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Examination No. \_\_\_\_\_

**504 CRIMINAL LAW**

Semester I, 1995-96

UNM School of Law  
Final Examination  
Three Credits

Professor Eliz. Rapaport  
Monday, December 11, 1995  
1:30 p.m. to 5:00 p.m.

**INSTRUCTIONS**

This is a 3 1/2 hour in-class examination. The question is designed to be answered in three hours. There is an additional one-half hour for organizing and preparing your answer.

In preparing your answer, you may consult your casebook, treatises or hornbooks, class handouts, class notes, and any other notes and outlines you have prepared yourself or in collaboration with your classmates. You may not consult commercial outlines.

The question includes a statutory appendix. Be sure to use the correct statutes, citing to the relevant section where appropriate. Assume that the facts set forth in the question are uncontested.

Please read the question carefully and attempt to answer the question directly. Clear, well organized, and concise expression will be rewarded.

Check to see that there are five pages in your copy of the exam including this page.

Please write in ink, legibly, on one side only of each blue book page.

[All essay exams will be filed in the Library.]

**END OF INSTRUCTIONS**

[EXAMINATION BEGINS ON PAGE 2]

A radical group of animal rights activists, styling itself The Militia of Moriarty, was outraged about the persistent popularity of hunting endangered species in this country. Horace and Dolly, two Militia members, were assigned to head into the woods on opening day of hunting season. Their task was to imitate the wolverine's distress call whenever hunters were present, thereby frightening off wolverines and saving them from harm. Dressed in camouflage, they entered the woods in what they knew to be prime wolverine territory and waited for the bloodthirsty hunters to arrive.

They waited quite awhile, but eventually they saw two individuals with rifles, whom they followed until a wolverine was seen. Just as the hunters were raising their AK-47s, Dolly and Horace let loose with their best imitation of a wolverine's distress call. But, as things turned out, what they believed to be a distress call proved to be much closer to the wolverine mating call. The animal, who had recently emerged from a co-dependent relationship with a badger who was averse to any form of genuine commitment, charged Dolly and Horace's position, hoping for a little action.

Both hunters fired at the charging animal, but with somewhat different motivations. Cornelius was simply looking for a trophy and was pleased to have a clear shot. Bob had instantaneously recognized the presence of the Militia members and fired to prevent them from being mauled by the wolverine. Both fired multiple bullets, and the wolverine was hit by bullets from both guns. Ace criminalists on loan from the Los Angeles Police Department later determined conclusively that either of the two shots would have proven fatal had it been the only wound the animal suffered. Meanwhile, unaware that the wolverine's wounds were fatal, Cornelius replaced the clip in his weapon in order to finish him off, saying audibly, "You seem to be all right, here's another."

Also unaware that the animal was mortally wounded, and enraged at Cornelius's apparent insensitivity, Dolly instantly pulled out a concealed handgun (which she had not told Horace about) and fired at Cornelius, intending to kill him. But as she was a person inexperienced with firearms, her shot missed Cornelius and killed Theresa, who had come to offer a blessing "for all participants in this event, human and animal." Implausibly enough, the same shot that killed Theresa also hit and killed the badger, who had returned hoping for a reconciliation. (You may assume that this "single bullet theory" has been conclusively established at hearings chaired by Senator Specter.)

Horace fainted when he realized that Theresa and the badger were dead; Dolly curled into a fetal position and appeared to

neither see nor hear anything going on around her. Cornelius was her estranged husband; she had left him 6 months before and filed for separation due to their irreconcilable differences about bloodsports. Cornelius took several stiff drinks from a hip flask from which he had been nipping since first light. "Ah Dolly," he mused, "You were magnificent shooting at me; I don't know which is more intoxicating, Dolly when she's mad or this whiskey." To his cousin, Bob, he said, "Lets have sex with Dolly before this granola-eating pal of hers wakes up."

Bob, who was afraid that Cousin Cornelius would get him into trouble again, replied, "Not me. But you do it, Cornelius. I'll keep an eye on Horace and warn you if he wakes up or anyone else comes along." He took up a discreet position on the far side of a thick clump of trees.

Cornelius undressed Dolly, but then changed his mind; he was overcome with remorse when he saw his disoriented wife's helpless form. He dressed her, and then wrapped her in his jacket to warm her and prevent shock. He led her, for by this time she was regaining her wits, back to where Bob guarded the now waking Horace. The hunters led Horace and Dolly out of the woods. They promptly encountered a party of deputy sheriffs who had come to investigate the shots. They told the deputies about the events that had transpired that day. Dolly, Horace, Cornelius, and Bob were promptly arrested.

You are an assistant district attorney. Your boss, the District Attorney, confesses to you that she is somewhat confused about the law in this area, and, remembering how well you had done in your criminal law course, asks you to prepare a memorandum on who can be prosecuted successfully for what. Please discuss only those crimes contained in the statutory appendix. Conveniently enough, the state of Moriarty has no relevant precedents, but the state supreme court has indicated that it finds some of the provisions of the Model Penal Code "well reasoned." Prepare the memo.

STATUTORY APPENDIX

MORIARTY FISH AND GAME CODE (portion)

**Section 87-3-105** Unlawful to hunt endangered species.

It is unlawful to take, hunt, shoot, kill, or capture any badger, bear, griffin, mountain lion, wolf, or wolverine, an offense punishable by a term of imprisonment of 1 to 5 years.

MORIARTY CRIMINAL CODE (portions)

**Section 12.** Murder defined.

The felony of murder is the unlawful killing of a human being with malice aforethought.

**Section 13.** Degrees of murder.

Murder which is a willful, deliberate, and premeditated killing is murder in the first degree, punishable by life imprisonment or life imprisonment without the possibility of parole. All other kinds of murder are of the second degree, punishable by a term of imprisonment of 20 years to life. Malice may be inferred if the killing is committed while the defendant is engaged as a principal or an accomplice in the perpetration of a felony that is dangerous to human life.

**Section 14.** Manslaughter defined.

The felony of manslaughter is the unlawful killing of a human being without malice.

**Section 15.** Degrees of manslaughter.

Manslaughter is voluntary when committed upon a sudden quarrel or heat of passion. Voluntary manslaughter is punishable by imprisonment of 10 to 20 years. Manslaughter is involuntary if committed by gross negligence. Involuntary manslaughter is punishable by a term of imprisonment of 5 to 10 years.

**Section 16.** Rape

A man commits rape if he has sexual intercourse with a woman without her consent. Rape is punishable by a term of imprisonment of 5 to 10 years.

**Section 22.** Attempt.

A person commits an unlawful attempt when, with intent to commit a specific offense, he does any act which constitutes a substantial step toward the commission of that offense. Attempt to commit a felony is a felony. Attempt to commit a misdemeanor is a misdemeanor. Unless otherwise provided by law, a criminal attempt is punishable by a term of imprisonment equal to half the punishment for the completed offense.

**Section 27. Accessorial liability.**

Any person who is an accomplice is punishable as if a principal. An individual is an accomplice if, with the mens rea required of a principal, he or she advises, encourages, or assists the principal in the commission of a felony or misdemeanor.

[END OF EXAMINATION]