

CRIMINAL LAW
PROFESSOR KRAVITZ
SPRING 1990

THE FINAL EXAMINATION

There are five additional pages to this examination. The exam consists of five questions. They are not of equal weight. You have three hours for the examination. Budget your time carefully.

Do not change the facts. Be sure to answer all of the questions.

Please answer the specific questions asked in the order they are asked. Support each answer with appropriate legal reasoning. Citations are not necessary.

Legibility will be appreciated.

QUESTION NUMBER ONE: TWENTY (20) POINTS	TIME (APPROX) 36 MIN.
QUESTION NUMBER TWO: TWENTY (20) POINTS	TIME (APPROX) 36 MIN.
QUESTION NUMBER THREE: FORTY (40) POINTS	TIME (APPROX) 72 MIN.
QUESTION NUMBER FOUR: TWENTY (20) POINTS	TIME (APPROX) 36 MIN.
QUESTION NUMBER FIVE: TWENTY (20) POINTS	TIME (APPROX) 36 MIN.

NUMBER: 0

Good Luck and Enjoy the Summer!

QUESTION NUMBER ONE
(Twenty Points)

E. Z. Racer was stopped and cited for a speeding violation. As a routine procedure, the officer ran Racer's license through the Bureau of Motor Vehicles computer and the readout stated that Racer's license was suspended for accumulating too many traffic tickets. Racer was additionally charged with driving under a suspended license.

The evidence at trial revealed that the BMV sent a certified letter to Racer notifying him of the suspension, however the letter was returned marked "unclaimed." The evidence further revealed that Racer had changed addresses prior to the suspension and had not notified the BMV of the change nor left a forwarding address.

Section 100 of the Revised Code provides that "[a] person may not operate a motor vehicle upon the public highways while his driving privilege, license or permit is suspended." A conviction for this offense is punishable by a sentence of up to six months in jail and a \$1,000.00 fine.

The prosecutor has argued that this is a strict liability offense. Racer claims he is entitled to an acquittal because the evidence was insufficient to show that he knew his license was suspended.

You are the trial judge. Determine the guilt or innocence of racer. What factors should be taken into account when interpreting this statute. Write a decision supported by appropriate legal reasoning, which determines the guilt or innocence of Racer.

QUESTION NUMBER TWO
(Twenty Points)

Officer Sneeze was arrested in Ohio for five counts of section 200 of the Revised Code which provides that "no person shall knowingly purchase a cough syrup or other preparation containing codeine within 48 hours of a prior purchase of a cough syrup or other preparation containing codeine."

Officer Sneeze, while on duty and in uniform, purchased Novahistine DH, a non-prescription cough syrup containing codeine on five consecutive days during the first week of January. On the sixth day, he purchased Cheracol ZZ, another cough syrup containing codeine.

At trial, Officer Sneeze testified that he had a bad cold during January and did not want to miss work. He was aware that Novahistine DH contained codeine but was unaware that Cheracol ZZ contained codeine. He testified that he thought the law permitted him to buy a bottle of cough syrup containing codeine every 24 hours. He testified he switched to Cheracol ZZ because Novahistine DH was adversely affecting his job performance.

In support of Officer Sneeze, three fellow officers testified they were unaware it was illegal to purchase the medication more than once in a 48 hour period. Sneeze's physician, who has been an allergist since 1937, said he often told patients to buy the medicine and did not know that purchases within 48 hours were illegal.

Evidence in the case showed that the directions for both medications stated that they contained codeine and noted that it was illegal under Illinois law to make repeated purchases and that the buyer should check his own state law.

(A) You are Sneeze's attorney. What arguments can you make for Officer Sneeze?

(B) You are the trial judge. Determine the guilt or innocence of Officer Sneeze.

QUESTION NUMBER THREE
[Forty Points]

Part A: Fifteen Points.

Opus and Frac were drinking heavily at the Do Drop Inn. As the evening progressed, Opus and Frac became involved in a verbal altercation with Schizo and Crazy Horse, two members of the Cupid motorcycle club. As the argument became increasingly heated, Opus grabbed a pitcher of beer and swung it wildly in the direction of Schizo. He missed Schizo and hit Crazy Horse in the head with the pitcher.

