

Your Number \_\_\_\_\_

Professor Nancy Ehrenreich, Fall, 1991

UNIVERSITY OF DENVER COLLEGE OF LAW  
CRIMINAL LAW FINAL EXAM (December 18 - 20)

[General exam directions deleted. Note: This was a take-home test.]

Part I (80 points)

[Instructions deleted. This section consisted of 5 short-answer questions. I have included 3 of them here.]

1. Some courts require knowledge as the minimum mens rea of an accomplice towards the conduct element of the principal's offense, while others require purpose. What concerns are raised in the choice between the two?

4. Lisa Sullivan was recently charged and convicted of violating a statute that makes it a crime, punishable by a fine of up to \$1,000 or up to six months' imprisonment, to smoke cigarettes during pregnancy. At trial, the judge instructed the jury as follows: "If you find that the defendant smoked cigarettes while pregnant, even if she didn't know that such behavior was illegal, you must convict." Is Sullivan's conviction likely to be overturned? On what ground(s)? (You can assume the statute does not violate the constitutional right to reproductive freedom established in *Roe v. Wade*.)

5. Diane Folsom rode the bus past the same empty lot every week on her way to pick up her unemployment check, and had noticed an old Chevy sitting in the lot that seemed to be abandoned. Therefore, one day when she desperately needed to get across town in a hurry for a job interview, she decided to see if she could jump the Chevy and use it. The car started up easily and Folsom drove it to the interview, very pleased that she now had a vehicle to get around with. On her return to the car, she was arrested and charged with unauthorized use of a motor vehicle, defined in this **common law** jurisdiction as "using the motor vehicle of another without consent." Despite Folsom's honest belief that the car had been abandoned, it in fact belonged to Sam Smith, who lived next to the empty lot. A reasonable person would have noticed the current plates on the car and the day-old newspaper sitting on the front seat, not to mention that it was parked in different places in the lot on different days. But Folsom had noticed none of this, and now faces criminal charges. (NOTE: On this question, you must answer both part A and part B.)

A. Will Folsom succeed in her claim that she should not be convicted because she thought that the car was abandoned?

B. Still operating with the facts set out above, assume that Folsom lived instead in a **Model Penal Code** jurisdiction, and was charged with violating section 223.2(1) of the code, "Theft by Unlawful Taking or Deposition." Would she succeed in her defense that she should not be convicted because she thought the car was abandoned?

Part II (40 points)

[Instructions deleted. This Part consisted of one policy/conceptual essay question.]

The following events took place in the state of Petunia, which is a common law jurisdiction:

One afternoon, at around 3 p.m., Janet Gallagher was stopped at a stoplight on a busy corner, near the courthouse in the business section of town, when Peter Boone approached her car carrying an umbrella. Terrified that Boone was going to attack her, Gallagher slammed on the accelerator to try to escape, and in the process knocked Boone down with her car, breaking his leg. As it turned out, Boone had become lost in the downtown streets, and just wanted to ask for directions.

Gallagher is now charged with assault (defined in this jurisdiction as intentionally or recklessly causing bodily injury to another), and wants to put on evidence about a mugging which she suffered two years earlier, in order to explain her reaction to Boone. That incident occurred at 1:00 a.m., on a poorly lit corner in the warehouse district of town. The attacker was carrying a flashlight, with which he hit Gallagher on the head. Should the evidence be admitted?

In answering, identify the legal issue(s) to which the evidence would be relevant, the arguments that can be made both for and against admitting it, and the broader questions of criminal policy implicated in the decision on admission. You can assume that the prosecutor could establish a prima facie case -- that is, that Gallagher was aware of the risk that she might hurt Boone and disregarded it.

Part III (180 points)

[This question has been slightly revised to better reflect what we've covered this semester and my current (less brutal!) style of exam-design.]

The following events took place in the state of Begonia, which follows Common Law rules:

Jane and Becky had hit bad times. They were sitting around Becky's apartment wondering what to do with their lives. They were basically out of money, they had no jobs, and they had developed something of a heroin habit which they had a hard time satisfying. They had gotten enough of the drug to last another day, but then they didn't know what they would do.

As they talked, they began considering their options. Neither of them had been involved in criminal activity before, except the possession and use of controlled substances. But at this point some criminal activity seemed like the only option; although they were not heavy users, each had tried to stop heroin use completely, and each knew at least some of the horrors of withdrawal.

They decided to steal some money from a convenience store down the street from the apartment. As they talked, they realized that neither of them wanted to hurt

anyone; they agreed that they would not try to get any weapons, but would simply try to grab money from the cash register when it was opened. The plan was to try to distract the clerk while he had the cash drawer open.

At the planned hour, the two of them met and walked together to the store. Unbeknownst to Becky, Jane had obtained a pistol and carried it in her purse. They entered the store and began walking down the aisles, pretending to shop. They did not know that Ray, the clerk at the store, had been robbed at gunpoint three times in the last two months. The store's owner had gotten Ray a gun and told him to shoot anyone who tried to rob him. "Shoot first, ask questions later," the owner had said.

After about five minutes inside the store, Becky lay down in an aisle of the store and pretended to have convulsions. Ray left the register and walked over to where Becky lay, to see if he could help. When he looked up, he saw Jane begin to go behind the register; he realized then what was up and, without saying anything, he took out his gun and fired at her. He missed and took aim again. Before he could shoot a second time, however, Jane took out her gun and shot Ray, killing him instantly. The two women then sat in shock at the scene for about two minutes. By the time Jane had recovered enough to suggest that they leave the store, police cruisers were waiting outside and both of them were arrested.

Begonia's criminal code includes the following statutes:

*Robbery: A person is guilty of robbery if he unlawfully takes personal property of another, from that person's possession or presence, by force or threat of force.*

*Murder: All murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery or burglary, shall be deemed murder in the first degree; and all other kinds of murder shall be deemed murder in the second degree.*

*Attempt: An act, done with intent to commit a crime, and tending but failing to effects its commission, is an attempt to commit that crime.*

In answering the questions below, **please assume** that:

- all the above facts could be proven at trial,
- the money in the cash drawer would be considered by the law to be in Ray's possession or presence when Jane tried to take it, and
- Becky would *not* be considered an accomplice in any use of force by Jane.

Please answer the following questions about this series of events:

- 1) What is the likelihood that Jane and/or Becky could be convicted of attempted robbery?
- 2) How would your analysis of question #1 change if this were a Model Penal Code jurisdiction?
- 3) What is the likelihood that Jane and/or Becky could be convicted of murder?

\*\*\*\*\* (end of exam)\*\*\*\*\*