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Examination No. _____

504-003 CRIMINAL LAW
Semester I, 2006-07

UNM School of Law
Final Examination
Three Credits

Professors Ellis, Rapaport & Bay
Monday, December 11, 2006
1:30 p.m. to 5:00 p.m.

EXAMINATION FORMAT

1. **Laptop** computer users: start the Securexam program by entering your examination number, course name, professor's name, and date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam.
2. **Bluebooks** for writing: write in ink, legibly, skipping lines and only on one side of each page of the bluebook. On the front of each bluebook record the class name, professor's name, and date of examination. Be sure to number each bluebook in order.

Go to the exam check-in table at the conclusion of the exam & fill out the examination receipt.

PROFESSOR'S INSTRUCTIONS

1. This is a three-and-one-half-hour in-class examination. The question is designed to be answered in three hours. There is an additional half hour for reading the question carefully, and for organizing and preparing your answer.
2. 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 treatises, hornbooks, or any other commercial materials.
3. This exam contains one question and includes a statutory appendix. Be sure to use the correct statutes, citing to the relevant section when appropriate. Assume that the facts set forth in the question are uncontested.
4. Please check to ensure that there are seven pages in your copy of the exam not including this page.

GOOD LUCK!

QUESTION

Two attorneys, Clu and Les, find themselves in considerable difficulty because of their love of animals.

Clu and Les, who are married to one another, had a law practice that involved representing inmates at the maximum security prison at Stork Harbor. Two of their incarcerated clients, Britches and Cornfed, were members of the notorious white supremacist prison gang known as the Aryan Brotherhood and had a number of disciplinary disputes with prison authorities. In the course of representing Britches and Cornfed, Clu and Les developed a strong emotional attachment to them, and a friendship blossomed. Britches and Cornfed told them of their love of animals and that one of the most frustrating aspects of their incarceration (each was serving a term of life imprisonment without possibility of parole) was that they could no longer keep pets, as they had prior to their conviction.

Eventually, Britches and Cornfed persuaded our counselors-at-law to help them purchase two llamas in violation of prison regulations. The llamas were to be boarded out at a commercial llama kennel, and Les and Clu agreed to pay for the animals' upkeep and to provide photographs of the llamas that the prisoners could keep in their cells (possession of such photos violated the strict prison rules, so the pictures had to be smuggled into the penitentiary as contraband, and Les and Clu, sympathetic to the inmates' pleas of loneliness, agree to smuggle them in).

Unbeknownst to the attorneys, Britches and Cornfed were plotting to train vicious attack llamas that could then be sold to drug dealers to protect their illegal operations. In pursuit of that goal, without telling Britches, Cornfed contacted Bartleby, a naïve designer of websites. Cornfed asked Bartleby to design a website for a business called Llamas-o-War Kennels that would breed and sell aggressive llamas to drug labs to finance the activities of the Aryan Brotherhood. Poor Bartleby laughed, "Surely, you jest, my good man!" Cornfed replied, "I don't jest. I'm Aryan Brotherhood. You know, I have my peoples." Without really wanting to help, a fearful Bartleby agreed to do so, but he dragged his feet while he tried to decide whether to complete the website or to flee the country. By the time our sad tale comes to a conclusion, all he had done was to obtain and register the domain name of www.llamas-o-war.com.

Through Clu and Les, Britches and Cornfed arranged for the purchase of a breeding pair of llamas (the infamously vicious "camelid furiosa" variety,

although, unbeknownst to all, one of the llamas was infertile) and for the llamas to be boarded at the Hard Times Kennels, operated by a former inmate named Tombs. Some time later, Cornfed became concerned that although Tombs was taking some acts to accentuate their naturally vicious nature, Tombs was turning the llamas into "wusses," because the animals were not being exercised on treadmills or injected with steroids (and as a result, they might lose their commercial value as guard animals for marijuana fields and meth labs).

