**CRIMINAL LAW (6300001)**

**Fall 2007 Final Examination Professor Henning**

**The examination consists of 8 pages, including this page.**

Time & Materials

You have three hours and fifteen minutes (195 minutes) to complete the exam. Part I consists of 3 shorter fact patterns, and the point value for each question is noted. The total points available for this Part is 60. You should try to complete this section in 75 minutes and give yourself approximately 25 minutes per fact pattern. Part II is a longer fact pattern that you should try to complete in 120 minutes. The total points available for this Part is 80.

This is an open-book, open-note examination.

Format

**Space Limits: Bluebooks**  Please limit your answers on Part I to one (1) page **for each question** after the fact pattern. If you skip lines, you may use up to two (2) pages **for each question**. For Part II, please limit your answer to two (2) bluebooks. If you skip lines, you may use up to four (4) bluebooks.

Please observe the following guidelines in handwriting the answer: (1) **do not write on both sides of the page**; (2) skip lines if your handwriting is difficult to read; (3) **stay in the margins on the page**; (4) begin the answer to Part II in a separate bluebook; and (5) put your examination number on EACH bluebook.

* **Space Limits: Laptops** Please limit your answers on Part I to 300 words **for each question** after the fact pattern. You may start the answer for each question on a separate page if you wish. For Part II, please limit your answer to 2,500 words, and you may insert page breaks to separate defendants, crimes, etc.

You should not recite every tangentially relevant piece of information in an answer. One aspect of a successful exam involves exercising your judgment about what facts, legal theories, and issues are relevant to answer the question in the time and space allotted.

Feel free to use any abbreviation or shorthand reference you believe is appropriate. While you are not required to use case names, to the extent they are helpful as a shorthand in discussing an issue or argument, feel free to cite them. Do **not** recite the facts of a case.

**Return the exam to the Proctor when you are finished.**

**Part I 60 Points**

**(75 minutes to complete this Part)**

**1.**

A state enacts the following statute: *Whoever shall engage in the practice of hazing in this state, whereby any one sustains an injury to his person therefrom, shall be guilty of a Class B misdemeanor*. A Class B misdemeanor is punishable by up to two years in the county jail. The statute defines hazing as

*any pastime or amusement, engaged in by students or other people in schools, academies, colleges, universities, or other educational institutions of this state, or by people connected with any of the public institutions of this state, whereby such pastime or amusement is had for the purpose of holding up any student, scholar or individual to ridicule for the pastime of others*.

Members of the Western State University rugby team holds a party every year before the first game at a local pizza restaurant where freshmen wear party hats and must take off their shirts and wave them over their heads whenever the team captain requires. Near the end of the dinner, the teams tradition is that each freshman must drink beer for the entire time the rest of the team sings the University fight song, which usually takes about thirty to forty seconds. If a freshman fails to drink the entire time, he is required to shout five times Im a jerk-face! and pay an extra $10 toward the dinner. At the team party in September, Kevin, a freshman, consumes a large quantity of beer during the song because Stan, a sophomore, is a trained opera singer who held the final note of the fight song for an extra forty seconds. Kevin is the only freshman to drink beer throughout the song. A short time later, Kevin passes out and his skin becomes blue and clammy. He is taken to the hospital, where he is diagnosed with alcohol poisoning. The hospital reports a case of underage drinking to the University authorities, who investigate the circumstances. The local prosecutor learns about the case from a story in the student newspaper and files charges against each of the non-freshmen members of the rugby team for violating the hazing law. This is the first prosecution under the statute, and the state courts generally follow the principles of the common law in interpreting statutes.

A. Counsel for the defendants files a motion to dismiss the charge on the ground that the government cannot prove beyond a reasonable doubt that the defendants purposely engaged in hazing the victim. What is the governments **strongest argument** that the court should reject the motion to dismiss? **(6 points)**

B. Chuck, the president of the rugby club, attended the dinner, but when the school fight song was being sung he was outside the restaurant talking to his girlfriend on a cell phone. He left the restaurant because he could not get a good signal inside, and two employees can testify to his whereabouts outside the building at the time the song was being sung. Chuck tells the police that he had no idea Kevin would drink for so long, and would have stopped him if hed been there. What is Chucks **strongest defense** at trial, and how will the government respond? **(14 points)**

**2.**

Officers Dudley and Dueright observe an automobile driving with a burned-out headlight and pull it over. As they approach the vehicle, a man bolts from the front passenger seat and tries to run into a lemon grove. Dueright apprehends him and returns him to the vehicle. Dudley asks the driver for permission to search the vehicle, and the driver agrees. In the trunk, Dudley finds a bag containing cold medicine packages with 120 pills and a half-gallon jug filled with a pungent liquid. Dudley recognizes the cold medicine as containing pseudophedrine, and the liquid has a smell similar to anhydrous ammonia, which are the two ingredients used in manufacturing methamphetamine. The two men are arrested, and the prosecutor charges the driver, Rocky, with one count of *attempted manufacture of methamphetamine* and one count of *attempted possession of methamphetamine with intent to distribute*. The passenger, Bullwinkle, is charged with one count of *attempted possession of methamphetamine* and one count of *flight from an officer*.

