

## **INSTRUCTIONS**

There are three additional pages to this examination. The exam consists of four questions, one of which has 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***

On November 13, 1990 the evening newspapers in the State of Myopia all published a front page headline declaring "PROSTITUTION LEGALIZED" and an accompanying news story detailing the passage of new legislation legalizing prostitution. The basis for the story and headline was an erroneous wire service dispatch which named the State of Myopia instead of the Western European Nation of Myopia. Prostitution was and always has been a felony in the State of Myopia. Petunia, a local prostitute, in the City of Oculo, Myopia's largest city, read the story in the Evening Spectacle, Oculo's major evening newspaper. She rejoiced at the thought of her profession's having become legal and immediately set out to maximize her earnings.

Realizing that one of the keys to a good business is an attractive office she went to the Eye's Delight Motel to rent a room. On the registration card she listed her occupation as "Prostitute." The manager, Brown, told Petunia that there would be an additional charge of \$5.00 per person for each guest in her room after 11:00 P.M. This was also printed on the registration card and Petunia agreed.

The evening of November 13, 1990, was particularly profitable for Petunia since the news story had attracted many new customers. By midnight she had five customers and had paid the motel manager an additional \$25.00. However, she got into an argument with customer number six, Arnold, and Arnold began to beat her, breaking her nose and blackening an eye. Petunia screamed and Arnold ran from the room. Petunia took a revolver from her purse and went after Arnold.

Brown, hearing Petunia scream, took a revolver from behind the front desk and went to investigate. He found blood in the room and went looking for Petunia and Arnold. Brown and Petunia took different routes and Brown was the first to spot Arnold running down the alley behind the motel. He yelled "Stop or I'll shoot!" and fired a warning shot in the air. Arnold did not stop. Brown then aimed and fired. At the same instant Petunia sighted Arnold and also fired. Both bullets struck Arnold simultaneously and either would have been sufficient to cause the resulting death.

What crime or crimes, if any, have been committed by Brown and Petunia?

## **QUESTION II**

Anthony Hussane is a member of the Druk tribe who inhabit a remote portion of southern Iraq. As a result of the recent war, Anthony and his family consisting of his wife, Cleopatra, three daughters aged 10, 12, and 14 and three sons aged 11, 13, and 15 have recently moved to the State of Capitalia. The Druks are a very sensual tribe and believe that sex education belongs in the home. According to tribal custom it is the duty of each Druk husband to have sexual intercourse with each daughter as soon as she reaches puberty and to instruct her in the various forms of sexual behavior customarily practiced by the Druks. Similarly it is the duty of each Druk wife to have sex with and train each son as soon as the son reaches puberty. The Hussane's 12 year old daughter and 13 year old son reached puberty shortly after arriving in Capitalia and engaged in sexual relations with their parents in accord with tribal custom. As they recounted their experiences to their classmates in school the next day they were overheard by a teacher who reported the information to the police. As a result of the following police investigation Anthony and Cleopatra have been indicted for statutory rape since the age of consent in Capitalia is 14.

Anthony's cellmate is Cassius Brutus, an extremely tall (6'8") private investigator who is licensed to carry a gun. Brutus lacks many of your basic social skills when dealing with women. His basic technique is to approach a woman in a bar or on the street and ask her to go to bed with him. While he is often rejected, occasionally a woman agrees to sleep with him. Julia Seeser was forcibly raped and beaten by a varsity basketball player while she was in college. Since then she has had an extreme fear of very tall men. As she was shopping in the supermarket late one evening she was approached by Brutus who asked her to go to bed with him. She observed the gun in his shoulder holster, recalled her previous experience and decided that it was better to succumb than to be beaten or shot. In reply to Brutus' question, Seeser said: "I'll do whatever you want, just don't hurt me." They then went to Brutus's nearby apartment and engaged in sexual intercourse. Julia went straight home and called the police. Brutus has been arrested based on Julia's rape complaint.

As defense counsel for Anthony and Brutus indicate how you would defend them against the charges that have been brought and your likelihood of success.

### **QUESTION III**

Fred Flicker has an acute but undiagnosed case of chicken phobia; that is, he is extremely afraid of chickens. On June 15, 1990, he bought a front row seat for the baseball game that evening at County Stadium. Unbeknownst to Flicker the Capital City Chicken was scheduled to appear that night. When the chicken first appeared on the field Flicker became nervous and upset. During the fourth inning the chicken began to prance around on the field in front of Flicker's seat. Flicker sincerely believed that the chicken was about to attack and kill him. He jumped onto the field, chased and caught the actor portraying the chicken, and strangled him to death believing he was a chicken. The fans thinking this was part of the chicken's act applauded wildly.

Flicker has been charged with first degree murder for the strangulation death of the chicken. He has pled not guilty and requested jury instructions on the defense of insanity, the theory of diminished capacity, and the lesser included offense of manslaughter.

The trial judge has requested counsel to submit memoranda supporting and opposing the jury instructions requested by Flicker. Please write those memoranda.

### **QUESTION IV**

- A. The charter of the State of Cincinaticus allows the citizens to enact criminal laws through the initiative process. This process allows for the direct passage of laws by a plurality of the electorate following the filing of a petition signed by 3% of the voters requesting the enactment of the specific piece of legislation. A petition signed by the required number of voters has been filed proposing the following law:

"It shall be a felony of the fourth degree punishable by a term of imprisonment of no less than 2 years nor more than 5 years for any married person to engage in sexual intercourse with a person other than his or her spouse within the State of Cincinaticus.

The Cincinaticus Hotel & Motel Association has asked you to write a memorandum stating the arguments that can be made to persuade the legal profession to oppose the initiative campaign. Please write that memorandum.

- B. Hart Rinebuck, the Mayor of the City of Redrum, where the homicide rate is increasing exponentially has recently proposed televising the electrocutions of convicts who are executed as a means of reducing the homicide rate.

Please comment on Rinebuck's proposal giving due regard for the arguments for and against capital punishment and how Rinebuck's proposal would affect these arguments.