Cornfeld told Les that he was concerned that the animals were being treated inhumanely, and persuaded her to take the llamas into the apartment she shared with Clu. When Les came to pick up the animals, Tombs, who was very afraid of Cornfed's anger, was greatly relieved, and soon entered the witness relocation program in return for agreeing to testify against Britches, Cornfed, Les, and Clu in an anticipated prosecution for the smuggling of contraband animal photographs.

Before she took the animals home, Les (whose given name was Leslie) phoned Clu (whose mother named him after the actor Clu Gulager because she was an ardent admirer of his sensitive portrayal of Lt. Baker in the classic film "I'm Gonna Git You Sucka") to make the necessary preparations in their downtown apartment building. First, Clu offered "a token of appreciation" to McGuffin, the building's superintendent, if Clu could place a very large litter box on the roof of the building – a rather egregious violation of the building's strict policy against tenants owning large Andean mammals. McGuffin retorted, "You know I can't take a dime from you! It'd be against the law!" Clu replied, "I know. How about a thousand bucks?" McGuffin winked, "Consider it done, my friend," as he pocketed the money.

Clu also approached the occupant of the only other apartment on their floor, Whipple (a former All American lacrosse player known for her quickness), as to whether she had any objection to two llamas living in the apartment. Clu told her that they were quite harmless, housebroken, and would be no trouble. Whipple said she had no objection, but was factually mistaken because she had misunderstood and thought Clu was asking her about the prospect of Tibetan monks moving into the apartment.

The two animals, Dolly and Fernando, proved to be quite a handful for Les and Clu. For one thing, they were less than fastidious in their use of the litterbox, and Whipple and other tenants complained to Les and Clu about the hazardously slippery conditions in the building's foyer. (After one such complaint, Les remarked to Clu that if one of the llamas attacked Whipple "it would serve her

right.”) More ominously, each llama had attempted to attack strangers when Les and Clu were walking them in the park. (Les and Clu made it a habit to always walk them together, since Les, a 125-pound woman, found it difficult to control them by herself when they became excited.) In the five months prior to the incident in question, Fernando had spit at numerous strangers, had knocked five of them down, and had bitten three individuals, two of whom required care at the local hospital’s emergency room. (Dolly had also attacked strangers, but, as a slightly smaller animal, was somewhat easier to control.)

About 4:00 p.m. on January 26, Les had arrived at the doorway of her sixth-floor apartment after having taken a short excursion to the rooftop of the building with Dolly. She had taken Dolly to the rooftop as an emergency measure that she considered a necessity because the animal was sick with diarrhea. (Les had assumed the responsibility of taking care of the animals late in the day because Clu was out of town on business and was delayed in returning home because of mechanical problems with his car. She had only taken one llama to the roof because she knew she was not strong enough to control both at the same time.)

When Les returned from the rooftop and opened her apartment door, Fernando was at the doorway waiting. Fernando noticed Whipple, who had just returned from grocery shopping, in the hallway entering her own apartment approximately 60 feet away. Fernando started squawking and spitting at Whipple. Les had restrained Dolly on a leash attached to a harness. Despite this restraint, Dolly became aroused upon hearing the agitated sounds from Fernando, and she too turned her attention to Whipple, and then she began pulling Les down the hall towards Whipple.

As Dolly advanced towards Whipple, Les was dragged on the floor behind her. Seeing this, Whipple, who could have easily retreated into her apartment, began shouting at Les. Whipple complained loudly about the traction problems in the foyer and threatened to have Les arrested and the animals destroyed. “I’ll get my gun and do it myself if I have to,” she yelled.

At this point, Les lost the ability to control the 125-pound Dolly. After Dolly reached Whipple, she stood on her hind legs and pinned the 5’3”, 110-pound Whipple against the wall. Les claims that she then tried to push Whipple into Whipple’s apartment in an attempt to get her away from Dolly, but Whipple resisted. Les and Whipple shouted insults at each other as they struggled in the hallway, and in the struggle Les claims that Whipple hit her in the eye. Both Les and Whipple fell to the floor, with Dolly continuing to attack Whipple. Moments

later the larger Fernando emerged from the Clu-Les apartment, accidentally locking the apartment on its way out, and the two llamas' attack on Whipple spiraled out of control. No one, not even Les, came to the immediate aid of Whipple. (Les says she went to look for her keys.) McGuffin and Mr. Rogers, another tenant in the apartment building, also heard commotion but took no action. Whipple died of her injuries.

