

ST. MARY'S UNIVERSITY SCHOOL OF LAW

CRIMINAL LAW - 6341
Professor J. Schmolesky

FINAL EXAMINATION
Spring 1995

Instructions

1. This examination consists of Two Parts, with a total of twenty-two (22) pages, including this page as the first.
2. St. Mary's Law School prohibits the disclosure of information that might aid a professor in identifying the author of an examination. Any attempt by a student to identify himself or herself in an examination is a violation of this policy and of the Code of Student Conduct.
3. A student should not remove a copy of the examination from the room during the exam time.
4. The following exam consists of two parts. Part One consists of 25 multiple choice questions, each worth two points. The answers to these questions should be made by marking the Scantron sheet which has been handed out with the exam questions. Each question has five options. Mark only one answer for each question on the answer sheet. Do not answer in a bluebook or in any other location. Mark your answers with a number 2 pencil only and avoid making stray marks on the answer sheet. You should choose the best answer for each question. Your score on this portion of the exam will be determined by the number of correct answers. Thus, there is no penalty for guessing and you should answer all of the questions.

You will be given 75 minutes to answer the objective questions, which means that you have 3 minutes per question. When time is called after 75 minutes, you will be asked to turn in both your answer sheet and the test questions. Make sure that your exam number, but not your name or any other identifying information, is on both the answer sheet and the test questions. The objective part of the exam, Part One, is a closed book exam and no materials may be consulted in answering the questions.

5. After the time for Part One has expired, the second part of the exam will be handed out. (You will not be given the second part of the exam until the time for it has expired, so there is no advantage in finishing the first part in less than the allotted time. Part Two consists of 2 essay questions, worth a total of 50 points. You will be given 90 minutes to write your essay answers. Please write your answer in a bluebook. Again put your exam number only on the bluebook cover (or on any additional bluebooks). For

Part Two of the exam only, you may use your textbook, notes, or any other material that you have prepared, borrowed, or purchased.

6. After reading the oath, place your exam number in the space below. If you are prevented by the oath from placing your exam number in the space below, notify the student proctor of your reason when you turn in the examination.

I HAVE NEITHER GIVEN NOR RECEIVED UNAUTHORIZED AID IN TAKING THIS EXAMINATION, NOR HAVE I SEEN ANYONE ELSE DO SO.

EXAM NUMBER

Part I. The multiple choice portion of this exam is not available. For classes in which Professor Schmolesky has a multiple choice component to the exam, the questions are not released because some questions are re-cycled often after some revision based upon the answers by the students and a re-evaluation of the precise language of the questions and the five options (provided by a computer print-out). New multiple choice questions are written for each new examination, but a pool of previously used questions that have been tested in at least one previous exam are also used. Because these questions are sometimes re-used, examples of multiple choice questions are not available.

PART II. Essay Question

You have 90 minutes to answer this portion of the exam, which consists of two essay questions worth 50 points (a 30 point question and a 20 point question). Please write your answer in the bluebook(s) that will be provided to you with the exam question. Please write your answer with a blue or black ink pen or type your answer. For part two of the exam only, you may use your textbook, notes, or any other material that you have prepared, borrowed, or purchased. Good luck!

Question One (20 Points--note that there are 2 parts to this question)

Sally Sudden fell in love with Walter Winning in Las Vegas, Nevada while she was on a vacation from her husband, David Dull. Sally saw a sign on Las Vegas Blvd. advertising "one-stop divorce and marriage services." Sally inquired whether she could divorce Dull and marry Walter. The owner of "One-Stop" Harry Hustler assured Sally that she could obtain a divorce from Mr. Dull and marry Mr. Winning in One-Stop's High Roller's Chapel within six hours for a package price of \$500. Harry Hustler assured Sally that he was a licensed attorney and magistrate and that he could file the divorce papers and grant them and that the divorce would be recognized by her home state of Texas. Sally eagerly paid the money and then went shopping for her wedding dress and was married the same day after signing a few "divorce papers" provided by Harry Hustler. When Sally returned to Texas with her putative new husband, Sally was arrested after a complaint was filed by David Dull. Sally is charged with violating 25.01 of the Texas Penal Code (see statutory appendix). Assume that Sally has retained you as counsel to defend her in this criminal matter.

Part One: Discuss how you would plan to defend Sally.

Part Two: Assume that the defense provided for in subsection (c) of the statute was amended to provide that the defense described is "an affirmative defense," rather than a defense. Assume that you are the trial judge in the case. Respond in a brief written opinion, how you would respond to the defense argument that the amended statute is unconstitutional.

