

FINAL EXAMINATION

1. The examination is governed by the Capital University Law School Honor Code. It is an open book, open notes examination. 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 two (2) questions. Question One has three (3) parts, and Question Two has two (2) parts.
3. In total, there are one-hundred (100) points available on the exam. The points are distributed as follows:
 - Question One, Part A: Twenty-five (25) points
 - Question One, Part B: Twenty (20) points
 - Question One, Part C: Fifteen (15) points
 - Question Two, Part A: Twenty (20) points
 - Question Two, Part B: Twenty (20) 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, re-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 Examsoft website. **Only typed answers will be graded.**
6. At the end of the exam, you must turn in your **bluebook(s), these examination questions, 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

Tyra is an eighteen-year-old senior at Dillon High School. On a Saturday evening in May 2007, Tyra was working late at the local Applebee's. A customer came into the restaurant that evening, had a couple of drinks, engaged in small talk with Tyra, and left shortly before closing. When Tyra left the restaurant that evening, she was attacked by the customer, who attempted to sexually assault her in the passenger cab of her truck. Tyra fought off her attacker by biting through his right ear. The attacker ran to his own car, an older blue sedan.

Tyra reported the attack to the police and described her attacker as a white male, approximately 6 feet tall, 210 pounds, with thinning, sandy blond hair. She was unable to identify her attacker in any mugshots shown to her by the police, however, and the investigation stalled.

Landry also is eighteen years-old and a senior at Dillon High. He has had a crush on Tyra since he was sixteen and describes her as "the love of [his] life." Until the summer of 2007, Tyra and Landry were only casual friends; however, in the wake of the attempted sexual assault, they began a romantic relationship.

On September 18, 2007, Tyra noticed an older blue sedan following her truck. Tyra took several abrupt turns through Dillon, but the sedan continued to follow her. She eventually pulled her truck into the Dillon police station, and the sedan pulled away. Tyra related these events to Landry. Two days later, Tyra was waiting for Landry in her truck outside a local supermarket when a man approached the open driver-side window. The man attempted to open the driver's side door of her truck. When she demanded that the man leave, he said, "Alright, honey, but don't worry, I'll be back for you." Tyra again told Landry about the encounter and indicated that she thought the man "may have been" the perpetrator of the attempted sexual assault.

Around midnight on September 24, Tyra and Landry drove to a local convenience store to pick up some snacks and drinks. While Landry went inside the store, Tyra got out of her truck to stretch her legs and enjoy the evening air. Shortly thereafter, a man grabbed Tyra from behind. As he dragged her away from the building, the man whispered in her ear, "I've finally got you, darling, and that nerd can't save you." As Tyra fought to free herself and tried to scream, Landry came out of the store. He saw Tyra and the man struggling. Landry ran toward them, struck the man, and attempted to pull him off of Tyra. The man let go of Tyra and struck Landry in the face with his fist. Landry fell down. The man started back toward his car, yelling, "I'm coming back, and then both of you are going to get it!"

Tyra screamed at Landry, "That's him! That's the guy! Stop him!" Landry, still on the ground, grabbed a large piece of stone, stood up, and, screaming incoherently, struck the man in the back of the head. The man fell down, and Landry struck him three more times with the stone.

Tyra felt for a pulse and determined that the man was still alive. Landry stood nearby in a daze. Tyra grabbed Landry by the shoulders and slapped him across the face. Landry looked down at the man on the ground and the bloody stone in his hand and exclaimed, "My God, what have I done?" Panicked, the two packed the man's body into the back of Tyra's truck, drove to a

nearby hospital, and left the body on a curb near the emergency room entrance. The man died hours later from his injuries.

Two days later, Tyra and Landry were arrested in the death of the man, identified as Allen Andrews. Tyra told the police that at the time Landry hit Allen with the rock, she believed that Allen was the same man who had attempted to sexually assault her, but that now, upon reflection, she no longer was certain. Allen was a white male, five feet, ten inches tall, 200 pounds and had thinning brown hair. The car recovered at the scene was an older blue sedan registered to Allen. Allen's right ear bore no scars.

A. Under both common law and the MPC, of what level of homicide, if any, is Landry guilty? Please ignore any affirmative defenses for this part of the question.

B. What defenses could Landry raise to a homicide charge? Assess the viability of any such defenses under the common law and the MPC.

C. Assume you are a prosecutor presented with the facts above – would you charge Landry and Tyra with conspiracy to commit murder? Consider both whether the legal elements are satisfied and any policy considerations that you feel are relevant.

QUESTION TWO

The following problem occurs in the state of Grace.

For the last fifteen years, Benjamin lived at 1424 Charlotte Drive with his wife Diane. On the morning of October 12, Benjamin and Diane signed their divorce papers, making the dissolution of their marriage final and finalizing an agreed-upon division of assets. Due to miscommunication between Benjamin and his attorney, Benjamin believed that he received the house at 1424 Charlotte Drive as part of the divorce settlement. In fact, Diane retained possession of the house.

At approximately 11:00 p.m. that evening, despondent over the divorce, Benjamin decided to destroy the house at 1424 Charlotte Drive in hopes of wiping the slate clean and starting his life anew. He drove to the house and parked in the driveway, noting that a car that looked very similar to Diane's was parked on the street in front of the house. Shrugging his shoulders, Benjamin entered the kitchen and pulled the gas stove away from the wall. Thinking that a spectacular explosion would cleanse his soul better than a messy fire, he unhooked the natural gas line and released a slow stream of gas into the house. Benjamin then went into the living room and pulled two albums of wedding photos from a bookcase. He removed many of the photos and placed them in a pile on the kitchen table. Benjamin lit the photos on fire, figuring that they would act as a fuse that would ignite the natural gas once the concentration of natural gas was high enough. He then hurried from the house, got in his car, and drove to a hotel.

The photos smoldered for a while, giving off a strong odor of burning plastic. Diane, sleeping upstairs, awoke to the smell of burning plastic and hurried downstairs. She saw the pile of photos burning on the kitchen table and doused the flame with water. Suspecting that Benjamin had broken into her house and set the fire, Diane searched in the dark for the cordless phone so she could call the police. While fumbling around the kitchen, she noticed the smell of rotten eggs and spotted the stove pulled from the wall. Realizing the danger, Diane fled the house through a door leading off the kitchen. Luckily for Diane, the door opened without incident, but when it slammed shut, it generated a spark that ignited the now-combustible concentration of natural gas. The house was destroyed, but Diane, though thrown several feet, survived unharmed.

The Grace legislature has enacted Sections 2.02, 2.03, and 2.04 of the Model Penal Code in their entirety into the Grace Penal Statutes. In addition, GPS section 112.4 reads:

- (a) *Arson.* A person is guilty of arson if he starts a fire or causes an explosion with the purpose of destroying a building or occupied structure of another.
- (b) *Reckless Exploding.* A person is guilty of reckless exploding if he purposely causes an explosion, whether on his own property or another's, and thereby recklessly places another person in danger of death or bodily injury.

- A. Discuss fully Benjamin's potential liability for arson under GPS section 112.4(a).
- B. Discuss fully Benjamin's potential liability for reckless exploding under GPS section 112.4(b).