At trial, an expert witness for the government testifies that in order to manufacture methamphetamine, six items are necessary: pseudophedrine (contained in the cold pills seized), anhydrous ammonia, lithium batteries, gasoline or propane for a continuous fire, drain cleaner, and a thick iron cask or pot that can withstand the extreme heat necessary to separate out the ingredients of the cold pills. The cold pills and anhydrous ammonia are the key ingredients, and the most difficult to obtain because state law limits their purchase to small amounts; the 120 pills in Rockys car is the amount that two people could buy at one time. On cross-examination, the expert states that the amount of methamphetamine that could be manufactured from the ingredients in the car was consistent with personal use by two average users, or an amount that could be sold for a profit. The government introduces evidence that Rocky owns the vehicle and has a conviction two years earlier for sale of crack cocaine. None of the other items identified by the expert that are needed to make methamphetamine was found in the car or after a search of Rockys house. Bullwinkle has no prior record, and plays in a rock band with Rocky and two other friends, Sherman and Peabody, both of whom were recently arrested for possession of methamphetamine. In the closing argument, the prosecutor states that Bullwinkle aided in Rockys plan to make the methamphetamine and so is liable as an accomplice.

The states attempt statute is identical to Model Penal Code 5.01 (**Casebook p. 419**). Neither defendant testifies at trial, and the jury convicts both defendants on all counts, and each appeals.

A. What is Rockys **strongest argument** that he is not guilty of the attempted manufacturing charge? **(5 points)**

B. What is Rockys **strongest argument** that he is not guilty of the attempted possession/distribution charge? **(7 points)**

C. What is Bullwinkles **strongest argument** that he is not guilty of the attempted possession charge? **(8 points)**

**3.**

Marge has two young daughters, ages seven and five, who live with her mother because Marge can only afford a small studio apartment and works late hours at a restaurant. Marge is dating a co-worker at the restaurant, Homer, who lives in a small duplex on the edge of town. Homer is working to renovate the duplex, and it has no utilities and very little furniture. Many weekends, when her mother travels to a casino out of town overnight, Marge brings her two daughters to stay with her at Homers duplex. The girls sleep in a bedroom on a futon, and there is also one dresser along the wall. When the girls go to bed at Homers, Marge leaves a candle in an aluminum pie pan on top of the dresser so that they will not be in the dark as they go to sleep. One Saturday, Marge asks Homer to stay at home with the girls while she goes out with friends. Homer agrees, and at 9:00 p.m. Marge goes to say good night to the girls. As shes leaving the room, Marge puts the lit candle in the pie pan on the dresser and tells Homer, Make sure to check on them. Although Homer has never stayed alone with the girls for a long period of time, he is caring of them and often gives them small gifts of candy. At 11:00 p.m., Homer goes into the girls room but is unable to see them very well because of the low light, so he puts the candle on the floor in a corner near their bed. They are both asleep, so he leaves and goes outside to speak with a neighbor.

Approximately twenty minutes later, Homer smells smoke and sees flames coming from the girls bedroom. He and other neighbors rush into the house and are able to pull the girls out, but they suffered severe burns. An investigation by the Fire Marshal shows that the fire started in a pile of woodchips and trash in the corner of the girls bedroom, and may have been set by a candle burning nearby. Marge tells the police that when they stay at Homers duplex, she makes sure to blow out the candle when she checks to see if the girls are asleep. Prosecutors charge Marge with violating the Child Endangerment statute, which provides:

*A person commits an offense by intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causing to a child, elderly individual, or disabled individual: (1) serious bodily injury; (2) serious mental deficiency, impairment, or injury; or (3) bodily injury.*

A. Marge files a pre-rial motion to dismiss the charge on the ground that there is insufficient evidence of the *mens rea* for the offense. What is the governments **most likely theory** of her liability, and what argument will it make that the court should deny the motion? **(14 points)**

B. Assume the trial court denies Marges motion and she is convicted. What is her **strongest argument** on appeal that the conviction should be reversed? **(6 points)**

**Part II 80 Points**

**(105 minutes to complete this Part)**

**Begin This Part in a New Bluebook**

Dwight Shrewte decides he wants to kill his boss, Michael Schott, because he was not promoted to Assistant Regional Manager at their company, Dander-Muffen Paper Co. Dwight calls Stan Headson, a high school friend who recently left the Army after two tours of duty in Iraq, about helping with a little problem he has with his boss. Dwight tells Stan that he wants Michael killed in a way that will make it appear to be a drive-by shooting by a local drug gang. Dwight offers to pay Stan $10,000 to do the shooting. Stan tells Dwight that hell need to get someone to help him as the driver during the drive-by, and hell need a car that cant be traced to him.

