

CRIMINAL LAW EXAM

Monday, December 11, 2017

Professor Houck

INSTRUCTIONS

1. This is a closed book exam with one appendix. No outside materials of any kind are permitted.
2. You will have three hours to answer these questions. If not otherwise stated please answer under the law of your jurisdiction where applicable, and if not under common law.
3. This is a 100-point exam weighted as indicated; allocate your time accordingly. Additional points may be awarded for a particularly good answer.
4. In your answers, please also observe the following:
 - Accept the facts as stated.
 - If writing, on one side of a page only and legibly
 - Reference to relevant opinions is persuasive, as are analogies, where making a case.
5. Keep your head. There is nothing here beyond you.

I GENDER (30 points)

Recent awareness (at least for many people) of the ubiquitous nature of sexual harassment has brought calls for criminal sanctions, lest the phenomenon be eclipsed by (also ubiquitous) bad news on other fronts going forward. As Staff Counsel to the Senate Judiciary Committee, you are asked:

Question 1A: to evaluate the proposition (considering the pros and con's, is this a good idea?), and

Question 1B: to draft language the Committee might consider for a criminal statute.

In in both tasks, please explain your choices. Please assume that there is no federal criminal law on the subject (although there are civil requirements under the Equal Employment Opportunity Act).

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The US Olympic Committee (USOC) is a private, tax exempt charitable organization with the mission of "promoting, developing and selecting athletes for Olympic competition". The actual training is done by independent coaches and facilities, many of whom know each other and whose athletes compete for slots on the team. Assume that the USOC has received information, sporadically but over many years, that young gymnasts, swimmers and other athletes (largely female) have been sexually abused by their coaches and trainers, whom they were taught from a young age "to obey like Gods". The USOC, deciding that it was in the best interest of the sport, has taken no official action on these reports other than refer them to the identified individuals and facilities, where they languished. Within the past year yet more athletes have come out with (credible) accusations. Several sport professionals have told media sources, anonymously, that these relationships have long been "a dirty secret" in the trade. Please assume that these abuses were crimes under relevant state law (which they are), and that the statute of limitations has not tolled on the more recent of them.

Outraged, the District Attorney has asked you to determine whether the USOC (as opposed to individual Committee members) can be charged with criminal responsibility relating to these acts.

Question 2 A: Please assess potential causes of action, issues and defenses under common law principles.

Question 2 B: Would a RICO charge lie?

II CRIME AND PUNISHMENT (25 points)

When last seen, Katherine Ann Power and the Weathermen, the Vietnam War resistance group, had decided to rob banks in Boston to finance their activities. Assume (and departing from the case) that on day one they robbed the First National Bank of Boston on Commonwealth Avenue, no weapons, clean get-away. Assume also that on day two, at a second First National in the Back Bay area, a firearm was displayed but no shots were fired, and they were soon arrested. No one died.

Assume now that the resisters were convicted of both crimes and are up for sentencing under the Federal Sentencing Guidelines. The base level for robbery is 20, the adjustment for a banking institution is 2, and for displaying a firearm is 6. Assuming no other adjustments, criminal histories or other aggravating or mitigating factors:

Question 3 (A): What is the ultimate offense level that would be used for determining the sentencing range?

Question 3 (B): Is the Guidelines approach reasonable?

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Assume now that, as it turns out an undercover FBI agent new to the Weatherman group (though not chosen for the hesits themselves) had promoted using a gun for the second job (“you don’t even have to load it, and it might help speed things along”). Following which, in order to solidify his standing in the organization, he provided one. (Granted, it was rather reckless, but stranger things have happened with the Bureau). So the Powers team went in armed and, with the authorities tipped off in advance, were promptly arrested.

Question 4. What (if any) effect, in your jurisdiction, would this revelation have on sentencing?

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In the last ten years the disparity between federal sentences for minorities, primarily African Americans, and white defendants with identical crimes and criminal histories has risen by more than 20 percent, and continues to rise.

Question 5. Granting some obvious (and terribly depressing) social causes, how under federal sentencing law (aimed at reducing disparities) could this happen? (NB there may be more than one way).

III ELI (25 points)

Eli is an Afghanistan War vet where he learned to hate Muslims (“they carry grenades in their pajamas”), received a dishonorable discharge for misconduct (getting in fights), and is now hanging out in Miami, never quite sober and suffering migraines, flashbacks and other symptoms of Post Traumatic Stress Disorder (PTSD). He was given some pills at the Veterans Hospital that left him dazed, but when the migraines continued he started drinking. He tried to quit, but the pain was bad.

On the day in question Eli is idling his car near a convenience store on South Delgado, what remains of a pint of Jack Daniels in his lap, driver window down, enjoying the sunlight, when down the street comes a bearded man wearing a tunic and a large turban and chanting Arabic prayers. The man approaches the car, points at Eli and says “YOU come to my mosque!”, to which Eli mutters “f ... off, raghead!”, which brings the man up to the car window, repeating his message, Eli begins to run his window up but the man reaches in and grabs the front of his shirt, shouting in Arabic again, and now, in a panic, in a rage, Eli seizes the man’s tunic with one hand while flooring the accelerator, dragging him down the street. And then down another, parked cars whizzing by. By the time Eli is stopped by police he has a torn tunic in his hand and the Arab is lying some distance behind in the road. He dies the next day. Which leaves Eli, whose blood alcohol after the arrest was at .24. His only question to the police was, “where’s the other one?” Apparently he thought there were two.

Question 6 Please evaluate all possible charges of Homicide against Eli, and all possible defenses available to him under the law of your jurisdiction, including as well Florida’s stand your ground law (excerpt in Appendix to this exam).

IV TWO WORLDS (15 points)

“Trump Decries ‘Unfair Corporate Burdens”

Corporate Law Reporter, 2017

In order to stimulate economic growth “vital to the welfare of all Americans”, the Trump administration is seeking ways to “reduce the unfair burden of criminal law” on businesses and corporations, in favor of civil and other remedies. You, newly hired by

the US Chamber of Commerce, are asked to develop an agenda for the Department of Justice to consider.

Question 7 Recognizing that even this Congress is not likely to decriminalize wrongful corporate conduct altogether, nor can the Attorney General simply refuse to prosecute, please propose three specific ways that laws might be amended to “reduce the criminal burden”, and rationales for each.

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“Judge Laments Imbalance in Criminal Justice System”

New York Times, 2015

Reacting to “deferred settlement agreements” for corporations resulting in remedial actions without other penalty, and to major settlements resulting in fines without incarceration, federal Judge Emmet Sullivan wrote recently to demand equal protection for non-corporate offenders now being prosecuted and incarcerated at an historic high. With devastating social consequences.

Question 8 Please propose three specific steps that might be taken towards this end, and their rationales.

V MY BOOK (5 points)

Question 9. Please describe (briefly) how the book you have read relates to the law or policy of this course, and what it illustrates about them.

Appendix

2017 Florida Statutes

776.013 Home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.—

(1) A person who is in a dwelling or residence in which the person has a right to be has no duty to retreat and has the right to stand his or her ground and use or threaten to use:

(a) Nondeadly force against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force; or

(b) Deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.

(2) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used or threatened was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

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(4) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.