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Criminal Law
The University of Oklahoma College of Law
Course 5223-602; Spring 2016
Professor Kit Johnson

FINAL EXAMINATION: PART TWO

Notes and Instructions

1. The total duration of Part Two of this exam is two and one-half hours.
2. The first 30 minutes of Part Two is a reading period. **You may not begin typing or entering into bluebooks any response during this first half hour.** This is your time to carefully read the question(s) and organize your thoughts about how to respond. You may, however, make notes on this exam sheet or scratch paper, reference notes and materials, and are encouraged to outline your response.
3. Part Two is an open-book exam. You may use any notes or books you like. You may not use or reference electronic or interactive resources including, but not limited to, the internet, iPads, and cell phones. You may, of course, use a laptop to write your exam, but you may not reference files stored thereon during the examination session. No materials may be shared during the exam.
4. **Do not turn the page until instructed to begin.**
5. You will not receive credit unless you return this booklet at the end of the period with your exam number written above.
6. You may write anywhere on the examination materials – e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
7. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems within the scope of the course's subject matter. It is upon these bases that you will be graded.
8. During the exam: You may not consult with anyone – necessary communications with the College of Law staff being the exception. You may not view, attempt to view, or use information obtained from viewing other student examinations or from viewing materials other than your own.
9. After the exam: You may not communicate regarding the exam with any enrolled member of the class who has not yet taken the exam, and you must take reasonable precautions to prevent disclosure of exam information to the same.
10. You may not copy, transcribe, or distribute the material in this booklet or attempt to do the same.
11. Base your exam answer on the general state of U.S. law, including statutes and cases discussed in class.
12. Organization counts.
13. Keep in mind: The weight given to each part is specified, but not all issues within each part will be given equal weight. Thus, it may be entirely appropriate for one issue to be dispensed with considerable brevity, while another might require very detailed analysis. You should divide your time according to which issues require the most discussion and analysis.
14. **Bluebooks:** Make sure your handwriting is legible. I cannot grade what I cannot read. Skip lines and write on only on one side of the page. Please put answers to each section in a separate blue book and label the blue books accordingly. Please write in pen using blue or black ink.
15. **Computers:** Please clearly label your answers to each subpart, starting a new "question" in ExamSoft for each subpart.
16. Do not write your name on any part of the exam response or identify yourself in any way, other than to use your examination I.D. number appropriately. Self-identification on the exam will, at a minimum, result in a lower grade, and may result in disciplinary action.
17. Good luck.

The storefronts on Broadpark in the bustling metropolis of New Michisota City, Michisota, are beloved by tourists and locals alike. The brightly painted shops include jewelry stores, coffee shops, yoga studios, and fashion houses. In short, they've got everything that The Capitol Of The World, as folks are apt to call New Michisota City, ought to have.

Norm Nembisar owns the Emerald Emporium, a tastefully jade colored storefront on Broadpark. He sells emeralds, naturally, but also a wide range of unusual jewelry with hard-to-find stones that are designed to appeal to customers seeking something truly unique.

As the owner of such a high-end store, Norm is naturally worried about theft. He employs a two-part system for protection. First, he keeps the front door locked at all times. Prospective shoppers must ring a bell to seek admittance. If

Norm likes what he sees, he remotely unlocks the door and admits the shopper. Second, Norm keeps a Beretta 92FS 9 mm Semiautomatic Pistol behind the counter very close to his cash register. Also, Norm finds his own appearance is something of a deterrent as well. He's 6 foot 4 and weighs a good 300 pounds, most of it solid muscle.

On Saturday, Pam Penderdash rang the bell at Emerald Emporium. A well-dressed and rather slight young woman, Pam was promptly buzzed in by Norm. Pam and Norm discussed engagement rings for a few minutes. Pam indicated she was looking for something special for her sweetheart. They settled on a spectacular red beryl ring for \$20,000.

Before Norm could ring her up, Pam grasped his right wrist and pulled his body half way over the display case, leaving his 300-pound frame off-balance. Using classic jujitsu technique, she wrapped her fingers around the root of his thumb and twisted his wrist. In a completely calm voice, Pam said: "If you make any move, I will break your wrist. Now, I'm just going to take this ring and walk out that door. It's mine, anyway. It was left to me by my great grandmother, and I know you bought it on the cheap from that lying sack of filth Mundungus Meltcher, who stole it from my apartment. I'm taking it back. No funny business."

While Pam was talking and before she could pocket the ring, Norm was just able to grab his Beretta with the tips of his left fingers. Although Norm was right-handed and had never shot the gun with his left hand, he did so now. Norm was sure that Pam wasn't just going to break his wrist; he knew in his heart that she was going to leave him for dead. So he aimed to kill.

He got off five shots. Norm's aim, however, wasn't helped by the painful position in which Pam was holding him. His inexperience with left-handed shooting was a factor as well. Only one shot connected with Pam, and it tore through her shoulder, releasing her grip on



FIG. 1: Broadpark is beloved by tourists and locals alike.

Photo: Eric E. Johnson

Norm. All five shots went through Norm's storefront window. One tore through the leg of Tamir Tilbeck, who happened to be jogging by, ripping open his femoral artery.

