

Criminal Law (CRM 100 D6S) Final Examination

Brooklyn Law School, Fall 2009
Professor Trachtenberg

Instructions

1. You have three (3) hours to complete this exam.
2. You are allowed to consult (1) your casebook, (2) other assigned or recommended readings, and (3) 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. Note, however, that a longer answer is not always a better one.

Special Instructions for Students Handwriting their Examination Answers

6. Write your exam number on the cover of every book containing part of your answer.
7. The answer to each question should start in its own answer book. On the outside of each answer book, indicate what question's answer is inside. If the answer to a single question is contained in multiple books, indicate this on the relevant book covers. When numbering books, restart at "1" for each question. (*E.g.*, "Answer to Question 2, Book 1 of 2.")

[END OF INSTRUCTIONS]

Fact Pattern

Note: Some of you may recognize this fact pattern as a (modified and partial) 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.

Gotham City—the principal city of the State of Gotham—is under the sway of a mysterious criminal mastermind known only as “the Joker,” who dyes his hair green, covers his face in white makeup, and smears lipstick over his lips and the two deep scars running up his cheeks from the corners of his mouth. Early on, the Joker robs a bank with his accomplices, whom he tricks into killing one another, ultimately killing the last one himself.

Following the robbery, police lieutenant James Gordon operates the “Bat-Signal,” a means the police use to summon Gotham’s “caped crusader,” a masked figure known as “the Batman” who dedicates himself to ridding Gotham of crime, sometimes working with the police, sometimes not. (The Batman is, in fact, the alter ego of wealthy Gotham businessman and socialite Bruce Wayne.)

The Batman then joins Lieutenant Gordon to investigate the Joker’s robbery. Gordon and the Batman contemplate including new district attorney Harvey Dent in their plan to eradicate the mob. However, the Batman wonders if Dent can be trusted. Wayne later runs into Rachel Dawes—Wayne’s ex-girlfriend—and Dent, whom she is now dating, and after talking to Dent, he realizes Dent’s sincerity and decides to host a fundraiser for him.

Elsewhere, various underworld gangsters meet to discuss both the Batman and Dent, who have been cracking down on the mobsters’ operations. Lau, a Chinese mafia accountant, informs them by a video connection that he has hidden their money and fled to Hong Kong in an attempt to preempt Gordon’s plan to seize the mobsters’ funds and to hide from Dent’s jurisdiction. The Joker enters the room and, after killing a hostile mob member’s crony, sits down and talks with the mobsters about how pathetic they’ve become since the Batman came around. He tells them their one solution is to “Kill the Batman.” As one of the mobsters rises from his seat and threatens the Joker, the Joker opens his coat, exposing grenades, and makes his exit.

Meanwhile, Harvey Dent, with Gordon, lights the Bat-Signal to meet with the Batman, who appears. Dent and Gordon explain to the Batman that they need Lau back, realizing that the Batman is under no one’s jurisdiction. They want to make Lau talk, and give up all the mob members’ names. The Batman agrees and disappears.

In Hong Kong, the Batman crashes in through a window in Lau’s office and, after disabling some guards, grabs Lau and escapes by sending a balloon attached to a cable to a plane he has chartered flying over Lau’s building. He brings Lau back to Gotham and delivers him to the Gotham City police, where Lau agrees to testify against the mob.

Dent and Gordon arrest the mobsters. When the police commissioner and the judge presiding over the mob trials are killed, the public blames the Batman, prompting Wayne to decide to reveal his identity, but before he can turn himself in, Dent holds a press conference where he announces that he, Dent, is the Batman, and is arrested as part of a plan to draw the Joker out of hiding. The Joker attempts to ambush the police convoy carrying Dent, but the Batman and Gordon intervene and capture him. In recognition of his actions, Gordon is appointed the new police commissioner.

Unfortunately for the police and residents of Gotham, the Joker soon escapes from police custody.

Following several additional horrific crimes (including the murder of Dawes), the Joker announces to the public that anyone left in Gotham at nightfall will be subject to his rule. With the bridges and tunnels closed due to a warning by the Joker, authorities begin evacuating people by ferry. The Joker has explosives placed on two of the ferries—one ferry filled with convicts, who are being evacuated from a prison to keep the Joker from freeing them, and the other with civilians. The Joker announces by loudspeaker that each ferry has a detonator which will set off the explosives on the other ferry, and he tells the passengers the only way to save themselves is to trigger the explosives on the other ferry; otherwise, he will destroy both ferries at midnight.

On the “convict ferry,” one convict makes a speech about the warden holding the trigger not knowing how to take life, then asks the warden for the trigger so he can do what the warden should have done ten minutes ago. The warden hands the convict the trigger, and the convict promptly throws it out of the ferry, making it impossible for anyone on the convict ferry to blow up the other ferry. On the “innocent ferry,” a majority of passengers vote in favor of using their detonator, but the officials in charge can’t bring themselves to do it. A frantic man stands up, takes the detonator, and tries to use it, but it is wrestled away from him before he can do so.

The Batman finds the Joker, and after a brief fight, is able to subdue him, preventing him from destroying both ferries.

Subsequently, a series of events ensues that causes public opinion to turn against the Batman (among other things, he is falsely blamed for the murder of Dent and at least one Gotham police officer, who indeed were dead but had not been murdered by the Batman). The Batman flees Gotham and goes into hiding.

[END OF FACT PATTERN]

Question 1 (50% of total)

Assume, for purposes of this question only, that the Model Penal Code (“MPC”) has been adopted by Gotham in its entirety. You are a prosecutor employed by the Gotham District Attorney’s Office. Your boss would like a memorandum in which you discuss (a) any charges that might plausibly be brought under Article 212 of the MPC against the Batman for abducting Lau, and any defenses he might have to some or all of those charges, and (b) any related charges that might plausibly be brought against the charter pilot who flew the plane above Lau’s office building, and any defenses the pilot might have to some or all of those charges.

Assume that Gotham law may be used to impose liability even though the abduction took place in Hong Kong. Your boss wants to have the memo ready in the event the Batman is caught and the pilot is identified; you need not worry about whether Gotham authorities actually have the ability to catch them.

Question 2 (30% of total)

Assume, for purposes of this question only, that Gotham has retained traditional common law rules with respect to (1) homicide crimes, (2) criminal attempts, and (3) justifications and excuses. Assume the man on the “innocent ferry” who tried to set off the detonator to explode the “convict ferry” is found and charged with attempted murder. You are hired to represent him. Prepare a memorandum for your client discussing any arguments or claims he might be able to raise in his defense and assess whether they are likely to succeed.

In answering the above two 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.

Question 3 (20% of total)

In the wake of these events, the Governor of Gotham seeks to introduce a new law making it a crime to pursue vigilante justice while hiding one’s identity. You are an attorney in the Governor’s office of legal counsel. Advise the Governor about (1) the merits of such a new crime—whether or not it would be a good idea, and why; and (2) how, if the Governor decides to pursue this idea, to construct such an offense in a way that would be most likely to maximize its benefits while minimizing its flaws.

[END OF QUESTIONS]

[END OF EXAMINATION]