutes later Kopp is discovered. He recovers fully from the heart attack.

Dim is about to be charged with criminal homicide for the death of Smash, a theft offense with respect to the quarter, and possession of a handgun, under a statute which provides: "Sec. 1209. Whoever, without a license, possesses a handgun is guilty of the misdemeanor of handgun possession, and shall be sentenced to pay a fine of not more than \$2,000 or to be imprisoned for not more than two years, or both." ["Handgun" is adequately defined, and Kopp's handgun falls within the definition.]

You are defending Dim. What exact charges might be brought as to the homicide and

theft? What defenses will you raise and what success do you anticipate with respect to the homicide, theft, and possession charges. Explain.

[END OF EXAMINATION]