Question Two (30 Points)

In March of 1994, Bud Black learned that he had an inoperable brain tumor and that he probably had a year or less to live. Bud's doctor recommended immediate hospitalization and Bud agreed.

Bud's condition deteriorated rapidly and, by December 1994, Bud no longer recognized close friends and relatives, including his wife of 40 years, Alice Black. Alice watched in horror as Bud spent most of his time mumbling incoherently and crying. On occasion, Bud would grow violent and attempt to assault his visitors who dwindled in

number after a few such incidents. This was particularly upsetting to Alice who had known Bud to be a quiet and gentle man.

Bud and Alice's savings were quickly being exhausted by the expensive medical care that Bud required. The couple no longer had medical insurance because Bud had been laid off from his job three years earlier. Besieged by bills and tormented by Bud's suffering, Alice decided to put Bud out of his misery.

Alice confided in a sympathetic nurse, Chris Collins, who suggested that Alice give Bud an overdose of sleeping pills on a night when Chris would be on duty on Bud's restricted ward. Chris knew that a doctor had prescribed extra sleeping pills for Bud and the extra dosage might not be noticed. Chris provided Alice with several bottles of sleeping pills. Although Bud was kept in an intensive care ward where no visitors were allowed after evening visiting hours, including Alice, Chris helped to sneak Alice into the secured ward after hours by giving her a nurse's outfit. Chris told Alice that she would keep watch outside of Bud's room to make sure that no one interrupted Alice while she fed Bud sleeping pills.

Alice began feeding sleeping pills to Bud, who was in a quiet and compliant mood. Alice was relieved because she hadn't relished the thought of having to force-feed sleeping pills to Bud. Because an emergency call in another room took Chris away from her position outside the room, Alice had no warning when Dr. Evans made an unusual late evening call on several of his intensive care patients.

Alice was startled by the voice of Dr. Evans outside of the room. She did not want to be caught with a half-empty bottle of sleeping pills. Believing that she had given Bud enough pills to end his life and believing that there were not enough pills left to cause any harm, she thrust the pill bottle into the hands of the feeble, semi-delerious patient in the room with Bud. "Here, take these, they're good for you," whispered Alice as she gave the pill bottle to the terminally-ill patient before slipping out the door in time to avoid Dr. Evans.

Alice was correct in her belief that she had given enough pills to Bud to kill him, but, unfortunately, she miscalculated concerning the number of remaining pills and Bud's roommate also died. Suspicions were raised about the two deaths in the same room on the same night and a thorough

autopsy was performed, revealing that both patients had died from an overdose of sleeping pills. Bud's roommate had not been prescribed sleeping pills. An investigation led to an interrogation of Chris Collins, who revealed the entire plot.

As an assistant district attorney who has been assigned to this case, write a brief memo discussing the possible homicide and related charges that might be filed against both Alice and Chris. (See the statutory appendix for chapter 19 of the Texas Penal Code dealing with homicide. Note that not all of these statutes may be relevant and other statutes may be important to your discussion). Be sure to discuss offenses that might be submitted as lesser included offenses.

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Bud's condition deteriorated rapidly and, by December 1994, Bud no longer recognized close friends and relatives, including his wife of 40 years, Alice Black. Alice watched in horror as Bud spent most of his time mumbling incoherently and crying. On occasion, Bud would grow violent and attempt to assault his visitors who dwindled in

I

The rivalry between 2 San Antonio high schools, the Goats of Godfrey High School and the Bandits of Babcock High School, had reached a fever pitch. The Godfrey football team had defeated Babcock on their homecoming in a bitterly fought game. Babcock's homecoming celebration before the game also had been dampened by Godfrey students. A huge pile of wood set up for the traditional bonfire had been doused with water so that it would not burn and the Babcock homecoming floats were spray painted with the message: Go Goats! Now, the two schools were to meet in the finals of the State baseball championship.

Rocky Jr., age 18 and a former member of Babcock's football team, asked his 18 year old team mate, Stocky, to join him in seeking revenge by stealing the Godfrey mascot, a rare white mountain goat. Stocky agreed.

The goat's coat had an appraised value of at least \$1,000.00

Rocky asked his 16 year old girl friend, Suzy Homemaker, if she would make a coat for the Babcock mascot of the goat's hide if Rocky and Stocky were able to steal and skin the unfortunate goat. Suzy, remembering the destruction of her hard work on the homecoming float, readily agreed.