Janice Jinkston had been walking along Broadway and was just two doors down from the Emerald Emporium when the bangs of the Beretta rang through the air. She saw Tamir fall to the ground. Janice, who was now a full-time day trader, had once been an emergency room doctor. She knew that putting pressure on Tamir's leg wound might save his life. But she was terrified about entering the line of fire. All she could think of was her six-month-old daughter at home. *I will not leave my daughter an orphan*, Janice swore to herself. So she sought refuge in the store closest to her: Bagel Bonanza. Unfortunately, Bagel Bonanza was closed. But Janice, spooked to her core, didn't care. She swung her purse and smashed the store's plate glass window. She then climbed in and concealed herself in a backroom.

Down the street at Floral Fantasy, Angeline Ashbern and Cecile Castron were browsing for a bouquet to bring to a bridal shower when they heard the gunshots. The owner of Floral Fantasy, Serge Smithton, ran out the door, determined to help. Cecile couldn't tear her eyes away from the drama unfolding outside. Angeline, however, seized the moment. "Here, Cecile, hold my coat," she said, thrusting her coat into Cecile's arms. Angeline then hurried behind the counter, opened the cash register, grabbed a fistful of cash, and tucked it away in her purse. When she heard the tell-tale "ding" of the cash register, Cecile wrenched her eyes from the street to see what Angeline was up to. Cecile couldn't help but laugh out loud. "Seriously, Angeline? You've got some cojones," Cecile said. Angeline was back by Cecile's side in a flash. Cecile handed over her coat, and the two walked out of the shop.

When the police responded to the scene, they found Norm a little sore, but unharmed, brandishing a weapon over a profusely bleeding Pam. Pam was whisked away in an ambulance but not before being thoroughly searched by the police, who found no weapons of any kind on her body.

At the hospital, Pam's peculiar behavior led to a psych evaluation. Dr. Don Drapster concluded that Pam suffered from undiagnosed schizophrenia. He also determined that Mundungus Meltcher, while very real to Pam, was, in fact, a hallucination caused by her illness. And her story about the stolen red beryl ring was a delusion.

At first, the police were puzzled by the broken window at the Bagel Bonanza. It wasn't in the line of fire nor did it look like it'd been hit by a bullet. They searched the premises and found Janice hiding in a back room. After assuring her that the threat of the shooter had passed, they guided her out of the building.

Serge, it turns out, had been able to help. He was the one who called the police. And, although he was unable to offer any medical care, he was able to sit by Tamir's side and offer him comfort and company in his last moments. Tamir passed away with Serge clasping his hand tightly. When Serge finally returned to his store and discovered the missing cash, he immediately alerted the police. He also gave the police a copy of his in-store surveillance tapes, clearly showing Angeline and Cecile.

QUESTION

The Broadpark crimes have landed on the desk of New Michisota City District Attorney Lani Lauman. You're an intern in her office. What charges might Lani bring? How difficult will it be to obtain convictions? Are there any other issues she should consider?

Lani gives you this advice: "Look, you might be tempted to give me a write-up about Norm's defense of property, but I'm not interested in that. I would like you to consider the following sections of the Michisota Penal Code," and she hands you a paper with the following:

§ 54: *Wanton destruction of property.* Whoever destroys or injures the property of another in any manner if such destruction is wanton, evidencing recklessness or indifference to the fact that his conduct would probably cause substantial damage, shall be guilty of a felony.

§ 65: *Theft.* Every person who shall steal, take, carry, lead, or drive away the personal property of another with the purpose to deprive him thereof is guilty of theft. Theft constitutes a felony in the third degree if the value involved exceeds \$500.

§ 71: *Burglary.* A person who enters any shop, warehouse, store, mill, barn, stable, tent, outhouse or other building with intent to commit a crime is guilty of burglary, a felony in the second degree.

§ 85: *Simple Assault.* A person is guilty of simple assault if he purposely, knowingly, or recklessly causes an injury to another. Simple assault is a misdemeanor.

§ 86: *Aggravated Assault.* A person is guilty of aggravated assault if he causes serious bodily injury to another, or causes such injury purposely, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life or causes such injury with a deadly weapon.

"Of course," Lani goes on, "don't forget to consider all of the other criminal law principles you've already learned in class this year."

In assessing the legal issues that arise from the above facts, organize your response as follows, clearly labeling the subparts:

Subpart A: Discuss possible charges against Pam Penderdash.

Subpart B: Discuss possible charges against Norm Nembisar.

Subpart C: Discuss possible charges against Janice Jinkston.

Subpart D: Discuss possible charges against Angeline Ashbern.

Subpart E: Discuss possible charges against Cecile Castron.

Subpart F: If there is anything else you wish to discuss, which does not belong in any of subparts A through E, please put it under this Subpart F.

Keep in mind the subparts will not be given equal weight. The subpart structure is provided for organizational purposes only. It may be entirely appropriate for one subpart to be answered with considerable brevity, while other subparts might require very detailed analysis. Pace yourself appropriately, and plan ahead to put information where it belongs.

Finally, avoid needless repetition. Do not repeat the exact same analysis with substituted parties. You may incorporate analysis by reference to another portion of your exam answer to the extent appropriate.

Some suggested abbreviations for your answer:

AA:	Angeline Ashbern	LL:	Lani Lauman
BB:	Bagel Bonanza	MM:	Mundungus Meltcher
CC:	Cecile Castron	NN:	Norm Nembisar
DD:	Don Drapster	PP:	Pam Penderdash
EE:	Emerald Emporium	SS:	Serge Smithton
FF:	Floral Fantasy	TT:	Tamir Tilbeck
JJ:	Janice Jinkston		

END OF EXAMINATION