

EXAM # \_\_\_\_\_

## FINAL EXAMINATION

Criminal Law  
L506, Section 3  
Spring 2010  
Professor Falk

May 7, 2010  
Room 12  
Exam Begins: 9:00 a.m.  
Exam Ends: 12:00 noon

## INSTRUCTIONS

1. This is a 3-hour, closed book exam. You may not have any written or printed materials with you while taking the exam.
2. Please be sure that you have all pages of the exam (4) and that you answer each question.
3. Write your **exam number (not your name)** on this exam and turn it in at the end of the examination period.
4. Write your **exam number (not your name)** on your typed or hand-written answer.
5. Answer all questions on the computer or in a blue book. Do not answer on the exam itself.
6. Read the questions carefully.
7. Answer in full sentences. Part of your grade will be based upon your ability to express your ideas in coherent English.
8. If in order to answer the question, you feel that additional information is needed, you may make reasonable assumptions consistent with the information given in the question. Do not assume the issue away.
9. Discuss both the common law and the Model Penal Code.
- 10. Good luck!**

**QUESTION I. Short Answer**  
(30 points; suggested time: 45 minutes)

1. Name four factors a court may consider in deciding whether the legislature intended a crime to be a strict liability offense when no mens rea is specified in the statute. (4 points)
2. What is the difference between extreme recklessness, a possible mens rea for murder, and recklessness, a possible mens rea for involuntary manslaughter? (1 point)
3. Under the common law, what are the possible mens rea for the crime of battery? (3 points)
4. How does a justification defense differ from an excuse defense? (2 points)
5. Is duress a defense to murder? Why or why not? (2 points)
6. Under the Model Penal Code, what is the mens rea for solicitation? Under the Model Penal Code, what is the mens rea for conspiracy? Under the Model Penal Code, what is the mens rea for accomplice liability? (3 points)
7. Under the common law, what are the two rules that govern the defense of others? Which is the majority rule? (3 points)
8. Briefly describe the four circumstances under which intoxication is considered to be involuntary. (4 points)
9. Define insanity under the M’Naghten test. Define insanity under the Model Penal Code. Define insanity under the Durham product test. (7 points)
10. What was the most interesting case we read this semester, and why? (1 point)

## QUESTION II. Essay

(unlimited points; suggested time: 2 hours)

Three siblings, Ethan, Poppy, and Ava, are the major players in a nationwide drug trafficking cartel. Ethan is responsible for the identification and recruitment of marijuana growers in Mexico and Central America. Recently, Ethan traveled to Mexico to recruit some growers. Ethan met with one local farmer, Anthony, who was really not interested in participating in the cartel. However, when Ethan described in excruciating detail what Anthony might expect to find left of his family if he did not go along, Anthony consented to grow marijuana. Ethan was also responsible for the importation of marijuana from Mexico and Central America. Usually, this involved smuggling the marijuana into the United States via large panel trucks. Once the marijuana was in the U.S., Poppy was in charge of the distribution of the drug to the various sellers throughout the country. Usually, this involved an informal network of individuals who transported the marijuana in their personal vehicles on the interstate highways and byways. Unbeknownst to anyone in the cartel, Poppy was operating as an undercover DEA (Drug Enforcement Agency) agent who was helping to bring down the whole drug ring. Ava was the main “enforcer” of the operation. For example, if any of the sellers tried to shortchange the cartel by keeping some of the money for themselves, Ava was dispatched to teach them a lesson. Usually, this involved the breaking of bones, but on at least one occasion it involved the “termination” of the seller. “Termination” was a euphemism that the gang used to describe the killing of an errant dope dealer and the disposal of that person’s body. The cartel had one other member—John. John was the kingpin. He did not get his hands dirty with the details, but funded the entire operation and was the behind-the-scenes wizard pulling the strings.

The cartel had been operating smoothly for some time when two unexpected events occurred at almost the same time. First, Ethan ordered an unusually large shipment of marijuana from one of his new growers in Mexico—Sarah. However, Sarah, who has been persuaded to join the cartel by promises of riches and not with brute threats, pulled a fast one. Instead of sending Ethan marijuana, Sarah sent a shipment of a weed closely resembling marijuana but with no intoxicating qualities at all. The weed was so much like marijuana that Ethan, Poppy, and Ava were completely fooled. After the shipment arrived in America, Poppy oversaw the distribution of this “faux” marijuana to her usual sellers. The second unexpected event was that the DEA choose this particular shipment as the one it was going to use to bring down the drug trafficking ring. After Poppy had sent her distributors on their way with the “faux” marijuana, a bevy of drug enforcement agents spanned the country and arrested almost everyone in the cartel for the crimes of importation and distribution of a controlled substance—to wit, marijuana. Ethan and Anthony were apprehended; John, Ava, and Sarah avoided capture. Obviously, Poppy was not arrested because she was an undercover DEA agent.

When John discovered that the drug ring had been arrested and that the marijuana was not real, he took a number of steps. First, he sent his enforcer, Ava, down to Mexico to retaliate against Sarah, the grower who had sent the “faux” marijuana. When Sarah and her family were out for an evening on the town, Ava set an incendiary device in the

hay in the barn. Ava timed it so that the device would ignite at about midnight when the family had returned from their evening out. Although Ava only wanted to kill Sarah, she knew that Sarah's husband and two children would also be likely to die when the barn caught on fire and the fire spread to the adjoining home. The plan worked almost as conceived by Ava. The fire killed Sarah's husband and their two children, but Sarah only sustained burns to a large part of her body. Firefighters called an ambulance to take Sarah to the hospital, where she might have been saved, but the ambulance crashed in a freak accident and Sarah was killed. Next, John hired a lawyer, Cathy, to defend the members of the cartel on drug importation and drug distribution charges. John told Cathy that he believed that the importation and distribution of marijuana was legal following the trend in some states to allow marijuana to be used for medicinal purposes. At it turns out, only a few states allow the selling of marijuana for medicinal purposes and only under very strict government control, which had not been met in this case. Finally, John instructed Ava, after she returned to the United States from Mexico, to go to the home of Poppy and tell Poppy that unless she "disappeared" and thereby avoided testifying against members of the cartel, that she would die. Poppy used her training as a DEA agent to momentarily distracted Ava. Then, Poppy pulled out her service revolver and said "I am arresting you for drug trafficking." Ava, fearing for her life, drew her weapon, fired, and killed Poppy. After an extensive search, the FBI captured Ava. In turn, Ava incriminated John, the kingpin, with secret recordings she had made of their discussions.

Please ANALYZE what crimes may have committed (and by whom) and any defenses the "culprits" may have

1. under the common law, **and**
2. under the Model Penal Code.

Relevant statutes provide:

- Illegal drug importation is knowingly importing any controlled substance into the United States from a foreign country.
- Illegal drug distribution is purposely transporting, distributing, or selling any controlled substance.
  - The definition of "controlled substances" includes marijuana.
- Arson is the malicious burning of the dwelling house of another.

**END OF EXAM**