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Examination No. _____

504 CRIMINAL LAW

Semester I, 1996-97

UNM School of Law
Final Examination
Three Credits

Professor Eliz. Rapaport
Monday, December 16, 1996
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 four pages in your copy of the exam including this page.

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

GOOD LUCK!

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

END OF INSTRUCTIONS

[EXAMINATION BEGINS ON PAGE 2]

QUESTION

Victor Perdue died last week, after the harrowing course of events described below. Victor was married to Denise, who had a 15 year old daughter, Claire, by a previous marriage. It was a second marriage for Victor as well, who had been acrimoniously divorced from his first wife, Alice, after she accused him of molesting her sister's teenage daughter, Evita.

The events that led to Victor's death started on the day that Denise learned from the family physician following a visit to the doctor's office that her daughter, Claire, was pregnant. The physician called Denise shortly before Claire returned from school at 3:30 p.m. When Claire came home, Denise confronted Claire and asked who the father was. Claire, trying to protect her boyfriend, Bob, who was 19 years old, said that the father was Victor, her stepfather. Claire's relationship with Victor had been strained since Claire became a teenager, and Claire had resented Victor's attempts to discipline her and his disapproval of her going out with a group of older boys, and in particular with Bob.

Denise became upset when told that her husband Victor was the father, and especially so when Claire said she would get an abortion. Denise, the president of the state's Right to Life organization, told Claire that an abortion was out of the question and that adoption was the only course to take. Claire argued with her mother, and finally screamed that she was old enough to make the decision, and vowed she would leave home, get an abortion, and never return. When Claire ran out of the house, Denise took out the Wild Turkey whiskey and started to drink and brood.

Victor arrived home from work three hours later, and found Denise with the bottle of Wild Turkey half gone. Denise immediately confronted him with Claire's pregnancy and asked him in an accusatory tone how he could do such a thing, taking advantage of a young girl and betraying her. Victor truthfully denied that he was the father, but Denise called him a "lying S.O.B." She reminded him that the previous fall he had been discovered to be having sexual relations with her 14 year old niece Portia, and that he had "lied about that too."

Denise then took the pistol that she knew he always carried and fired six shots at him. All of the shots missed except one, which hit Victor in the head. Hearing the shots, neighbors called the police, who arrested Denise and had Victor transported to Mercy Hospital. Victor arrived with a severe head injury, unconscious but legally alive.

Claire ran straight to Bob's house, and told him that she was pregnant. "Bob", said Claire, let's get married. If you won't marry me, I am going to have an abortion." Bob did not want his relationship with Claire or her pregnancy and his role in it to become known. "Gee, he thought, "this could spoil my chances of going to law school." He decided to cause a miscarriage in hopes of keeping the whole thing quiet. His older cousin Harry happened to be with Bob when Claire ran in with the news she was pregnant. "Sit down, let's talk this over, have a cup of tea," said Bob to Claire, and then went into the kitchen and returned with a knife. Harry guessed what Bob was up to, and since he dearly wanted his cousin to have a chance at a legal

career, positioned himself between Claire and Bob, so that Claire would be unable to see the knife until Bob was at her side. But Claire did see the knife and tried to escape; but Bob caught her and Bob stabbed Claire in the stomach intending to kill the fetus. Bob did kill the fetus, and the attack rendered Claire unconscious. Bob and Harry called for an ambulance, with a tale about an accidental slip of the knife, and Claire was rushed to Mercy Hospital.

The emergency room physician, Dr. Kildare, thought Victor had no chance of surviving more than a week, and decided that it might be possible to transplant Victor's heart, and thus have some good come of Victor's anticipated death. Dr. Kildare decided to ask the unconscious Victor's next of kin for permission to remove his heart for transplant to a needy recipient immediately. He looked in Victor's wallet, and found an identification card which gave Alice's name and address under the heading "wife." Dr. Kildare called Alice, explained the situation, and obtained her consent to the removal of the heart for transplant. Alice did not tell Dr. Kildare that she and Victor were divorced. Unknown to Dr. Kildare, Alice had vowed to get even with Victor and saw this call from Dr. Kildare as the perfect opportunity for revenge. Alice also stood to inherit one-half of Victor's estate. Dr. Kildare removed Victor's heart and successfully transplanted it to another patient. A hospital review board at Mercy has subsequently concluded that Dr. Kildare's prognosis for Victor was correct: He could have lived a few more days but not more than a week.

Meanwhile, Bob mulled over the potential consequences of his attack on Claire and the likelihood that she would tell the authorities both about the attack and about his paternity of the fetus. He began to think about killing Claire to make sure she wouldn't talk once she regained consciousness. He discussed this possibility with his cousin Harry, who encouraged him to do it. Bob responded, "I don't need your encouragement, since I know this is the only way I can protect my future." Bob decided to shoot Claire, and Harry volunteered to call the hospital to find out what room Claire Perdue was in. The hospital switchboard operator negligently mistook Claire's room for Victor's, and responded, "Room 105."

Bob decided to wait until nightfall to complete his plan. During this time, Harry began to have second thoughts about the wisdom of this course of action, particularly since he thought they would be caught. So he told Bob, "I've had enough of this; from now on you're on your own." Harry then went home, hoping Bob would change his mind.

Undeterred, Bob climbed through the window of Room 105 and fired three shots from his pistol into the figure in the bed. The bullets entered the lifeless (and heartless) body of Victor Perdue. Unfortunately, the sound of the gunshots startled the coronary patient in Room 106, Mr. McGuffin, who proceeded to have a fatal heart attack.

Bob, Harry, Denise, Alice, and Dr. Kildare, have all been taken into custody. You work for the District Attorney of Yucca County, in the state of Enchantment, who has asked you for a memo on who can be prosecuted successfully and for what crimes. Please prepare a memo concerning only the crimes contained in the following statutory appendix. You should keep in mind that this is a jurisdiction that has a deep, if inexplicable, affection for the Model Penal Code.

**STATUTORY APPENDIX
ENCHANTMENT CRIMINAL CODE (portions)**

Section 187. Homicide

- (1) Murder is the unlawful killing of a human being, or a fetus,* with malice aforethought.
- (2) Murder which is perpetrated by means of poison, lying in wait, or other willful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary of a dwelling, or kidnapping, is murder in the first degree; all other kinds of murder are of the second degree.
- (3) Voluntary manslaughter is the unlawful killing of a human being upon a sudden quarrel or in the heat of passion.
- (4) Involuntary manslaughter is the unlawful killing of a human being without malice 1) in the commission of an unlawful act, not amounting to a felony; or 2) in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

**Except where done in the course of a lawful abortion or by a physician pursuant to a medical judgment or where consented to by the mother.*

Section 243. Corruption of Minors

A male who has sexual intercourse with a female not his wife is guilty of an offense if the female is less than sixteen years of age and the male is at least eighteen years of age.

Section 401. 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 is a felony. 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 402. Accessorial liability

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