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

**504-003 CRIMINAL LAW**  
Semester I, 2006-07

UNM School of Law  
Final Examination  
Three Credits

Professor Romero  
Wednesday, December 5, 2007  
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 and 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 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 cover sheet.

**GOOD LUCK!**

## QUESTION

The “peaceable kingdom” that had been the State of Harmony has been shaken by the chain of events that followed a recent dispute over the competing passions of animal lovers.

It all began when the State Ornithologist (a public official with responsibility for the interpretation, administration, and enforcement of the state’s Endangered Bird Act) declared that the Tatty Titwillow was an endangered species, its population having been reduced to a few dozen mating pairs, which have only been seen in the vicinity of the Tallahatchie Toll Bridge. The designation of the rather unprepossessing bird as “endangered” means that officials, including the State Ornithologist, must make efforts to protect it from perils that could lead to its extinction.

### Birds of a Feather

The official designation as “endangered” brought birdwatchers from far and wide who sought to take advantage of this unique opportunity to add the Tatty Titwillow to their life-list. Three of them, Billy, Joe, and McAllister, had positioned themselves under the bridge in the hopes of spotting the elusive bird. To their great pleasure, they sighted one, but their momentary elation quickly turned to horror and rage as they witnessed the rare Titwillow being attacked and then devoured by a pack of cats that had been lurking under the bridge abutment. It was truly murder most fowl. (It turns out that Titwillows are a favorite meal for cats, and the birds’ slow reflexes – possibly a result of inbreeding – make them relatively easy to catch.) One cat was white, another was ginger, and the third was calico. After their meal, the cats looked like, well, the cat that ate the Titwillow.

Our three birders were enraged and distraught at the sight of the carnage they witnessed, and vowed to kill the guilty cats. They each believed that only destroying the cats could avert the catastrophic extinction of this species of Titwillow. After a brief argument about the means to be employed, they agreed to act individually, using different methods, in the hopes of enhancing their chances of success. Joe persuaded the others to adopt this plan, citing the old adage that “there is more than one way to accomplish your purpose.”

## A Game of Cat-and-Mouse

Billy is an avid birdwatcher who founded the Carroll County Ornithological Society, and who also owns a bed-and-breakfast which caters to birdwatchers from around the country. (It crossed his mind that his business might profit if the few remaining Titwillows could be protected from the attacks of the heartless cats.) Billy immediately went to visit Grendel, the owner of Deuce's Hardware. Grendel, also a bird lover, sold Billy hundreds of pounds of bird seed each year. "Grendel," said Billy, "I have a problem. A big, furry problem that's causing me and our fine-feathered friends a lot of heartache."

"I'm sorry to hear that," replied Grendel. "What kind of problem?"

Billy paused. "Rodents," he said at last. "They're big. In fact, you might say they're as big as a . . . cat."

"In that case, I have just the thing for you," Grendel said. "Forget the rat poison; I have a poison so strong that I'm not supposed to sell it without a license, which I don't have. When you want the job done right, I say do it with cyanide. After all, you know what they say, 'A rat has nine lives.'" Billy replied, "Cyanide sounds perfect. I'll take some." Grendel reached into a drawer underneath the cash register, but in his haste and excitement he pulled out a jar of powdered sugar instead of the jar of potassium cyanide that was hidden there. He carefully placed a tablespoon of the powdered sugar in a Ziploc bag. "Be careful my friend! This stuff is deadly." Grendel smirked as he said this. "Oh, and by the way, this one's on me." As Billy left, Grendel said, "It's about time that someone gets rid of cats that owners let run loose."

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of  
domestic

Billy took the Ziploc bag and drove to the bridge. There, he hid behind a bush to look for the cats. He saw the white cat go up to the Becky Thompson, who worked in the toll booth. Becky petted the cat for a minute or two; the cat then went under the bridge. "Aha," thought Billy, "Too bad it's Becky's cat. She ought to watch it more carefully." In fact, the white cat lived under the bridge and belonged to no one. Over time, however, Becky, a cat fancier, had become the white cat's friend.

