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Examination No. _____

504 CRIMINAL LAW
Semester I, 2001-02

UNM School of Law
Final Examination
Three Hours

Professor James Ellis
Wednesday, December 5, 2001
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 reading the question carefully, and for organizing and preparing your answer.

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

This exam contains one question and 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.

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

Please write in ink, legibly, and only on **one side** of each page of the bluebook, leaving a margin at the left side of each page. If you are typing your answer, please identify each page (e.g. "1 of 5;" "2 of 5;" etc.). If you are hand writing your answer, please identify your bluebooks similarly. Make sure your exam number is on every bluebook or every typed page.

GOOD LUCK!

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

**CRIMINAL LAW
FINAL EXAMINATION
FALL SEMESTER, 2001
PROFESSOR JAMES W. ELLIS**

QUESTION

Tensions had been building for some time at Jerome Robbins Academy of the Modern Dance, the toughest high school on the west side of town. Rival gangs of incongruously balletic miscreants have been eyeing each other, with the hope of obtaining retribution for perceived past instances of disrespect.

The most recent incidents began when members of one of the gangs, the Seaplanes, decided to take action against their most hated rivals, the Mackerels, who had recently moved into town and had sought to take over some of the Seaplanes' territory. Riff called a meeting of his fellow Seaplanes, Tony and Anita, announcing that it was "time to do something." Various crimes and pranks were proposed, but each proposal elicited objections and was abandoned. Then Riff said, "The thing that would hurt the Mackerels the most would be to increase their unpopularity in the school. Once the other kids discover that they aren't cool, they will have to leave the neighborhood in shame. Therefore, I propose that we spread the rumor that all the Mackerels have cooties." All agreed to this plan, and the members present set about to spread the rumor.

When the Mackerels found out they were being shunned, they quickly confirmed their suspicions that the Seaplanes were behind the scurrilous rumors. They called a gang meeting, at which all the members, Bernardo, Chino, and Leonard, vowed to obtain revenge. Bernardo, the gang's unofficial leader, proposed that they escalate the conflict by infecting the Seaplanes "with real cooties." Leonard objected that there was no such thing as real cooties, but Bernardo responded that he had read about them on the Internet, and therefore it had to be true. In the face of such irrefutable proof, all agreed to formulate a plan of action. Bernardo was chosen to obtain a sufficient supply of the microscopic vermin from the same website he had just described, www.cooties.com, and once they were obtained, the gang would convene another meeting to plan further action.

The website was operated by a somewhat shady character named Doc, who knew that cooties weren't real, but also knew that many teenagers were gullible and had ample amounts of cash. The site made three commercial offers: (1) a book, "Cooties for Knuckleheads," which promised to be both an introduction to the subject for the uninitiated, as well as a "step-by-step plan of action for infecting your enemies;" (2) "low-grade cooties, sufficient to cause your enemies to contract 'skin cooties,' which will cause them to itch and scratch in public, thus increasing their unpopularity;" and (3) "weapons-grade cooties, which will cause fatal 'inhalation cooties,' causing your victims to actually die of embarrassment." Bernardo looked into the gang's treasury and discovered there was enough money to buy items (1) and (2), but not the more expensive (3). But he knew that his fellow Mackerels had murderous intentions, so upon arrival of the package he had ordered, he changed the label on the vial from "low-grade

cooties” to “weapons-grade cooties,” and lied to the others that he had obtained the lethal version.

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After reading the book, the three Mackerels set out to pursue their dastardly plan. “But when should we do it?” asked Leonard. “Tonight,” was Chino’s response. Chino was deputized to spread the white powder “containing” the cooties at the entrance to the gym where they knew the Seaplanes were about to have a gang meeting, and where they knew they would not be on guard since the gym was neutral territory. (Unbeknownst to any of the Mackerels, the powdery substance obtained from the website was plain cornstarch.) By pre-arrangement, Leonard was to act as a lookout while Chino spread the cooties, but Leonard was busted by the assistant principal for not having a hall pass, and as a result was unable to give any warning if one was needed, although Chino thought he was standing watch in the hallway. Nevertheless, Chino was able to perform his task and get away undetected.

When the Seaplanes gathered for their scheduled meeting, three members were in attendance, Riff, Tony, and Anita. At first none noticed the white powder, but suddenly Riff became violently ill and collapsed. As it happens, he had an extreme allergy to cornstarch, and once some of the particles entered his lungs, he went into anaphylactic shock and died. Tony and Anita immediately concluded that this must be the work of the Mackerels. Cradling her dying comrade in her arms, Anita vowed revenge, “They have killed Riff with anthrax, and we’ll pay them back in kind.” Tony agreed that the substance was doubtless anthrax, which had prominently been in the news lately, but balked at her proposed form of retaliation. “I agree that they should all be killed, but anthrax is dangerous stuff, and since they began it, the Mackerels have probably taken Cipro. So let’s just shoot them.” But Anita, who had recently lost a relative to a hunting accident, objected to the use of firearms, saying, “A gun like that could kill your brother.” When Tony persisted, Anita announced she wanted no part of any plan with guns, and said, “Unless you come up with something without firearms, I won’t participate. But good luck, I wish you all the best.” They then shared the gang’s rather elaborate handshake, which included a nicely turned *pirouette* and *pas de deux*, and parted company.

