

Criminal Justice - Professor Hench

Final Examination Fall Semester, 2007

December 2007

Two (2) Hours

1. **EXAMINATION NUMBERS:** Please make sure that your examination number appears on your copy of this Examination, and on EACH of your bluebooks. **Do not put your name or other identifying mark anywhere on the examination materials or bluebooks or in your answer.**

2. **QUESTIONS:** This examination consists of **one question** based on one fact pattern. Please answer in the bluebooks provided or type on ExamSoft© and return the examination when you turn in your bluebooks. Each bluebook should be numbered in sequence [*e.g.*, 1 of 2; 2 of 2]. **If you hand write, skip every other line and write on one side of each page only. Ignoring this instruction will hurt your grade.**

3. **PAGES:** There are three (3) pages to this examination, including this instruction page. **Check NOW to make sure you have all 3.** Feel free to mark up the examination question sheet in any way that will help you, but nothing that you write on the question pages will count either for you or against you.

4. **OPEN BOOK:** This is an **open book examination**. You may consult books, notes, or other materials brought with you, whether prepared by you or by someone else.

5. **LIMITATIONS:** You may NOT consult or log onto any form of electric, electronic, or other data storage or recording or communication or playback device *in any way*. You may NOT consult materials outside of the examination room, and you may NOT consult any other person, either in person or via any communication medium, during the exam, EXCEPT that you may address questions concerning the exam process itself to the proctor on duty.

6. **TIME AND ORGANIZATION:** Two (2) hours have been allotted for the examination. Please note carefully what you are asked, and answer in the manner indicated by each Question.

7. **LEGIBILITY, CLARITY:** Make your answer succinct and organized, and **do** write legibly. I cannot give credit for anything I cannot read! I advise leaving space at the end of each major part of your answer in case you want to add something later.

8. **ASSUMPTIONS and FACTUAL INFERENCES:** Base your answers on the facts given and *logical* inferences which can be drawn from the facts. If you think it necessary to make assumptions or to draw inferences, (for example, if significant facts appear to have been omitted or are ambiguous) state **CLEARLY** what assumptions you are making, and analyze accordingly. You may NOT assume, however, that facts given are untrue, and you may not make assumptions contrary to the stated facts.

9. **LAW AND STATUTES:** **Your answer should apply generic common law.**

10. **NON-RESPONSIVENESS:** Do not overlook the importance of answering what was asked. Points will be deducted for non-responsive portions of any answer. **Do not simply “dump” your outline into your answer!** You should address all issues reasonably raised by the fact pattern, but not matters that have no possible bearing on the case. Your ability to discern the difference is part of what is being tested.

STATEMENT OF FACTS: Assume that the following facts are true and can be proven in court.

Ace and Dilly had pulled a large number of small home and office burglaries without getting caught, so Ace thought it was time for a bigger job. The Potter Museum was having a special display of rare chihuahua art, including a priceless solid-gold chihuahua statuette from Malta. Ace planned to wait until the Maltese chihuahua was on the Museum premises and then send the Museum Curator, Clyde, a series of fake bombs and threats, supposedly from an extremist group. Ace figured that ought to empty the entire Museum long enough for Ace and Dilly to do their work.

Dilly agreed, on condition that they would not carry guns and that no real explosives would be used so that no one would get hurt. Ace promised Dilly that there would be no guns or explosives. Ace did get Dilly to agree that they would carry in an acetylene torch to burn open any security doors or locks. Unknown to Dilly, Ace fully intended to use real explosives, figuring that police would not evacuate the Museum for a box filled with empty cardboard tubes. Ace mailed off his intimidating packages and letters, ending with a threat that the Potter Museum would be blown off the face of the earth at 1:00 a.m. the next day. The police ordered the entire museum grounds evacuated and set up barricades to prevent anyone from entering, but Ace and Dilly were already hiding in the building, having entered during the evacuation, disguised as fire fighters. The acetylene torch and additional pipe bombs were hidden in their firefighters' equipment.