Billy walked to the base of the bridge. There, he placed a piece of tuna fish on the ground and carefully sprinkled Grendel's white powder on it. "One down!"

he crowed. Billy then returned to his car. The white cat smelled the tuna, ate it, purred, and contentedly took a nap.

### Cat's Play

The next day, Joe drove his Hummer to the bridge and parked it. Hiding himself behind the bush, he watched for the cats. After half an hour, he spotted the ginger cat emerge from underneath the bridge and walk onto the bridge. Joe exclaimed, "That stray cat will kill no more!" (In fact, the ginger cat was owned by Mrs. Doubtfire, who lived near the bridge and who, like many homeowners, let her cat out each day to play.) Joe leaped into his Hummer, accelerated, and tried to run over the cat. But the cat was sufficiently agile to avoid the oncoming vehicle, and Joe's car hit a pedestrian who had instinctively run onto the bridge to protect the cat.

The pedestrian, James John Audubon XII, was a descendant of the 19<sup>th</sup> century illustrator who had killed countless birds in order to paint them. Audubon (XII) had come to Harmony to protect the Titwillow, "as an act of penance to partially atone for the acts of ornithological genocide committed by my infamous ancestor."

Joe, realizing he had struck someone, sped away.

Audubon lay on the pavement, with a broken arm and leg, and assorted internal injuries. His injuries were not life threatening with prompt medical attention. The first driver to see him was, coincidentally, his sister, Veronica Rich, a wealthy oil lobbyist from whom he had long been estranged. Rich spotted Audubon and thought to herself, "thank goodness for Hummers," as she kept driving and turned up the radio to drown out Audubon's moans.

Subsequent investigation revealed that Joe had not been driving recklessly or negligently, but that he had failed to pay the toll to cross the bridge. Failure to pay bridge tolls is a misdemeanor under Harmony law.

### Birds' Revenge?

McAllister was a retired attorney who had become a full-time birdwatcher. She left the law after repeated anxiety attacks rendered her unable to function. According to her psychiatrist, these attacks in part resulted from a traumatic early

childhood experience in which she was mauled by a cougar. McAllister, as a result, was not a “cat person.” She hated and feared cats.

She was also concerned that the means chosen by Billy and Joe were “too wimpy” and were unlikely to succeed. McAllister, a methodical individual, spent a week doing surveillance at the bridge. She meticulously noted each sighting of the calico cat, which appeared to her to live in the undergrowth at the base of the bridge and to be wild. She also found and carefully studied sections 42.08 and 42.09 of the Harmony Criminal Code.

At long last, McAllister was ready to act. She went home and procured a .22 caliber rifle fitted with a telescopic sight in order to shoot the calico cat. She returned to the bridge, lay in wait until she saw the cat, and fired her gun at what she believed to be the offending cat as it drew close to the toll booth. Her aim was true and she killed the calico cat.

Unbeknownst to McAllister, section 13 of the Harmony Civil Code states, “Wild or feral creatures not otherwise belonging to an endangered species may be adopted or domesticated if a person assumes custody or control of the creature, registers the creature with the County Clerk, and pays a \$50 registration fee.” Earlier in the day, Becky Thompson, charmed by the calico cat, had paid the \$50 fee, assumed custody of it, and gained lawful possession of it. Becky planned to bring the cat home after work.

Hearing the sound of gunfire, Becky looked out from the toll booth and saw her calico cat covered with blood and dead. She then spotted McAllister forty feet away behind the bush with a rifle. Angry and heartbroken, Becky yelled at McAllister, “You murderer, I’ll kill you,” and threw a rock at her. McAllister could have ducked beneath a nearby boulder but she shouted, “Stop that.” Becky threw another rock and then started pushing a large boulder directly above McAllister, trying to dislodge it. McAllister, realizing what Becky was trying to do, fired at Becky. Again her aim was true and Becky dropped to the pavement.