Tony went on alone, and purchased an Uzi assault rifle from a local pawnshop, after complying fully with the State of Apathy’s rigidly-enforced ten-minute waiting period. He loaded a clip of ammunition and then positioned himself outside the Mackerels’ clubhouse, intent on obtaining revenge. Fifteen minutes later, as he heard the Mackerels approaching, Tony said, “Something’s coming,” having forgotten that Anita was no longer with him and thus unable to hear. Tony emerged from the shadows with the Uzi pointed at the Mackerels and announced, “You gave Riff anthrax, and now it is time for you to die.” They, of course, had no idea what he was talking about, but there was something about the assault weapon that convinced them that it was a good time to dive for cover. Bernardo was killed in the first burst of bullets, but Chino and Leonard managed to hide behind a trashcan. They lacked guns, but each picked up a conveniently located brick and hurled it in the direction of Tony and whatever Seaplanes might be with him. One brick hit Tony, but caused only a slight wound. The other brick went astray and hit a saintly nun who happened to be walking by, and whose habit coincidentally was of the same color as the Seaplanes’ gang colors. She died instantly. (No one knows whose brick hit whom. Forensic evidence cannot resolve the question, although the Robbins Commission’s “single brick” theory has now been conclusively discredited.)

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Anita, who as luck would have it was only a few doors away, heard the gunfire and ran out in the street, just in time to see the nun struck dead. Without knowing who was behind the trashcans, and without grasping that this was part of the same transaction between the gangs, but being an extraordinarily devout soul, she took leave of her senses and instantly grabbed the gun away from Tony and sprayed the general area with bullets, shouting, "Take that, you crummy heathens!" One of her bullets killed Chino, but Leonard was uninjured. At that moment, Officer Krupke arrived on the scene and arrested everyone who was still alive. Upon hearing the stories of the various participants, he went out and arrested Doc too.

You work for Maria, the district attorney, who tells you, "I feel pretty disgusted by the behavior of everyone involved. Please prepare a memorandum detailing who can be prosecuted for any of the crimes included in the Appendix, and considering any plausible defenses that may be available to those lowlifes." In writing the memorandum assume all the facts above to be proven. Apathy's Supreme Court has sometimes found the Model Penal Code to be persuasive.

APPENDIX

APATHY CRIMINAL CODE (PORTIONS)

SECTION 6: FIRST DEGREE MURDER. Murder which is perpetrated by means of poison or other willful, deliberate, and premeditated killing or which is committed in the perpetration or attempt to perpetrate arson, criminal sexual conduct, robbery or kidnapping, is murder of the first degree. [First degree murder is punishable by life imprisonment without possibility of parole.]

SECTION 7: SECOND DEGREE MURDER. All other kinds of murder shall be murder in the second degree.

SECTION 8: MANSLAUGHTER. Manslaughter is the felonious killing of a human being without malice. Voluntary manslaughter is an intentional killing perpetrated under the influence of extreme emotional distress for which there was reasonable explanation or excuse. Involuntary manslaughter is an unlawful unintentional killing evidencing a reckless disregard for human life.

SECTION 19: HOAXES. It shall be a fourth degree felony [punishable by one to five years imprisonment] to knowingly release or disseminate any substance that resembles anthrax or any other fatal poison with the purpose of causing in another person, fright, emotional distress or terror, or to spread false and malicious reports about anthrax or such fatal poison.

SECTION 20: CONSUMER FRAUD. It shall be a third degree misdemeanor [punishable by a fine of \$10,000, or confinement in the county jail for up to six months, or both] to purposely offer for sale any substance that is different from the substance advertised.

SECTION 54: COMPLICITY. A person is an accomplice if he or she assisted another in the commission of a felony or misdemeanor. Accomplices may be punished as if they were principals.

SECTION 55: CONSPIRACY. A person is guilty of conspiracy with another person or persons if with the purpose of promoting or facilitating its commission, he agrees with such other person or persons that they or one or more of them will engage in conduct that constitutes such crime. Conspiracy is punishable at the level of two-thirds of the imprisonment for the contemplated offense.

SECTION 56: ATTEMPT. A person is guilty of attempt if he is unsuccessful in completing a contemplated crime. Attempt is punishable at the level of half of the imprisonment of the underlying offense.

[END OF EXAMINATION]