

Criminal Law, Section C  
Professor Simons  
December 15, 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* (7<sup>th</sup> 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.

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)

Dan is returning home after a dinner party at which he consumed a large amount of alcohol. He is driving just a few miles per hour over the posted speed limit of 40 miles per hour. Harry, driving very carelessly, does not notice a red light and collides with Dan's car which is proceeding through a green light at the intersection. The result is significant damage to both vehicles but no personal injuries.

Harry and Dan leave their vehicles, expecting to exchange license and insurance information. Before they have done so, Harry discovers that Dan is intoxicated, and Harry becomes enraged, accusing Dan of causing the accident. Shouting, "I could kill you! And I know how to use a gun!", Harry suddenly opens the trunk of his car and reaches in, pulling out a large bag.

In fear, Dan jumps back into his car and flees the scene, accelerating quickly. In his panic, he looks back at Harry, and does not see a pedestrian crossing the street in front of him a short distance from the scene of the first accident. His car strikes and kills the pedestrian. As it turns out, Harry's bag contains his registration, but no gun or other weapon.

**(a) (30 minutes)**

Dan is charged with two crimes:

(1) "knowingly leaving the scene of an accident," and

(2) the aggravated crime, "knowingly leaving the scene of an accident with the intention of avoiding legal responsibility for that accident."

Is he likely to be found guilty? Does he have any plausible defenses? Explain whether your answer would differ based on whether Model Penal Code principles or common law principles apply. (In your answers to questions I(a) and I(c), you may consider New York's necessity defense to be a "common law principle.")

**(b) (15 minutes)**

Dan is also charged with homicide. Under the MPC, of what degree of homicide, if any, is he likely to be found guilty?

**(c) (20 minutes)**

Assume the following variation in the facts: As Dan is escaping from the apparent threat, he sees the pedestrian in the path of his car. In a state of fear and panic, he intentionally drives ahead, running over the pedestrian, who dies as a result of the impact. Under the MPC, of what degree of homicide is he likely to be found guilty? Under the common law, would your answer be any different?

**II**  
**(25 minutes)**

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

**(a) (12.5 minutes)**

Requiring a heightened mens rea for attempt makes little sense if one also believes that completed crimes should be punished more harshly than completed attempts (those attempts in which the actor has done all he believes necessary to bring about the crime).

**(b) (12.5 minutes)**

It is inconsistent for a jurisdiction to abolish the volitional prong of the insanity defense yet continue to recognize provocation as a partial defense to murder.