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

**504 CRIMINAL LAW**  
Semester I, 1998-99

UNM School of Law  
Final Exam  
Three Credits

Professor Eliz. Rapaport  
Wednesday, Dec 9, 1998  
1:30 to 5:00 p.m.

**INSTRUCTIONS**

This is a 3 ½ hour in class examination. The questions are designed to be answered in 3 hours. There is an additional one-half hour for reading the questions carefully, and for organizing and preparing your answers.

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

The exam contains two questions. Question I will count for 2/3's of the exam and Question II for 1/3. You should budget your time accordingly. Question I 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 questions are uncontested.

Please check to see that there are six (6) pages including this page in your examination package.

Please write in ink, legibly, only on every other line of the blue book, and only on one side of each page.

GOOD LUCK!

[All essay exams will be filed in the library]

## Question I

The following story proves that with enough incentive and imagination fiction can be stranger than real life. Strange as this story may be, it has no basis in fact, and any resemblance to actual events or people is purely coincidental.

Will Slick is despondent because he had recently lost his job as President of Universal Services Corporation of America (USA, Inc.) due to the debacle involving Monica from the secretarial pool. He and Monica had been found in a compromising position in his office during the firm's annual morality audit. If only I had gone into politics, sighed Will, as he drank a glass of whiskey at the Tavern of Sighs. Will is joined at his table by Suzy Que, who is 21 years old, but looks younger. Indeed to Will Slick she looks no more than 15 years old. Suzy Que suggests that they leave and find some place "to be alone." Will is cheered by this suggestion. "By golly," he thinks, "They don't call me the 'comeback exec' for nothing, no sirree." Slick and Suzy get into Slick's car and drive to the Capital City Hotel.

Will and Suzy register for a suite and then stop at the Presidential Lounge before going to the suite. They are hailed by Ken Stellar, head of the Audit Division of USA, Inc., who is having a couple of drinks with his ethics adviser, Sam Dasher, and a friend named Henry Hide. Ken has been having a personal crisis. Ever since the firing of Slick, he has been vehemently attacked by USA employees and stockholders. They cannot forgive him for bringing down the CEO they credit with leading the company to unprecedented prosperity. They call him a sanctimonious prig! For the first time in his life he wonders if being perfect is worth it. Maybe Slick has the right approach to life and the use of power????

Over a couple of drinks the five develop a well lubricated friendship. Suzy thinks Ken, Sam and Henry are nice guys, and cute, like Will. Ken thinks Suzy is very pretty; a sophisticated 21 year old, he guesses. Sam keeps calling her Monica. Will whispers to Ken and Sam, "If we feed this little kitten a couple more drinks. I think she'll have sex with all of us. Ken winks, laughs, nudges Will with his elbow, and rubs his hands together. Sam says nothing. Will asks the group to join him and Suzy in his suite for a round of drinks. Henry, says, "I have a tricky hearing to preside over in the morning, I will come up to your suite for a drink and then I am going home."

The five go up to Will's suite and continue drinking. Soon Will goes into the bedroom with the thoroughly inebriated Suzy. Ken waits in the living room, assuming he will get his turn next. Sam says he needs some air and leaves the suite. Henry says, one more drink and I am going home."

Once in the bedroom, Suzy sits on the bed. Will starts to kiss and undress her. She freezes and is unable to talk or move. She is actually slightly mentally retarded, and has

been play acting conduct she has seen on TV. She is a virgin and has in fact never been alone with a man before, since her parents guard her zealously due to her limitations. Tonight she has slipped the traces. Will leans his weight on the silent Suzy, lies on top of her unresistant body, and effects penetration. Suzy begins to cry. Will immediately stops, jumps up, sits besides her, takes her hand and asks, "What's wrong, honey?" Their conversation persuades the abashed and suddenly sober Will that he has made a terrible mistake.

He runs back out to the living room. "We've made a terrible mistake. She's a virgin, and she's slow, mentally slow. She has no idea what she is doing." "So, says Ken, "you've had your fun and now you want to keep me from having mine. Let me at the lascivious little tramp. I know she wants it," pushing past Will. Will grabs Ken from behind and throws him against the wall. Ken pulls a gun from his pocket and points it at Will. Will, who was a pitcher in high school and has confidence in his throwing arm, throws a heavy ashtray at Ken. The ashtray hits Henry Hide in the head. Henry dies instantaneously.

Meanwhile, Sam Dasher called Suzy's family from the lobby and told them where Suzy was and that she needed their help. He then rushed off to avoid being associated with Ken and Will's actions. Suzy's sister, Dorothy, bursts into Will's suite, sees the weeping and confused Suzy in the bedroom, and listens to the contrite but voluble Will tell his story about what has happened. She recognizes him immediately, for she is a USA employee, a typist in the executive secretarial pool at the Capital City offices. Will says, "I can explain all this." He launches into a four hour explanation. Dorothy listens, and believes much of what he says, especially that he did not know that Suzy was retarded, that he stopped as soon as she started to cry, and that he protected Suzy from Ken. However, when he tells her, "I feel your pain. This can be a growth experience for me," an enormous rage wells up inside Dorothy. She is overwhelmed with anger at Will for the wrongs done to her sister, the secretaries, Will's family, and all the employees and stockholders of USA, Inc. She picks up Ken's gun, aims at Will's chest and fires; but the gun jerks and the bullet hits Henry's lifeless form.

