

PACE UNIVERSITY SCHOOL OF LAW

CRIM-LAW I
PROFESSOR HUMBACH
FINAL EXAMINATION

December 8, 2009
TIME LIMIT: 2 hours.

IN TAKING THIS EXAMINATION, YOU ARE REQUIRED TO COMPLY WITH THE SCHOOL OF LAW RULES AND PROCEDURES FOR FINAL EXAMINATIONS. YOU ARE REMINDED TO PLACE YOUR EXAMINATION NUMBER ON EACH EXAMINATION BOOK AND SIGN OUT WITH THE PROCTOR, SUBMITTING TO HIM OR HER YOUR EXAMINATION BOOK(S) AND THE QUESTIONS AT THE CONCLUSION OF THE EXAMINATION.

DO NOT UNDER ANY CIRCUMSTANCES REVEAL YOUR IDENTITY ON YOUR EXAMINATION PAPERS OTHER THAN BY YOUR EXAMINATION NUMBER. ACTIONS BY A STUDENT TO DEFEAT THE ANONYMITY POLICY IS A MATTER OF ACADEMIC DISHONESTY.

This is a **closed book** examination.

GENERAL INSTRUCTIONS:

This examination consists of 6 questions based on four fact situations. Each question has approximately equal weight (but note that questions 5 and 6 have two sub-parts each, and each subpart has half weight). The questions are to be answered by SecureExam or in the Examination Booklets provided by the Registrar's Office. Please **clearly number** your answers to each of the questions (1 to 6). Follow the instructions carefully and answer only what is asked.

Unless the context otherwise requires (such as where the facts are specifically stated to arise in a particular state), base your answers on general principles of criminal law as generally applied in American common law jurisdictions. If you are aware of more than one rule among the jurisdictions, you will do well to discuss the alternatives. Do not assume the existence of any facts or agreements not set forth in the questions.

Legal arguments are called for, and your grade will be based substantially on the overall quality of your legal argumentation.

Remember to keep your answers **on point**, and answer only the questions asked. In so doing, do not circle around your point. Aim for the bull's eye. Otherwise, you will risk running out of time.

Important note: If you are using SecureExam and *any part* of your answers is written in a Bluebook or otherwise has been placed in the large brown envelope collected by the proctors, *be sure to write "contains answers" conspicuously on the front of the envelope*. Failure to do so may mean that material in the brown envelope will not be graded.

I.

On her way home from a small office celebration after work, Barrie Bostwick stopped her car at a traffic light. Andrew Milliwatt, distracted by a conversation on his cell phone, slammed into the rear of Barrie's car, which was waiting for the light to change. Andrew was killed instantly. As a result of being hit by Andrew's car, Barrie's car was propelled forward and struck a pedestrian, who was crossing the street at the time of the collision. Worried that she might have had one too many at the office party, Barrie did not get out to check on the condition of the pedestrian, who was now lying near the curb about 20 feet in front of her car. Instead, noting that there were plenty of people around, Barrie proceeded through the intersection when the light changed (being very careful to swerve around the pedestrian). Finding that her car was still drivable, she went home.

Several hours later, the police arrived at Barrie's home and informed her that the pedestrian died when another driver, Wilkins, came around the corner, failed to see him lying in the road and ran over him. This occurred less than a minute after Barrie had left the scene. It is determined that, given the circumstances of visibility coming around the corner, Wilkins was not at fault.

Barrie has been indicted for negligent homicide based (1) the fact that she hit the pedestrian with her car, and (2) her omission to provide the pedestrian with assistance after hitting him.

1. Does the prosecutor have a sound basis for holding Barrie responsible for her act or omission?

II.

In October, 2009, a California man was charged with mayhem for causing a small tattoo of a dog paw to be placed on the hip of his 7-year old son, who had allegedly requested it. The applicable California statute reads:

§ 203. Mayhem defined

Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem.

(Mayhem is punishable by imprisonment in the state prison for up to eight years.)

The defendant's lawyer has moved to dismiss the mayhem charge on the ground that this statute should not be interpreted to cover the defendant's conduct.

2. Discuss whether the motion should be granted.

III.