The next day, Stan contacts Ryan Howie, an Army buddy, to see if hed be interested in helping me out with a little dirty work, nothing as dangerous as what we did in Baghdad. Ryan asks what he needs to do, and Stan says, Just do a little drivin and dont ask too many questions. Stan then tells Dwight that Ive go a buddy of mine to be the wheel man, so thats all taken care of. Ill get us a car that I can ditch. When do you want this thing to go down. Dwight tells Stan that Michael is taking a yoga class on Thursday evenings, and the session ends around 9:00 p.m. Dwight and Stan drive to the yoga studio to look around to see the best place to do the drive-by shooting. The parking lot next to the studio leads into a narrow alley from which the cars then emerge onto a small residential street. Stan tells Dwight that hell be waiting on the street when Michaels car emerges from the alley and pull up next to him for the shooting.

On the next Thursday, Michael calls in sick to the office. Dwight calls Stan and tells him that hell have to wait until the following week. Stan calls Ryan and says, Its off for tonight because our guy wont be where we need him to be. Its on for next Thursday. The following Monday, Ryan calls Stan and says, Look, I cant help you, I gotta keep my nose clean, so youll have to scare this guy yourself. Sorry Stan-O. Stan decides that he will do the job himself so that he wont have to share the money with anyone else. On the following Thursday, Stan steals a car and drives it to the street near the yoga studio. As Michaels car emerges from the alley, Stan pulls up next to it, fires three shots at Michael, and then drives away quickly. The bullets strike the car but miss Michael. When Michael comes into the office the next morning, Dwight is shocked to see him.

Two weeks after the shooting, Dwight is passed over again by Michael for the Assistant Regional Director position. Enraged at this continued slight, Dwight contacts another high school friend, Pam, and asks her if she knows anyone who can do a little dirty work for me. When Pam asks what he wants, Dwight replies, I need someone who can make a guy disappear. Pam says shell have a friend of hers give Dwight a call. That evening, Pam speaks with Jim, who she knows spent time in prison. She says, Ive gotta friend who needs someone to do a little dirty work. I figured that since youre out of a job, you might want to get in touch with him. Unknown to Pam, Jim is a confidential informant for the police working to infiltrate a local drug ring. A few days later, Pam tells a friend about Dwights request and says Dwight is so delusional, he would never do anything to hurt someone.

With his police supervisors permission, Jim contacts Dwight to see what he wants done. Dwight explains that he wants Michael killed. Jim agrees to do it for $15,000 half up front and half after the job is completed and says that he can arrange for it to look like an accident so no one will be suspicious. Jim calls Pam and says, I spoke with your friend Dwight, and hes gonna pay me ten grand to do some work for him. I figure I owe you something for sending me the work because I really need the cash. Pam says, Well, if you want to drop off some money for me, that would be great.

The following week, Jim explains to Dwight how he will make it look like someone forced Michaels car off the road and into a ditch, and will rig the gas tank in the car to explode. Jim has no intention of causing Michael any harm, and is making up the story. Dwight says, Look, I want to come along to see for myself. The last guy I hired to do this screwed it up. Jim says he doesnt need any company while he does his work, to which Dwight replies, If Im not there the deal is off and were finished. Jim reluctantly agrees, and they decide to do it the following Thursday when Michael is driving home from the yoga studio through a wooded area near his condo.

On Thursday evening, Jim and Dwight follow Michael as he leaves the yoga studio. Jims police supervisor has arranged to have officers in the wooded area where he said the killing would take place so that they intercept Jims car and arrest Dwight. Michael is not aware of the plan because the police determined Michael would not be able to keep the plan secret to ensure there is sufficient evidence to arrest Dwight for attempted murder. As they drive through the wooded area, two police cars block the road, and the cars with Michael and Jim both come to a stop. When Dwight sees whats happening, he jumps from the car and runs toward Michael screaming, Im gonna get you myself. When Dwight is about 20 feet from him, Michael takes out a concealed weapon he is carrying, points it at Dwight, and shoots. The bullet misses Dwight but hits Jim who is chasing after Dwight in the head, killing him instantly. Dwight and Michael are arrested. Stan is arrested on different charges and gives a statement recounting the involvement of Dwight and Ryan in the earlier shooting; he agrees to plead guilty and testify against them. All of Jims conversations with Dwight and Pam are recorded, and Pam is arrested.

*You were recently hired as a Deputy District Attorney, and the chief of the major crimes bureau asks you to prepare a memorandum discussing the potential charges that can be filed against Dwight* **[35 points]***, Ryan* **[15 points]***, Pam* **[15 points]***, and Michael* **[15 points]** *from the course of conduct described above. Be sure to discuss (1) the most serious crimes that can be charged, including any lesser-included offenses, (2) what evidence the prosecution can use to prove its case, and (3) potential defenses the defendants can raise. The states murder statute is identical to Californias homicide provision* **[Casebook p. 273]** *and the states courts follow the majority common law rules in interpreting its criminal laws.*

**Return the exam to the Proctor when you are finished.**

**Have a good Holiday!!!**