

University of Windsor
Faculty of Law
Winter 2005

FINAL EXAM

CRIMINAL LAW

Kirk W. Munroe, Sessional Instructor, U of W
Alan Saltzman, Professor, U of D Mercy
The Honourable Justice G. DeMarco

April 15, 2005
9:00 a.m. to 12:00 p.m.

FOR GRADING PURPOSES please note that the exam is divided into 3 sections: (1) questions 1 through 4; (2) question 5 & 6; and (3) questions 7 through 9. Please use a separate booklet or booklets for each of the 3 separate sections. In that way, your exam will be graded faster.

EXAM BOOKLET #1: Use a separate exam booklet or booklets for Short Answer Questions 1-3 and Essay Question 4. These 4 questions will be graded separately.

SHORT ANSWERS

6 Points: 2 points per question.

1. What is the *mens rea* for attempted murder in Canada? What is your authority?
2. In Canada, identify the statutory section on Mistake of Law and provide the two recognized exceptions to this rule.
3. If two persons agree to commit a crime but one of the two persons is an undercover police officer with no intent to carry out the object crime, can the other person be lawfully convicted of the crime of conspiracy in Canada? Please explain your answer.

ESSAY QUESTION

29 Points:

QUESTION 4:

MEMO

To You, Student at Law
From: Sam Ballard, Crown Attorney
Re: Local Baseball Scandal
Date: April 15, 2005

As you probably read in the newspaper, Windsor now has its very own steroid scandal. A young local baseball star, Mark McSlugger, was found dead in his Windsor home two days ago. It now appears that his death is connected with illegal steroid use in our city. This matter is sensitive and important. The police are asking for legal advice. They have made no arrests yet. Given my trial schedule, I turn to you for some quick, but good, legal advice before I meet with the police later this afternoon.

Mark McSlugger, a Windsor native, was just 19 and, many believed, had the potential to make it as a major league baseball player. He had just finished his first spring training camp with a major league team and was headed to play for their Triple A affiliate hoping to be called up to the majors later this year. He came home to Windsor (he lives with his parents) for a few days before heading off to the farm team. His mother found Mark dead in his basement room. As you can imagine, the family is devastated. He is an only child.

At first the police believed death was caused by an obvious gunshot wound to the head but the postmortem examination established that death was caused by insulin poisoning. Mark died from a huge overdose of insulin. This was quite puzzling because Mark was not a diabetic and did not use insulin. There are clear and fresh needle injection sites on both of Mark's buttocks. The pathologist is very clear - Mark was already dead when shot in the head.

The detectives did a great job. With Mark's status as a professional athlete and the fresh injection marks on his buttocks, the police went to a local gym where Mark has worked out regularly for years. There they met his best friend, another aspiring baseball player, Jose Donseco. It was not too long before Jose broke down and told the police what happened.

According to Jose, Mark and Jose wanted very badly to become professional baseball players. So much so that two years ago they both started injecting performance enhancing drugs, namely steroids. Despite the health warnings and their illegality, both were convinced steroids would make them bigger, stronger and better. They got the steroids from a local doctor, Dr. Rudy Balco. Dr. Balco also provided the two with syringes and taught them how to inject each other. Both did not like needles so Jose would inject Mark and Mark would inject Jose.

Then, two days ago, the world of these aspiring ballplayers collapsed. Running low of steroids, Mark and Jose went to Dr. Balco's office, as they had many times in the past, for a new supply. Dr. Balco was busy so he told the boys to get the steroids themselves from the cabinet in his office. Mark went into the office and grabbed a bunch of vials. Both boys went back to Mark's house knowing both of Mark's parents were working. Mark was first. Using the newly acquired vials, and believing they were steroids, Jose injected Mark in the buttocks, obviously with Mark's consent. In mere seconds, Mark collapsed on the basement floor. Jose did not know what to do.

Jose ran out of the house to Dr. Balco's office and reported what happened to Dr. Balco. Dr. Balco checked his cabinet and discovered that the vials taken were insulin, not steroids. Dr. Balco instructed Jose to go home and say nothing to no one. Before leaving, Jose saw Dr. Balco remove a pistol from his desk drawer. When Jose asked Dr. Balco the purpose of the gun, Dr. Balco screamed at Jose saying he was not going to let their stupid mistake ruin his life.