Police have arrested Clu, Les, McGuffin, Rogers, Britches, Cornfed, Bartleby, and Tombs. (The llamas were deported to Peru and have not been charged.)

You are an assistant to the District Attorney, Ogden Nash. He has asked you to provide a prose memorandum analyzing the likelihood of success in prosecuting the various defendants under the statutes included in the Appendix. Please organize your memorandum by individual, analyzing potential charges against each one before turning to the next.

APPENDIX

STATE PENAL CODE (PORTIONS)

§ 187. Murder. Murder is the unlawful killing of a human being with malice aforethought.

§ 188. Malice Defined. Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow human being. It is implied, when no extreme emotional disturbance is proven, or when the circumstances of the killing show an abandoned and malignant heart.

§ 189. Murder; Degrees. All murder which is willful, deliberate, and premeditated is murder in the first degree. All other murder is of the second degree.

§ 192. Manslaughter. Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

- (a) Voluntary – with intent to cause the death of another person, he causes the death of such person or of a third person under circumstances which do not constitute murder because he acts under the influence of extreme emotional disturbance.
- (b) Involuntary – in the commission of an unlawful act, not amounting to a felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution or circumspection.

§ 350. Smuggling of Contraband into Prisons. Any person who smuggles or attempts to smuggle any contraband item prohibited by the rules of a prison shall be guilty of a misdemeanor.

§ 365. Bribery. (a) Whoever corruptly gives, offers, or promises anything of value to a public official with intent to influence such public official or to induce such public official to do or omit to do any act in violation of the official duty of such official is guilty of a felony punishable by up to ten years imprisonment; or (b) Whoever being a public official corruptly demands, seeks, receives, or accepts anything of value personally in return for being influenced in the performance of

any official act or for being induced to do or omit to do any act in violation of the official duty of such official is guilty of a felony punishable by up to ten years imprisonment.

§ 399. Mischievous Animal Causing Death; Negligence of Owner or Custodian. If the owner or custodian of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large, or while not kept with ordinary care, kills any human being who has taken all precautions which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

§ 400. Animals Trained to Fight, Attack, or Kill; Causing Injury; Negligence of Owner or Custodian. Any person owning or having custody or control of an animal trained to fight, attack, or kill is guilty of a misdemeanor, if, as a result of that person's failure to exercise ordinary care, the animal bites a human being on two separate occasions or on one occasion causing substantial bodily injury. No person shall be criminally liable under this section, however, unless he or she knew or reasonably should have known of the vicious or dangerous nature of the animal, or if the victim failed to take all precautions that a reasonable person would ordinarily take in the same situation, or if the victim has provoked the animal or contributed to his or her own injuries. As used in this subdivision, provocation includes situations where an animal reacts in a protective manner to a person or persons who approach the owner or custodian in a threatening manner.

§ 401. Breeding Dangerous Animals. It shall be a misdemeanor offense to breed animals for the purpose of training their offspring unlawfully to fight, attack, or kill.

§ 505. Accomplices. A person 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. Accomplices are punished as if they were principals in the commission of the offense.

§ 506. Conspiracy. A person is guilty of conspiracy with another person or persons to commit a crime if, with the purpose of promoting or facilitating its commission, he or she agrees with such other person or persons that they or one or more of them will engage in conduct that constitutes such crime or an attempt to commit such crime.

§ 699. Good Samaritans. It is a misdemeanor punishable by up to one year imprisonment for a bystander to fail to give reasonable assistance to another person whom he or she knows is exposed to grave physical harm, if such aid can be rendered without danger or peril to the bystander, unless that assistance or care is being provided by others.