

Criminal Law Final Examination

Brooklyn Law School, Fall 2008

Professor Trachtenberg

Instructions

1. You have 3 hours to complete this exam.
2. You are allowed to consult (1) your casebook, (2) any printed copies of notes or outlines prepared by you or other students in this class. You may not consult other books, nor may you consult any electronic documents.
3. Read the entire exam before beginning to compose your answer to any question.
4. I recommend you allocate your time based on the percentage values of each question. I also suggest you plan your answers before beginning to write them. That said, you may use your time as you see fit.
5. There is no word limit.

Fact Pattern

Note: Some of you may recognize this fact pattern as a (modified) plot summary of a film. If you happen to have seen the film, do not base any part of your answer on it; rely **only** on the facts given here.

After the credits, the action cuts quickly to the interior of a speeding car. Mr. White, driving with one hand, is trying to comfort a hysterical Mr. Orange, who has been shot in the lower abdomen and is bleeding profusely. They arrive at an abandoned warehouse, later revealed to be the rendezvous point for the armed jewel heist they have just committed at a bank. Mr. White leaves Mr. Orange on the warehouse floor. Mr. Pink appears and angrily suggests that the jewelry heist was a setup. Mr. Brown has been killed by the police and the whereabouts of Mr. Blonde and Mr. Blue are unknown to Mr. White and Mr. Pink.

Mr. White and Mr. Pink are enraged at Mr. Blonde, who shot and killed several civilians during the heist after the bank's alarm went off. They argue about whether or not to take the unconscious Mr. Orange to a hospital. The argument turns violent when Mr. White reveals that he told Mr. Orange his (Mr. White's) real first name. Mr. White and Mr. Pink point their loaded pistols at each other. Mr. Blonde, who has been watching the action from the shadows, steps forward and tells them not to leave the warehouse because "Nice Guy" Eddie — whose father, Joe Cabot, organized the heist — is on his way there. Mr. Blonde takes them outside to his car and opens the trunk to reveal a uniformed police officer he has captured.

Mr. Pink and Mr. White brutalize the officer; then Mr. Blonde tapes him to a chair. Eddie arrives at the warehouse and orders Mr. Pink and Mr. White to come with him to retrieve the stolen diamonds (that Mr. Pink stashed after fleeing the scene) and get rid of the hijacked vehicles, while ordering Mr. Blonde to stay with the dying Mr. Orange and the captured police officer. The officer denies knowing anything about the setup, and begs to be released. Mr. Blonde then draws a straight razor from his cowboy boot and turns on a radio. Dancing around to the music, Mr. Blonde slashes the officer's face and cuts off his ear. He then splashes the officer with gasoline and prepares to ignite it with his cigarette lighter when Mr. Orange suddenly shoots Mr. Blonde several times in the chest, killing him. Mr. Orange tells the officer that he is actually an undercover police detective, and reassures him that a large police force is in position a few blocks down the road waiting for Joe Cabot to arrive.

Mr. Orange's flashback reveals how he went undercover, his mission being to catch Cabot. Joe prepares the robbery and lays out the heist plan, including the code names for the men. The flashback then jumps to Mr. White, Mr. Orange, and Mr. Brown minutes after the robbery; Mr. Brown has been shot in the head and crashes their getaway car because he has blood in his eyes. After Mr. White kills two pursuing cops, he and Mr. Orange see that Mr. Brown has died from his injury. They hijack a car, but the female driver shoots Mr. Orange in the abdomen before Mr. Orange shoots her back and kills her. The film replays a part of the car scene from the start of the film before the view jumps back to present time at the warehouse.

The remainder of the heist group returns to the warehouse to find a dead Mr. Blonde. Mr. Orange claims that Mr. Blonde was going to kill the uniformed officer, Mr. Orange, and the rest of the gang so that he could take the diamonds for himself. Eddie doesn't believe the story and, furious with Mr. Orange, shoots the uniformed officer dead. Joe walks in and tells everyone that Mr. Blue was killed, and he confidently accuses Mr. Orange of being an informant, forcing Mr. White to defend Mr. Orange. Joe points a gun at Mr. Orange as Mr. White points his gun at Joe. Eddie then points his gun at Mr. White. After the gunmen briefly attempt to reason with each other, Joe shoots Mr. Orange and is then shot dead by Mr. White; Eddie shoots Mr. White, who shoots and kills Eddie. Mr. Pink, who stayed out of the shootout, takes the stolen diamonds and flees. There is some ambiguity as to his fate; faint sound effects of a car trying to start, police sirens and gunshots suggest he was either captured or killed by the police. Mr. White cradles Mr. Orange in his arms, and Mr. Orange reveals that he is in fact a cop, devastating his friend. Mr. White puts his gun to Mr. Orange's head just as the police enter. A single gunshot is heard, presumably Mr. White's, then multiple police gunshots. The screen then cuts to black.

Question 1 (30% of total)

Assume, for purposes of this question only, that Mr. Orange actually survived these events, and that he has been arrested and charged under the New York Penal Code with two counts of murder: one for causing the death of the woman whose car he hijacked, and one for causing the death of Mr. Blonde. You are Mr. Orange's defense attorney. Discuss any arguments you might make on his behalf, and assess their likelihood of success. (The New York homicide statutes appear in your casebook starting at B-24. Ignore the footnote on B-25 referring to amendments to the provisions; use the statute as provided in the book.)

Question 2 (30% of total)

Assume, for purposes of this question only, that Mr. White survived these events and that he fatally shot Mr. Orange. Discuss any charges that might plausibly be brought under the common law of crimes against Mr. White, and any defenses he might have to some or all of those charges, for (1) his failure to take Mr. Orange to a hospital; and (2) shooting Mr. Orange. Do not discuss potential charges based on any aspects of the fact pattern other than the two just mentioned.

Question 3 (40% of total)

Assume, for purposes of this question only, that Mr. Pink survived these events and that Mr. White fatally shot Mr. Orange. As a junior prosecutor, you have been asked to write a memorandum discussing any charges that might plausibly be brought under the Model Penal Code against Mr. Pink for any offense(s) based on the facts described above, and any defenses he might have to any of those charges. Restrict your answer to crimes concerning (1) the deaths of the uniformed police officer bound to the chair and of Mr. Orange; and (2) any other non-homicide crimes.

In answering all of these questions, you should: (1) identify the relevant crime(s) and defense(s); (2) summarize and, if necessary, explain the elements/requirements of the provision(s); and (3) explain why those requirements are, or are not, satisfied. Explain which charges would be most likely to lead to a conviction; which, though plausible, are less likely to succeed; and why.