Sam Dasher ran out of the hotel, wanting to get away without anyone seeing him. He decided to steal a car and ditch it near his home. "I have no choice, thought Sam, "I have to get away unseen." He planned to spend the rest of the evening watching C-Span to catch up on the news of the day. He hot-wired a car in the hotel lot and started to drive off. (Unlike Ken, he had not always been a perfect person, and had a few criminal skills dating from his boyhood.) However, the owner, Luckless Motorist, returned to the lot to retrieve something from the car and yelled at Sam to get out of the car. Motorist dove on to the hood of the car, but could not maintain his grip when the panicked Sam drove out of the parking lot at a high rate of speed and bumped into another car. Motorist slipped off the hood and slammed his head on the pavement as he landed, and died. Sam got home in time to see most of the wrap-up of the day's congressional impeachment inquiry news.

These events take place in the State of Enchantment. The appendix below provides pertinent parts of the Criminal Code of the State of Enchantment.

You are a summer clerk in the office of the District Attorney of Capital City, Enchantment. He asks you to write a memo stating what charges, if any, could be brought against Will Slick, Ken Stellar, Sam Dasher, and Dorothy Que, what defenses any of these persons might offer, and what in your view the chances of successful prosecution are on each charge. Restrict your memo to the offenses listed in the appendix to this exam question. Keep in mind that Enchantment courts are frequently influenced by the provisions of the Model Penal Code, although the legislature has not actually enacted the Model Penal Code.

## APPENDIX

### Enchantment Criminal Code (portions)

Section 101. Murder. Murder is the unlawful killing of a human being with malice aforethought.

(a) Murder 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, breaking and entering a dwelling, extortion, or kidnapping, is murder in the first degree. Murder in the first degree shall be punished by life imprisonment without the possibility of parole.

(b) All other kinds of murder shall be murder in the second degree, and shall be punished by imprisonment for a term of twenty to thirty years.

Section 102. Manslaughter. Manslaughter is the unlawful killing of a human being without malice aforethought. It is of two kinds:

(a) Voluntary -- upon a sudden quarrel or heat of passion. Voluntary manslaughter shall be punished by imprisonment for a term of ten to fifteen years.

(b) Involuntary -- producing death, in an unlawful manner, without due caution and circumspection. Involuntary manslaughter shall be punished by imprisonment for a term of five to ten years.

Section 105. Rape. A person commits rape if he engages in sexual intercourse with another person by force or threat of force against the will and without the consent of the other person.

Section 135. Statutory Rape. A person over the age of twenty-one commits statutory rape if he or she has sexual intercourse with a child under the age of sixteen. Failure to know or believe that the child is less than sixteen years of age is not a defense to statutory rape.

Section 153. Larceny

(2)(a) Larceny constitutes a third degree felony if the amount exceeds \$500, or if the property stolen is a firearm, automobile, motorcycle, airplane or other motor-propelled vehicle.

Section 200. Attempt. A person is guilty of attempt to commit a felony if, acting with the kind of culpability otherwise required for the commission of the felony, he or she purposely does or omits to do anything which is a substantial step in a course of conduct planned to culminate in the commission of the felony. An attempt is punishable by a term of years that is half the term prescribed for the completed felony.

Section 300. Complicity. An accomplice to a crime may be convicted and sentenced as if he were a principal.

## Question II

This story, unfortunately, reflects an actual and tragic event. You may recall the case. A 20-year-old man, Jeremy Strohmeyer, was charged with murder, kidnapping, and sexual assault in the slaying of a 7-year-old girl, Sherrice Iverson. According to the news accounts, Strohmeyer was accused of grabbing Sherrice Iverson in the Primadonna Casino near Las Vegas, Nevada, taking her into a casino bathroom, assaulting her sexually, and strangling her. On the day that his trial was to begin, Strohmeyer pleaded guilty to murder and avoided the death penalty.

This case received national news attention when students at the University of California-Berkeley, demonstrated and demanded that David Cash, Jr., a sophomore Nuclear Engineering major, be kicked out of the University and be prosecuted for his part in the events involving the death of Sherrice Iverson. According to news accounts, Cash, a close friend and high school classmate of Strohmeyer, was with Strohmeyer at the Primadonna Casino on the date of the killing. Cash told the Grand Jury that he saw Strohmeyer struggling with Sherrice but left before the time police say Strohmeyer strangled the girl in a casino bathroom. Authorities said that Cash did not stop the attack or notify police, even after Strohmeyer allegedly confessed to Cash as the two left the casino. Cash vigorously denied any wrongdoing.

Cash was not charged with any crime, because, according to the news accounts, he committed no crime under the laws of Nevada.

Assume that you have been retained by the Nevada Legislature to revise the Nevada Criminal Code in order to penalize conduct like Cash's in the Strohmeyer case. As part of your assignment, you have been asked to answer the following questions:

1. What doctrines in the law led the prosecuting authorities to conclude that Cash committed no crime?
2. What doctrinal changes in the law would accomplish the legislative goal of punishing conduct like Cash's?
3. Would the changes be good policy? What arguments could be offered to justify the changes? What arguments support retention of existing law?