

Criminal Law, Section C
Professor Simons
May 13, 2005
Three hours total

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 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.

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)

Anthony asks Chloe to help him play a trick on their friend Victor, who frequently plays and enjoys practical jokes. He suggests that they tie Victor up in a chair, blindfold him, and then pretend to threaten him with a gun, before releasing him safely. Chloe agrees to help with the prank. But unknown to Chloe, Anthony has something more serious in mind.

Several months ago, Anthony and his girlfriend Michelle amicably split up. Soon thereafter, Michelle met Victor and began an intimate relationship with him. Anthony has come to regret breaking up with Michelle, and has gradually developed an intense hatred of Victor. What Chloe does not know is this: Anthony has coolly resolved to use the device of this consensual "game" as a means of seriously injuring (but not killing) Victor, while making the injury look like an accident.

At Anthony's request, Chloe brings in her gun. She informs Anthony that she has taken out all of the bullets, and she shows him a metal case containing the six bullets, which she places in her pocketbook. They go to a local bar and both have quite a few beers. Chloe leaves for the restroom. When she returns, she mentions to Anthony that her pocketbook seems to be in a different location. Anthony offers that the waitress might have moved it when she cleaned up. Chloe takes a quick look inside her bag, and notices that only five of the six bullets are in the case, but she doesn't explore further, concluding that the sixth bullet probably fell into the bottom of the pocketbook, which contains many loose items.

The two intoxicated friends walk to Victor's apartment and tell him they'd like to play a trick on him: they will tie him up to a chair and blindfold him, and will then reveal the trick. He agrees to participate. After they firmly tie him to the chair and blindfold him, Chloe removes the blindfold. "The trick," she announces with a smile, "is that we'll pull the trigger of this gun six times. Let's hope you're still standing at the end!"

Anthony spins the barrel of the gun, points it towards Victor's shoulder, and pulls the trigger once. Victor laughs.

Anthony pulls the trigger again. Victor says, "This really is a joke, right?" Anthony says nothing. Victor starts to become upset. "You're angry at me, aren't you?" Again there is no response from Anthony. Victor notices a very serious expression on Anthony's face.

Anthony pulls the trigger a third time. Victor starts to panic. "Chloe, do something!" he yells. "I think he's trying to kill me!" Chloe laughs. "Come on, we told you this was a joke!" she exclaims. In her drunken state, she does not notice Anthony's serious demeanor.

Anthony aims the gun at Victor's shoulder once again, and pulls the trigger a fourth time. He fires the gun, but in his intoxicated state, his aim is poor, and he ends up firing directly into Victor's chest, resulting in Victor's death.

Assume that the Model Penal Code's general provisions and its homicide provisions apply. Also assume that the jurisdiction punishes assault, which it defines in relevant part as "Purposely or knowingly putting another person in fear of serious bodily injury."

(a) (20 minutes)

Anthony is charged with murder. Is he likely to be found guilty? (Also consider any plausible defenses.)

(b) (20 minutes)

Suppose, for purposes of this subquestion only, that just after Anthony pulled the trigger the first time, the "game" was interrupted by police who had been alerted by a neighbor, and Victor did not die. Anthony is charged with attempted murder and with assault. Is he likely to be found guilty?

(c) (25 minutes)

Chloe is charged with being an accomplice to the homicide and to assault. Is she likely to be found guilty of either crime? Of which category of homicide, if any, is she likely to be found guilty?

II
(25 minutes)

For each of the following statements, please indicate whether you agree or disagree, and why.

(a) (10 minutes)

The natural and probable consequences rule of accomplice liability is essentially a recklessness requirement.

(b) (15 minutes)

Cognitive insanity tests are inconsistent with the doctrine that ignorance of the law is no excuse.