McAllister ran to Becky, who was still and drenched with blood. McAllister, unable to find a pulse, thought Becky was dead. In fact, Becky was only unconscious and wounded; her wounds were not fatal, though they looked far more serious than they actually were. Nevertheless, McAllister, her emotions having subsided, threw Becky over the bridge, and Becky drowned in the Tallahatchie River.

The police have arrested Billy, Joe, and McAllister, as well as Grendel and Rich. Bird lovers and cat lovers have been holding demonstrations and counter demonstrations in Carroll County. Cat enthusiasts have branded the four birders “murderous fascists” and “diabolical monsters.” Birders, however, have lauded them as “heroes” and “freedom fighters” and set up a fund to help pay for their defense.

You are an assistant to District Attorney Bobbie Gentry, who, knowing of your success in your law school class in Criminal Law, has asked you to prepare a memorandum discussing what charges you would bring against the characters. (Do not discuss potential crimes committed by the deceased. Even they, unlike you, are entitled to the dignity of repose on a Criminal Law exam.) Please analyze the relevant legal issues, and evaluate the likelihood of successful prosecutions on each potential charge. You should be aware that the Model Penal Code sometimes influences Harmony State Courts. Please limit your consideration to offenses included in the Appendix of this examination, as well as any applicable common law defenses.

STATUTE  
**HARMONY CRIMINAL CODE (portions)**

Section 42.08. Definition. “Animal” means a domesticated living creature belonging to another. “Animal” does not include feral creatures.

Section 42.09. Cruelty to Animals.

- (a) A person commits an offense if the person intentionally or knowingly:
- (1) tortures an animal;
  - (2) fails unreasonably to provide necessary food, care, or shelter for an animal in the person’s custody;
  - (3) abandons unreasonably an animal in the person’s custody;
  - (4) transports or confines an animal in a cruel manner;
  - (5) kills, seriously injures, or administers poison to an animal other than cattle, horses, sheep, swine, or goats belonging to another without legal authority or the owner’s effective consent.
  - (6) It is a defense to prosecution under Subsection (a)(5) that the animal was discovered on the person’s property in the act of or immediately after injuring or killing the person’s goats, sheep, cattle, horses, or swine, and that the person killed or injured the animal at the time of this discovery.
- (b) Violation of this section is a felony, punishable by imprisonment of one to two years.

Section 99. Distribution of a Poisonous Substance.

- (a) It shall be unlawful to distribute a Schedule I poisonous substance without a license.
- (b) Schedule I poisonous substances shall include . . . cyanide and potassium cyanide.
- (c) Violation of this section is a felony, punishable by up to five years imprisonment.

Section 876. Accomplice Liability. Whoever commits a felony or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.



Section 894. Attempt. Any person who, acting with the kind of culpability otherwise required for commission of a crime under this Code, purposely engages in conduct that constitutes a substantial step in a course of conduct planned to culminate in his commission of the crime, is guilty of attempt, which is punishable at the level of half the punishment prescribed by law for the completed offense.

Section 996. Murder. Murder is the unlawful killing of a human being with malice.

Section 997. First Degree Murder. Murder in the first degree consists of murder by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing, or murder committed in the perpetration of, or attempt to perpetrate, arson, criminal sexual conduct in the first or second degree, child abuse in the first degree, robbery, breaking and entering of a dwelling, extortion, or kidnapping. First degree murder shall be punished by life imprisonment.

Section 998. Second Degree Murder. All other kinds of murder shall be murder in the second degree, and shall be punished by imprisonment for life, or for a term of years from twenty years to life.

Section 999. Manslaughter. Manslaughter is an unlawful killing without malice or under extreme emotional disturbance resulting from serious provocation, and shall be punished by imprisonment for a term of ten to twenty years.

Section 1000. Involuntary Manslaughter. Involuntary manslaughter is an unlawful killing without malice in the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death, and shall be punished by imprisonment for a term of two to five years.

Section 1021. Assault Resulting in Serious Bodily Injury. Whoever commits an assault resulting in serious bodily injury shall be punished for a term of imprisonment for not more than ten years.