

Criminal Law, Section A
Professor Simons
December 14, 2006
Three hours total

EXAM NUMBER _____

Part Two
Essay Portion
(The Examination has Two Parts)

General instructions

This is part two of the exam. You will have 90 minutes to complete this portion of the exam, which contains two questions, with subparts. You should allocate your time carefully according to the time suggested for each question and subpart, since each will be graded independently and will be weighted according to the suggested time.

Both parts of the exam are restricted open book. During the examination you may refer only to the following: the text used in the course (Kadish & Schulhofer, Criminal Law and Its Processes (7th ed. 2001)); the supplemental photocopied handouts; and any notes or outlines you may have prepared. You may not refer to any hornbooks or other library or purchased or commercial material.

Your answers should reflect the reasoning process that leads to your conclusions and not simply the conclusions themselves. If you believe that additional facts are needed in order to answer a question, state precisely what such facts are and how they would affect your answer. Make sure you answer the question that is asked.

If your exam is handwritten, please write legibly, and please write on every other line, and on only one side of a page.

Good luck!

DO NOT BREAK THE SEAL ON THIS EXAMINATION
UNTIL INSTRUCTED TO DO SO BY THE PROCTOR.

PLEASE STOP WRITING AND TURN THIS EXAMINATION
IN PROMPTLY WHEN TIME IS CALLED BY THE PROCTOR.
FAILURE TO DO SO MAY RESULT IN DISCIPLINARY
ACTION.

I**(65 minutes)**

Doris, a high school senior, is concerned about getting into the best possible college, and very worried about her upcoming Advanced Chemistry final examination. She has studied hard for the test but is also suffering from a very bad cold which makes it extremely difficult to concentrate. Accordingly, she asks the school for an extension of time until she is over her illness. The school refuses to grant the extension, concluding that the illness is not serious enough to warrant one.

Doris is furious at the decision, which she perceives as unjust. Examining her options, she concludes that it would be best to create a commotion that would cause the evacuation of the school and a delay of the exam. Doris thus plans to pull the fire alarm, and enlists her friend Ellen to help her, by standing watch for teachers or students while Doris carries out her plan. Ellen asks Doris whether she intends to actually set a fire. Doris indicates that she isn't sure. Ellen secures Doris's promise that she will simply pull the alarm.

Just before Doris's examination is to begin, Ellen stands guard for Doris outside the girls' bathroom, as Doris requests, and watches as Doris pulls the fire alarm. But Doris then impulsively decides (without sharing this with Ellen) that she will attract less suspicion if she can create some actual evidence of a fire; so Doris quickly enters the bathroom, grabs a paper towel on the counter in the bathroom, lights a match to it, throws it on the floor, and promptly leaves. In her hurry, Doris does not notice that the bathroom sinks and floor are overflowing with loose paper towels.

The fire soon causes serious smoke and physical damage to the bathroom. Doris and Ellen both see a significant amount of smoke and some flames pouring out of the bathroom, but, out of a combination of panic, fear, and a desire not to implicate themselves, neither Doris nor Ellen tells anyone about it. They quietly join the other students who are evacuating the building.

(In answering the following questions, you may assume that both Doris and Ellen are high school seniors, who can be tried as adults.)

(a) (25 minutes)

Doris and Ellen are charged with two misdemeanors:

(1) A person is guilty of "reckless burning" if the person starts a fire and thereby recklessly causes damage to or partial or complete destruction of a building.

(2) A person is guilty of "causing a false alarm" if the person purposely triggers an alarm device that is designed to alert the public of a risk to public safety, knowing that he has no reasonable grounds and no legal justification for doing so.

Are they likely to be found guilty? Do they have any plausible defenses? Explain whether your answer would differ based on whether Model Penal Code principles or common law principles apply.

(b) (20 minutes)

Assume (for this part only) the following additional facts:

After she leaves the bathroom and sees smoke and flames escaping, Doris hears a loud scream from inside. Unknown to Doris, a student was in the bathroom when Doris initially set the fire. (At that time, all students were required to be in classrooms unless they had a special excuse to use the bathroom.) Doris tells her friend Ellen, but no one else, about hearing the scream.

The student in the bathroom is quickly overcome by the smoke and flames and dies. The evidence is clear that by the time Doris heard the scream, it would have been too late to save the student.

Under the common law and the Model Penal Code, what is the likelihood of homicide liability for Doris?

(c) (20 minutes)

Assume (for this part only) the following additional facts and criminal charges:

The fire burns out of control and causes the complete destruction of the school. The evidence reveals that if Doris or Ellen had alerted the authorities as soon as they realized that the bathroom was on fire, the school would not have been destroyed. A provision of the high school student code states: "All students are requested to immediately report any fire to school officials."

Doris and Ellen are charged with arson, defined as follows:

(3) A person is guilty of "arson" if the person starts a fire, or omits to prevent the spread of a fire when he has a legal duty to do so, and if the person thereby purposely or knowingly causes or permits the destruction of a building.

In a Model Penal Code jurisdiction, is either Doris or Ellen likely to be found guilty?

II

(25 minutes)

Please explain whether you agree or disagree with each of the following statements, and why.

(a) (12.5 minutes)

When applied to factually impossible attempts, the *res ipsa* or unequivocal act test is less likely to result in criminal liability than are the other major *actus reus* tests of attempt.

(b) (12.5 minutes)

The Model Penal Code's view that mistakes of other law should normally be treated like mistakes of fact but unlike mistakes of governing law does not further any defensible criminal law policies.