

Criminal Law B
Prof. Rich
Fall 2008

FINAL EXAMINATION

1. This examination is governed by the Capital University Law School Honor Code. It is an open-book, open-notes test. You may consult any materials during the exam with the following exceptions: any materials that you do not have permission to use, any other person, any computer files, or any Internet sites.
2. You have three hours to complete the examination. The exam consists of one (1) question. Question One has three (3) parts.
3. In total, there are one-hundred (100) points available on the exam. The points are distributed as follows:
 - Question One, Part A: Thirty-five (35) points
 - Question One, Part B: Twenty (20) points
 - Question One: Part C: Forty-five (45) points
4. If you are **HANDWRITING** your exam, use your final examination number and fill in the blanks at the front of the bluebook. Sign (by number) the honor code pledge on the bluebook. Please write **LEGIBLY** in **INK**. If you use more than one bluebook, write your exam number and indicate the ordering of the bluebooks (*e.g.*, 1 of 2, etc.) on the front cover of each bluebook. **Only answers written in the bluebooks will be graded.**
5. If you are **TYPING** your exam, on the first page of your answer, type and sign (by number) this statement: "I understand and agree to abide by the provisions of the Capital University Law School Honor Code in taking this examination." (This is the same Honor Code pledge found on the front of the bluebooks.) When you are finished with the exam, upload your answer into the Examssoft website. **Only typed answers will be graded.**
6. At the end of the exam, you must turn in **your bluebook(s), this examination, and your scratch paper**. Failure to return all of these materials can result in a failing grade. Place these materials inside the exam envelope and place the entire envelope in the box on the front desk when you are finished.
7. Good luck and enjoy your winter break. You've earned it!

DO NOT BEGIN THE EXAM UNTIL YOU ARE INSTRUCTED TO DO SO.

QUESTION ONE

The Facts

Marie and Charles Smith lived in the city of Lexinnati, capital of the state of Ohtuckiana. The two were married in 1998. Marie was previously divorced and had custody of twin daughters, born in 1993, from her first marriage. For the first three years of their marriage, Marie worked as a waitress, and Charles was a police officer in the Lexinnati Police Department (“LPD”). In early 2001, however, the restaurant at which Marie worked closed, and Charles was fired after he was caught drinking on the job.

From 2001 through 2005, Charles was unemployed, and Marie worked only sporadically. Without a steady income, Charles and Marie had a difficult time making ends meet.

After he lost his job, Charles started drinking more heavily and regularly, and whenever he got drunk, he beat Marie. When he was sober, however, Charles was an affectionate and loving spouse toward Marie. These periods of sobriety became less and less frequent. On two separate occasions, Charles broke Marie’s arm. She also suffered half-a-dozen concussions due to the beatings. One time, Charles held Marie’s head underwater until she lost consciousness. Though Marie visited the emergency room frequently, she explained away her injuries whenever the doctors inquired, and none of the injuries were life-threatening. As a result, the police were never contacted. Despite the regular violence that Charles perpetrated against Marie, he never physically abused or threatened Marie’s daughters.

Charles also belittled and degraded Marie verbally in front of their friends and family when he drank. He called her “worthless” and “a waste of space.” He often said that he wished he’d never met Marie and told Marie’s mother that having Marie “must have been the biggest mistake she ever made.” Charles also called Marie a “slut” and a “whore” for having children with her prior husband.

Once in 2002, after a particularly violent outburst, one of Marie’s daughters called the police. The officers assigned to investigate the complaint were close friends of Charles from his LPD days, and he convinced them not to file a report. After that, whenever Marie or her daughters threatened to contact the police, Charles told them that his friends in the LPD would protect him no matter what and that Marie “wouldn’t live to regret it.” A number of times in 2001 and 2002, Marie told Charles that she would leave him. Each time, Charles threatened to kill Marie and her elderly mother if she did. By the end of 2002, Marie stopped threatening to leave Charles.

In 2005, the Smith family finances became particularly dire, and they were close to being evicted from their home. After a long day of drinking, Charles told Marie that she would have to prostitute herself in order to pay the bills. When Marie refused, Charles held a knife up to her throat and told her that if she did not, he would “cut the pretty off [her] face.” Marie acceded to Charles’s demand that evening, but resolved that she would never do it again.