As planned, police evacuated the museum and Ace and Dilly came out of hiding. Dilly had been drinking for hours and could hardly walk. Ace had taken quite a few drinks himself to bolster his courage, and was even more intoxicated than Dilly. Dilly began trying to cut through the solid steel doors with the acetylene torch to get into the room where the Maltese Chihuahua was located. Ace pushed Dilly aside and placed a bomb at the base of the doors. Dilly saw Ace running for cover, realized the bomb was real, and ran for cover also, cursing Ace for using real explosives. The explosion blew the doors off the inner safe and set the museum on fire. Ace grabbed the Maltese Chihuahua which, improbably, had survived the blast. Ace and Dilly ran from the building. They saw an old Chevy convertible with the keys in it, jumped in, and drove off.

As Ace drove off, he was cut off abruptly by Blue, driving a late model SUV at an excessive rate of speed. Ace immediately and continuously blew the Chevy's horn as he followed Blue's SUV, with Ace and Dilly shouting and making obscene gestures at Blue and finally pulled the Chevy up beside Blue's SUV at the next light. Ace, Dilly, and Blue were screaming insults, threats, and obscene gestures through the opened windows of the two cars. Ace threw one of his pipe bombs at the SUV, but the bomb luckily was a dud and made only a very small bang when it struck the SUV.

As the bomb hit the SUV, Ace saw Blue reach down toward the floor of the SUV. Ace saw a pistol in Blue's hand, which Blue appeared to be loading. Ace yelled to Dilly: "He's got a gun! Give me mine, Dilly! Quick!". Dilly opened the glove compartment of the Chevy and removed a 22-caliber pistol, which she handed to Ace. Ace looked over at the SUV and saw Blue pointing a pistol at Dilly. Ace then

extended his right arm behind Dilly, pointed his gun toward the SUV and fired. The bullet missed Blue and struck and killed a bystander, 18-year-old Victor, in the head. Dilly yelled “Get me out of here” and Ace tried to drive away, but Victor’s father, Frank, enraged at the shooting of Victor, jumped in front of the Chevy and confronted Ace, screaming almost incoherently that he would tear Ace’s head off. Ace and Dilly were terrified. Ace pointed his gun at Frank and pulled the trigger, but the gun jammed. Dilly yelled “Can’t you do anything right?” at Ace, and threw the Maltese Chihuahua at Frank, striking and stunning him. Frank fell to the ground. Dilly began hitting Ace with the handle of the misfired gun, yelling “Drive!” and Ace, without thinking, stepped on the gas pedal and drove over Frank, killing him. When the Chevy hit Frank, the impact caused the gun to fly out of Dilly’s hand. The gun bounced off a pole, unjammed, and fired from the impact. The bullet struck Ace, severely wounding him in the head.

Dilly, who was now sobering up, was distraught about everything that had happened. Thinking she could get Ace to an emergency room, Dilly started driving away when she suddenly experienced a seizure brought on by the stress of the events of the day, her alcohol consumption, and an undiagnosed medical condition. Dilly lost control of the Chevy and ran into Blue, who was trying to block her way, killing both Blue and Ace in the process. Dilly was arrested at the scene.

Meanwhile, back at the museum, the police and fire departments had tried to put out the fire and remove and dispose of all of Ace's bombs. Unfortunately, they overlooked one of Ace's bombs in the rubble. Two days after Dilly was arrested, the last bomb went off, killing the Curator, Clyde.

You are a new law clerk in the Prosecuting Attorney’s office of the State of Confusion, a common-law jurisdiction. Your assignment is to write a CLEAR and CONCISE memorandum explaining **every** criminal **charge** which can legitimately be brought against Dilly, and **every** defense she might legitimately raise on these facts. Be SURE to analyze the **strong and weak points of each charge and defense**. Do not consider any federal charges. Do not repeat this statement of facts, but do refer to relevant facts and relate them to the appropriate rules of law as they arise.