The police advise me that Jose Donseco is devastated over the loss of his friend and his role in Mark's death. The police strongly believe Jose did not want to kill Mark. Jose believed he was injecting Mark with the regular non-lethal dose of steroids and not with insulin. Obviously, he was wrong and the mistake was fatal.

I am only interested in homicide related crimes so please do not address any other possible illegalities engaged in by Jose and Dr. Balco. They will be left for another day. Also leave for another day whether, by supplying the drugs, Dr. Balco is legally responsible for Mark's death.

The police are asking for legal advice. 1. Homicide - Jose Donseco. They want to know our legal opinion concerning what level of homicide is supportable against Jose Donseco. 2. Attempted Murder - Dr. Balco. Additionally, they are looking at Dr. Balco. The police theory is that Balco went over to the McSlugger home and shot Mark in the head to cover up the doctor's steroid involvement with these kids. The police want to charge Dr. Balco with attempted murder for shooting Mark. Do they have enough? Please analyze for me focusing on the two questions asked. Please include citations to the appropriate statute sections and case law. Tie in the facts of this case.

Thank you.

EXAM BOOKLET #2: Use a separate exam booklet or booklets for Questions 5 & 6. These two questions will be graded separately.

15 Points:

QUESTION 5:

A. Compare the insanity defense under Canadian law with the insanity defense under one, and only one, of the following: a) The ALI Model Penal Code; b) Michigan law; or c) U.S. Federal law, as follows:

- 1) What differences are there between the two so far as the elements necessary to establish the test?
- 2) Which party bears the onus/burden of proof and by what quantum (i.e. beyond a reasonable doubt, clear and convincing evidence or balance of the probabilities/preponderance of the evidence)?

B. If you were required to choose only between the two that you just compared, to be the rule that would be followed in your jurisdiction, which of the two would you choose and what are the reasons for that choice?

15 Points:

QUESTION 6:

Entrapment is recognized as a defense to a criminal charge under U.S. federal law, under Michigan law, and under Canadian law. In each of those three jurisdictions,

What are the elements of the defense?

Who is the trier of fact on entrapment, the judge or the jury?

At what point in a criminal prosecution is the issue decided?

EXAM BOOKLET #3: Use a separate exam booklet or booklets for Questions 7, 8 and 9. These three questions will be graded separately.

10 points (15 minutes):

QUESTION 7:

The defence of Necessity and the defence of Duress have evolved in Canada to their current state.

Please discuss in detail the substantive and procedural aspects of these two defences, citing appropriate authorities (both statutory and case law).

20 points (40 minutes):

QUESTION 8:

Al, who is 25 years old, sustained a serious head injury two years ago. As a result, he now has limited intellectual ability, such that his level of understanding and mental functioning is that of a 10 year old and he processes information slowly. His girlfriend, Dora, broke up with him after he was injured and began dating Vin. Al has resented Vin for "stealing" Dora from him.

One night Al went to a bar-restaurant with his friends Bob and Cam. While at the bar, Al had 6 bottles of beer and 3 "shooters." The server noticed that the drinks were having an effect on Al and was considering "cutting him off."

At one point Vin, who was also in the bar, walked by the table where Al, Bob and Cam were sitting. In a very loud voice he said to Al, "Hello, Stupid. I didn't know they let dummies like you in this place." Al says these words made him feel very confused and angry.

Bob told Al that he should cut out Vin's tongue for what he said to Al. Al said he would do it

himself. Al then asked Cam to lure Vin into the cooler so he could cut out Vin's tongue. Cam did as he was asked and told Al when Vin was locked in the cooler.

Al then entered the cooler with a hunting knife, stabbed Vin twice in the back, then left, locking the cooler door. He says he did not mean to kill Vin, only to hurt him for what he said. The medical evidence establishes that the stab wounds were not life-threatening in themselves, but that Vin died from hypothermia as a result of being in the cooler.

After stabbing Vin, Al left the bar and went to Dora's apartment. He told her he had just stabbed Vin and asked if she would throw the knife he had used down her garbage chute. She did so.

Discuss Al's criminal liability for the homicide of Vin and any defences or partial defences that may be available to him or upon which a trial judge may have to charge a jury.

Discuss the criminal liability of Bob, Cam and Dora.

5 points (5 minutes):

QUESTION 9:

Your firm has received a call from Alf who has been charged with "Prison Breach" under s.144 of the Criminal Code. Your employer wants you to go to the jail and advise Alf about where the trial and any court proceedings before the trial will take place.

Please relate the advice you will give Alf.