

INSTRUCTIONS

There are four additional pages to this examination. The exam consists of four questions, two of which have two parts. You must answer all parts of all questions. You have three hours.

Do not change the facts. Do not challenge any stated legal conclusions.

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

Budget your time. Be sure to answer all of the questions.

Legibility will be appreciated.

Good luck!

QUESTION I

A, B and C are employed as truck drivers for the Jinx Trucking Co. Jinx handles the deliveries for many small merchants in Xenia County, a rural county in the State of Hysteria. A learns that a valuable package of diamonds is to be included in the packages he is to deliver on November 15, 1989. He proposes to steal the diamonds but realizes that he will need help if he is to succeed.

Knowing that B and C have prior police records and are reputed to have criminal connections, he approaches them to seek their assistance. B and C agree to join A in the venture and at a meeting in Lou's Bar and Grill a plan is devised. It is agreed that a two vehicle collision will be staged on an isolated section of State Route 43 and that the diamonds will be taken from A at gunpoint following the wreck. Each man is assigned specific responsibilities in the execution of the general plan.

A is to arrange his schedule so that he will be driving on State Route 43 on the morning of November 15, 1989 and arrive at the point selected for the accident at precisely 10:12 a.m. B is to find a person willing to stage the accident with A's truck and he and C are to be waiting at the side of the road to take the package from the truck when it leaves the road.

D has accepted B's proposal to stage the accident with A. It is D's understanding that the accident is to be staged to get back at the Jinx Trucking Co., or anti-union activities. D, a militant unionist, is willing to do the job for the replacement cost of his

automobile, \$500, which B is to pay him following successful completion of D's part of the plan.

The morning of November 15, 1989 arrives. A has arranged his schedule to be at the proper place on time. C has called in sick and is waiting at the scene of the accident. D, however, oversleeps and in his rush to get to State Route 43 on time, races through a traffic light, killing a pedestrian, but arrives at the accident site at 10:12 a.m.

The accident is staged as planned and C jumps out from his hiding place, holds A and D at gunpoint, and demands that A give him the diamonds. Sam Sureshot, an avid hunter, happens to be deer hunting in the nearby woods at the time of the accident. He arrives at the edge of the woods in time to see C pull the gun on A and D. C, unaware of Sam's presence, and perhaps hamming it up for D's benefit, starts yelling "Give me the diamonds or someone will die. Hurry up or there will be an execution." Sureshot shoots and kills C.

In the confusion that follows the gunshot, B runs off with the diamonds. D, realizing he has been duped, decides to hold out for more money rather than go to the police. He contacts B after the robbery and demands \$5,000 rather than \$500. B agrees but when D comes for the money, D shoots and kills him instead of paying him the \$5,000.

What crime or crimes have been committed by A and B?

QUESTION II

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

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

B. 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 than \$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.

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.

QUESTION III

Betty Battered and Alice Airhead are cellmates awaiting trial. Betty was first married when she was 14 years old to a man twice her age. They remained married for 12 years even though her husband was physically abusive. Finally, after a very severe beating that hospitalized her for three weeks, Betty prosecuted her first husband and while he was serving a lengthy prison sentence, divorced him. Three years later, she remarried but again chose a spouse who was physically abusive. This marriage lasted five years and Betty again obtained a divorce while her husband was in prison for assaulting her.

Betty is currently engaged to Nathan Nerd, a seemingly quiet used book dealer. Betty is resolved never to be abused again, and thinks that she has finally chosen a considerate non-violent mate. They are married and shortly thereafter Nathan starts drinking. He tells Betty that he loves beer and that his first two wives divorced him because of his drinking, so he stopped drinking while between marriages. He also tells her that he thinks he can now control his alcohol-induced temper. The first evening Nathan gets drunk he comes home and beats Betty following which he is terribly contrite and swears he will not drink again. Two weeks later, he gets drunk and beats her again. Seeing her earlier life repeating itself, Betty hides a kitchen knife in her bedroom and when Nathan is asleep stabs him to death.

Alice's road to jail was somewhat different. While not being physically abused, she has been sexually exploited since she was 18. Her first boyfriend convinced her that she should prove her love for him by engaging in prostitution. After two months as a prostitute, she contracted a venereal disease and her boyfriend left her. She then met a man who claimed to be a famous movie producer who promised her a career in movies. Unfortunately, the movies he produced were all x-rated and Alice did become fairly well known. After three years as a porn queen, Alice decided that she was going to straighten her life out and decided to seek psychotherapy. She asked the physician who treated her venereal disease to recommend a psychiatrist and he recommended Dr. Siggy Fiend. Alice's first visit to Fiend was fairly traditional. She lied on a couch and told Dr. Fiend why she was there. On her second visit, Dr. Fiend suggested that Alice take off all her clothes while talking to him. On her third visit, Dr. Fiend said that they would now start active therapy and she was to disrobe and lie down on the couch. The therapy he had in mind was sexual

intercourse. When, on her fourth visit, Dr. Fiend told her to disrobe, Alice took a gun from her purse, said "You're worse than the rest of them, you're the Devil, the only way the world will be safe is if you're dead," and shot him between the eyes killing him. Her statements were recorded on Dr. Fiend's tape recorder.

How would you defend Betty and Alice in their separate trials and what are your chances of success?

QUESTION IV

A. Toody and Muldoon are narcotics detectives in Oz, the capital city of the State of Wizardry. While on vacation in Florida, they meet David Dealer and out of professional habit strike up a conversation about cocaine. They learn that Dealer has some cocaine to sell and indicate an interest in buying it if Dealer will deliver it to Oz. They agree to meet one week later in a restaurant located at 777 Goodwitch Street in Oz. Dealer arrives as scheduled, delivers the cocaine as promised, receives the money agreed upon, and is promptly arrested. Unbeknownst to Dealer, 777 Goodwitch Street is exactly 700 feet from the Queen of Hearts Elementary School and the laws of Wizardry provide for an enhanced penalty for selling drugs within 1,000 feet of a school.

May the State of Wizardry lawfully apply this penalty enhancement provision against Dealer?

B. The codified statutes of the State of Bliss provide:

No person shall provide intoxicating beverages to a person under the age of 21. For purposes of this statute, person shall include the holder of a liquor license issued by the State of Bliss whose employees or agents provide intoxicating beverages to persons under the age of 21. Whoever violates this statute shall be imprisoned for no less than three days nor more than 180 days and/or fined no more than \$1,000.

Barry Barkeep owns the Happy Hour Saloon in Beautiful, the capital of Bliss. - On March 17, 1990, Wendy Waitress served Margaret O'Minor an intoxicating beverage. Margaret, who looks 25 years old, was not asked for identification and is in fact 19 years old. Barry has been charged under the Bliss statute quoted above even though he was not present when Margaret was served and promptly fired Waitress when he learned she had served Margaret.

How would you defend Barry and what are your chances of success?