

CRIMINAL LAW

Fall 2009

Professor Ben Trachtenberg

Practice Examination Question

This examination has two parts. Part One is worth two-thirds of the total score, and Part Two is worth one-third.

As I said in class, the test is “limited open book.” You may use the casebook, any other assigned (or recommended) materials, and any notes or outlines prepared by you or other students in the class.

No commercial outlines, outlines from prior years, outlines by students with other professors, etc. are permitted.

And, of course, you may not use electronic materials of any kind, meaning you are not allowed to use one laptop for the test and another one (or a phone, PDA, etc.) to search your notes, even though a printed copy of those same notes is allowed.

There is no word limit.

You have one hour to complete the test.

Part One:

This Part is written with apologies to DJ Jazzy Jeff and the Fresh Prince. Even if the facts sound familiar to you, consider only the facts provided in the question, not anything you may recall from popular culture.

Okay, here’s the situation. The parents of Prince, a 15-year-old resident of the State of Blackstone, went away for a week’s vacation, and they inadvertently left behind the keys to their brand new Porsche automobile. Despite lacking a driver’s license, Prince—who possessed a learner’s permit and had driven before under adult supervision—decided to take the car for a spin. Prince’s driving lessons had involved the family’s other car, a ten-year-old Ford Escort. About one week earlier, Prince’s driving teacher had said that Prince was ready for the driving test and should schedule an appointment.

While cruising his neighborhood one Sunday morning, he spotted an attractive passerby and, after honking the car horn to capture her attention, convinced her to take a ride with him. A few minutes later, the passenger encouraged Prince to drive fast, saying, “Speed turns me on.” He complied, accelerating to 90 miles per hour. Concurrently, the passenger opened her shirt, exposing her chest, which may explain how Prince failed to notice the police car whose driver soon pulled him over. After his arrest, Prince learned that his passenger—whom Prince previously thought was 18 years of age—was actually a 12-year-old runaway whom police promptly reunited with her parents.

The local prosecutor charges Prince with four offenses: (1) grand larceny, (2) dangerous driving, (3) aggravated contribution to the delinquency of a child, and (4) attempted commission of non-forcible rape.

You represent Prince. He and his parents (who cut their vacation short to retrieve their son from jail) seek a forthright assessment of whether the prosecution can convict him on any or all of the charges. You should presume for purposes of this Part that while Prince's age may be relevant at sentencing should he be convicted, it does not provide a defense to any of the charges.

The relevant statutes follow on page three.

Part Two:

Assume for purposes of this Part that Prince has been convicted of at least one of the offenses listed above. Under Blackstone law, there is no minimum sentence. The maximum sentence is a fine of not more than ten thousand dollars, imprisonment of not more than three years, or both.

You are a clerk for the judge responsible for sentencing Prince. The judge, who is new to the bench and has never before sentenced a convict of Prince's young age, requests a brief memorandum discussing how Prince's age might be relevant to the appropriate sentence. The judge selected you to write the memo because of your familiarity with the various justifications for and principles guiding criminal punishment.

PROVISIONS FROM THE BLACKSTONE PENAL CODE

BLACKSTONE PENAL CODE SECTION 100 (LARCENY):

(a) A person steals property and commits Larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains, or withholds such property from an owner thereof.

(b) Larceny of property valued above one thousand dollars is Grand Larceny.

BLACKSTONE PENAL CODE SECTION 200 (DANGEROUS DRIVING):

Dangerous Driving shall mean driving or using any motor vehicle in a manner that creates a substantial risk of serious physical injury to another person.

BLACKSTONE PENAL CODE SECTION 300 (CONTRIBUTING TO THE DELINQUENCY OF A CHILD):

(a) A person is guilty of Contributing to the Delinquency of a Child if she directs, orders, cajoles, entices, or otherwise causes a person less than seventeen years of age to

- i. consume alcohol or any illegal drug,
- ii. commit any felony,
- iii. engage in truancy, or
- iv. lewdly expose himself either (A) in public or (B) in any place where such exposure is recorded on film, video, or any other medium.

(b) Contributing to the Delinquency of a Child is a felony. If the victim is less than 14 years of age, the offender is guilty of Aggravated Contribution to the Delinquency of a Child.

BLACKSTONE PENAL CODE SECTION 400 (NON-FORCIBLE RAPE):

A person is guilty of non-forcible rape when he or she (a) engages in sexual intercourse with another person less than fifteen years of age or (b) engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.