After his parents' divorce, Kenny went to live with his dad. He had to transfer from his suburban middle school to an inner city school closer to his dad's apartment. He had been a high-achiever in math at his old school, but this ability was not particularly appreciated at the new one, particularly among his new classmates. He felt immediate pressure to join a gang, but he refused and this, too, did nothing to gain him respect. The boys at his new school constantly made him the butt of jokes, and in class they would cast menacing stares, giggle under their breath when he answered teachers' questions, and generally made him feel very ill at ease.

Last week, Kenny was taking a shortcut through a vacant lot on his way home from an after-school activity (Math Club) when he was accosted by a group of boys about his age. They encircled him and, as he pivoted around to see their faces, they jeered at him, calling him names that included four-letter words and telling him his "days were numbered." As he continued to pivot around, the jeering boys took slaps from behind at his arms and neck. His tormentors did not prevent him from moving slowly across the lot, but they still maintained their circle. At a certain point, Kenny noticed a brick lying on the ground and he slowly stooped down to pick it up. Then, holding the brick over his shoulder, he backed toward a wall at one side of the lot. When he nearly reached the wall, the circle of boys became more of a cluster in front of him, and it was then that the boys started yelling things like "What are you going to do with that brick, Kenny-boy?" Kenny took a step forward and when jeering boys did not back away, Kenny boiled over and heaved the brick right at the mass of mocking faces. A corner of the brick hit one of the boys in the forehead, causing a concussion. A short time later the boy died.

A later investigation concluded that none of the boys had anything resembling a weapon and, apart from the jeering and taunts, Kenny had at all times been physically free to leave the scene, though it would have been humiliating to do so. Kenny is now accused of murder, but his lawyer wants the charge reduced to manslaughter.

3. Make an argument that the appropriate charge is involuntary (reckless) manslaughter rather than unintentional ("indifference") murder.
4. Make an argument that the appropriate charge is murder rather than voluntary manslaughter (provocation).

IV.

Four persons have been arrested at the international airport after search dogs identified them as carrying PFD, a controlled substance. Each of the four is being prosecuted under a law that prohibits "knowingly possessing [or] importing any controlled substance," including PFD. The question is whether, under the additional facts below, any of them is guilty:

5. Answer the following two subparts:
 - a. The first defendant, Clove, had purchased pills containing PFD at a pharmacy in the Dominican Republic, where he was attending a convention. He had developed a bad case of indigestion, and the pharmacist down the street from his hotel had recommended the pills. Pills containing PFD are both legal and available over the counter in the Dominican Republic. Clove

does not deny that he knew the pills were made with PFD (it said so on the box), but there is no evidence that he knew what PFD was, except that it's good for indigestion, nor is there evidence that he knew it was a controlled substance or otherwise illegal under U.S. law.

b. The second defendant, Busby, had got his PFD pills from a colleague at the same convention, when he had complained of indigestion. He admits that he knew PFD is a controlled substance, but there is no evidence that he knew there was PFD in the pills that his colleague had given him. He concedes, however, that he did nothing to check what the pills contained. He had just taken it for granted that they were "some kind of antacid."

6. Answer the following two subparts:

a. The third defendant, Rand, received the PFD pills when the hotel's front desk called and said that Rand's coworker, who checked out earlier in the day, had left behind his toiletries kit. Rand agreed to take the toiletries kit back home with him. He became concerned, however, when he discovered that the bag contained a small box of pills, and he called an old friend of his, now a staff lawyer for the DEA in Washington, and asked if there was any problem with PFD. His friend, mistakenly, told him that there was not.

b. The fourth defendant, Nobb, bought PFD pills on the street from a vendor who said they were DFD, a related chemical that is legal to possess in the U.S., but only with a prescription. Nobb knew that his possession of DFD was technically illegal in the U.S., since he did not have a prescription, but he also knew that possessing DFD is a minor offense, not nearly as serious a crime as possessing PFD. Assume that the jury accepts Nobb's assertion that he honestly believed he had DFD, not PFD, and that the court decides the doctrine of "willful blindness" does not apply. Can Nobb still be convicted of possessing PFD?

<End of examination.>