Crazy Horse stood up and advanced toward Opus. Frac then took his beer bottle and threw it in the general direction of Crazy Horse, missing his head by about twenty feet.

(A) Assume Opus was charged with a battery. Assume Frac was charged with attempted battery. At trial, their defense was intoxication. Is intoxication a defense? When should intoxication be recognized as a defense? What role should intoxication play in the trial of Opus and Frac?

Part B: Twenty-five Points.

Crazy Horse and Schizo grabbed Opus and Frac and threw them to the ground. They proceeded to kick Opus and Frac until they offered no resistance. Schizo went back to the bar to finish his drink. Crazy Horse, seeing some movement on the part of Opus (his eyes rolled back into his head), picked up his bar stool and smashed it on top of Opus's head. Crazy Horse then proceeded back to the bar to finish his drink. Both Schizo and Crazy Horse became very intoxicated. They also ran out of money and wanted to continue drinking. Schizo observed a cut on the head of Crazy Horse where he had been hit by the pitcher by Opus. Noting that Crazy Horse would probably need medical attention and expense as well as noting that Crazy Horse deserved to be compensated for his physical and emotional pain and suffering, he suggested that they should take whatever money Opus had on his person to settle the cause of action.

Crazy Horse agreed and reached into Opus's pockets. Both pockets were empty. Crazy Horse returned to the bar. Schizo then suggested that Frac should pay for Crazy Horse's injury. Crazy Horse disagreed, noting that at the time of the injury, Opus appeared to be acting on his own. Schizo ignored the reasoning of Crazy Horse and took \$100.00 in cash from Frac's pockets. He then returned to the bar and the two used the money to continue their drinking.

Shortly thereafter Opus expired. Frac was severely injured. Crazy Horse and Schizo were arrested.

(B) Discuss the criminal liability of Crazy Horse.

(C) Discuss the criminal liability of Schizo.

QUESTION FOUR
[Twenty Points]

Charlie and Arnold are twin brothers. Arnold has just been diagnosed as having leukemia. The only possible treatment is a bone marrow transplant and the only compatible donor is Charlie.

Charlie refused to agree to the transplant. Arnold tells his doctor that Charlie has agreed but only if he can be sedated at home because Charlie has a morbid fear of hospitals. The doctor gives Arnold a powerful sedative, which Arnold secretly administers to his dad. He then brings Charlie to the hospital where some of Charlie's healthy bone marrow is surgically removed and given to Arnold. When Charlie wakes up in the hospital, he immediately call the police.

How would you defend Arnold against the charges likely to be brought by Charlie?

QUESTION NUMBER FIVE

[Twenty Points]

Part A: Ten Points.

On October 1, 1990, a federal judge in New York will sentence Michael Creamer following Mr. Creamer's recent guilty plea to several felonies involving securities law violations and other violations of federal law. Mr. Creamer worked for a large Wall Street brokerage firm and pioneered the junk bond market. He faces a maximum prison sentence of 25 years and a maximum fine of \$2 billion. He has agreed, as part of the plea, to pay a fine of no less that \$200 million and to make restitution of \$400 million. He has no prior criminal record. His personal net worth is currently estimated at \$1.5 billion.

Part B: Ten Points.

Pete Tulip recently pled guilty to the crime of income tax evasion. Mr. Tulip was an all-star baseball player and manager who, until recently, was a sure bet to be elected into the baseball hall of fame.

Mr. Tulip has admitted that he cashed several exotic wagering bets at local racetracks totaling approximately \$500,000.00. These bets were legitimately won. Mr. Tulip had others cash the tickets and report the winnings so that he would not have to pay taxes on the winnings. He would pay people ten percent of the winnings for their help.

The presentence report notes that Mr. Tulip was recently thrown out of baseball for sports betting, including betting on the team that he was managing. Mr. Tulip admitted having bet on baseball games but denied betting on his own team. The presentence report also notes that Mr. Tulip has a severe gambling addiction which has adversely affected his emotional and financial well-being. Mr. Tulip is presently undergoing gambling addiction therapy.

The trial judge has solicited your opinion as to the appropriate sentence that should be imposed on Mr. Creamer giving due regard for the reasons why we punish criminal offenders.