Shortly thereafter, Marie found steady employment at a local factory, thus staving off the threat of eviction. Around the same time, Charles joined Alcoholics Anonymous, became sober, and stopped abusing Marie physically or verbally. Then, in April 2008, Marie was laid off again. Charles remained on the wagon for a while, but within three months, the Smiths were close to losing their home once more. In July, Charles went on his first bender in three years. When he got home, he told Marie that she would have to prostitute herself again in order to pay the bills. Marie refused, and Charles punched her in the chest and broke one of her ribs. He then threatened that if she did not agree to his demand, he would force her daughters into prostitution to “earn their room and board.”

The next day, a sober Charles drove Marie to the Oh-Well Motel, a nearby seedy establishment, and told her that he would collect the money from johns and send them to her room. Marie said nothing.

The first man to come to the room was Alex, a five-foot, four-inch tall, 140-pound man. Alex was a local, married banker with two young children. He was the sole breadwinner in his family, and his wife stayed home to take care of the children. Alex had a M.B.A. degree and volunteered at a food bank run by his local church. Alex’s only criminal record was a drunk and disorderly charge that he pleaded guilty to ten years previously. In addition, a female acquaintance had once accused him of rape while he was in college. No charges were filed in that instance, as the acquaintance refused to testify. Marie was unaware of any of these facts, beyond Alex’s physical appearance.

Alex sat down on the bed and instructed Marie to remove her clothes. Marie began crying and said, “I don’t want to do it, but my husband said he’ll kill me if I don’t.”

Alex responded, “Look, I feel bad for you, and I don’t want to have sex with you without your consent. But, I paid \$100, and I’m not going to leave until I get it back or you have sex with me.” After crying for a couple of minutes more, Marie removed her clothing, and Alex had sexual intercourse with her. Marie cried the entire time, but did not speak. Except as stated above, Marie did not resist physically in any way, and Alex did not use any force during the intercourse beyond that required to engage in that act.

Two hours later, Hector knocked on the door and entered the room. Hector and Marie engaged in sexual intercourse, during which Hector suffered a heart attack and died.

Approximately twenty minutes later, Charles came into the room and saw Hector lying dead on the bed and Marie crying. He screamed, “You idiot woman, what have you done?!” Charles began pacing back and forth in the room, punching his hand with his fist and muttering to himself, “What are we going to do now?” As Charles paced, Marie, still crying, crawled toward the door out of the room. She spotted the handle of a gun poking from the inside pocket of Hector’s jacket. She removed the gun from the jacket while Charles’s back was turned. Eventually, Charles stopped on the far side of the room, turned to face Marie, and stepped quickly in her direction, yelling, “Our lives are over!” Marie shot Charles in the head with Hector’s gun, killing him.

The Law

The Ohtuckiana legislature has enacted Articles 2, 3, and 4 of the Model Penal Code. In addition, the Ohtuckiana Revised Code contains the following provisions :

§ 2907.02 – Rape

A person commits rape if he engages in sexual conduct with another and purposely compels the other person to submit by force or threat of force. The crime of rape is punishable by a period of incarceration of between two and twenty-five years.

§ 2910.01 – Criminal Homicide

- (a) A person commits murder in the first degree if he kills another person in a willful, deliberate, and premeditated manner. . . .
- (b) A person commits murder in the second degree if he kills another person purposely or knowingly. . . .
- (c) A person commits manslaughter if:
 - (i) He kills another person recklessly; or
 - (ii) He kills another person in a manner which otherwise would constitute murder in the second degree, but does so under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be.

Trial judges in Ohtuckiana have complete discretion in sentencing. In other words, the trial judge may sentence an offender to any term of imprisonment within the range permitted by law. In an effort to create some consistency in sentencing, however, the Ohtuckiana Sentencing Commission has issued non-binding guidelines to assist judges in their sentencing decisions. The opening provisions of the Sentencing Guidelines explain that punishment in Ohtuckiana serves both retributive and utilitarian goals and that judges should take both into account in making a sentencing determination.

With respect to individuals convicted of rape under section 2907.02, the Guidelines state that the “average” rape sentence should be twelve years, that the typical sentence for an “aggravated” rape should be twenty years, and that the typical sentence for a “less serious” rape should be five years. Unfortunately, the Guidelines do not explain how a judge should distinguish between “aggravated,” “average,” and “less serious” rapes.

The Questions

- A. Discuss fully whether Alex is liable for rape under ORC section 2907.02. Discuss any potential arguments that would be raised by either the prosecution or the defense.
- B. **Regardless of your answer to part A**, assume that a jury found Alex guilty of rape. If you were the trial judge, what sentence would you impose on him? Explain what factors you considered in making your decision.
- C. If Marie is charged with murder in the first degree under ORC section 2910.01 and you are her lawyer, what arguments would you make in her defense, and what are your chances of success?