Stocky also had a 16 year old girl friend, Lucy Loyal, who attended Godfrey. Stocky questioned Lucy about where the goat was kept. Lucy answered all of Stocky's questions and then inquired why he wanted this information. When Stocky began to explain the plan that he and Rocky had devised, Lucy exclaimed: "Stop, I don't want to hear anymore, I love that goat and I'd never forgive you if you harmed it".

Stocky didn't discuss it any further with Lucy. He didn't want to upset her and he had all the information that he needed. All that remained was to buy some necessary supplies and to recruit a small agile person to force open an unlocked window which was 12 feet above the ground. Stocky and Rocky planned to lift someone up to the window on their broad shoulders. They both agreed that, Willy Wimp, a 14 year old prize winning gymnast would be perfect for the job. Willy was unwilling to do anything that might get him in trouble. Willy rejected Rocky's suggestion that he participate in the escapade, until Rocky forcefully pulled Willy's arm behind his back threatening "to break ^{his} him arm off" if he didn't help. Willy quickly agreed to participate. (Willy's arm)

On their way to Godfrey High School, the three stopped at a hardware store owned by Rocky's father (Rocky I). Rocky Junior told his father that they needed a crowbar. When Rocky's father asked him why he needed it, Rocky explained the scheme. Rocky's father went into the storeroom and came back with a crowbar with an extra long handle. "We just got these in today" he said. "It will work better than these other models on display in the store." Although Rocky once bought products at his father's store at cost, since he had incurred his father's anger by quitting his part-time work at the hardware store in order to tend bar, Rocky paid full retail price for all merchandise. Rocky paid for the crowbar and observed that since it was now dark outside that: "the time had arrived to get Godfrey's goat".

The three arrived at Godfrey High School and went to the loading dock at the back of the school. Stocky pointed to the window of the small room above the loading dock where Lucy had said that the rare goat was kept. Rocky hoisted Willy onto the sturdy shoulders of Stocky and handed him the crowbar. Willy was nervous and he pried awkwardly at the stubborn window until his grip slipped and the heavy metal crowbar shattered the pane of glass and then fell to the ground outside of the building.

- (3) What possible defense arguments would you anticipate? Discuss the merits of any plausible defense argument and suggested prosecution rebuttal. (You are permitted to conclude that there is no plausible defense or prosecution apparent from the facts that you have been given for a particular charge or client if you explain your answer). Be sure to mention arguments which may be available only to one or a few of the several defendants. (25 points).

II

The championship baseball game between the Babcock Bandits and the Godfrey Goats was an exciting pitcher's duel. The score was 1-0 in favor of Babcock in the bottom of the 9th inning. The Godfrey Goats had a runner on second base, with two outs when their leading home run hitter Casey Ruth coming to the plate. Ruth kicked dust from the batter's box in the direction of Bandit bench and pointed arrogantly at the center field bleachers, indicating his intent to hit a home run.

Bobby Beanball, the Babcock pitcher, glared at Ruth. Beanball threw an awesome fast ball that had been clocked at speeds in excess of 95 MPH. Beanball's control was a bit suspect however, as evidenced by the fact that he had walked 10 batters already in the game, although he had surrendered only one hit, a long double by Ruth that just barely missed clearing the fence for a home run.

Beanball delivered a high fast ball that travelled straight towards Ruth's head. Ruth dropped to the ground just in time to avoid being hit. Leaping to his feet, Ruth ran towards the mound brandishing his baseball bat as a weapon. The Goat's first baseman, Bruce Lee, a Karate instructor during the summer, prevented Ruth from reaching Beanball by aiming a potentially fatal blow at Ruth's neck. Lee's aim was a bit off however and Ruth was struck on his jaw, fracturing it.

(1) One of the spectators at the game was the District Attorney who believed that amateur athletics were becoming too violent. The D.A. decided to seek grand jury indictments against Beanball and Ruth for attempted aggravated assault and against Lee for aggravated assault. United by their common plight, Ruth, Beanball, and Lee pool their resources in order to retain you as counsel. Discuss the merits of the defense that you plan to present for each of your clients. (25 points)

(2) Assume for this question only that, prior to the baseball game, the Texas legislature amended the self defense statute. Only two changes were made: (1) the statute was renumbered from its current 9.31 to become 8.08 (Thus moving the offense from Chapter 9 to Chapter 8. Other conforming amendments were also made in the numbering of 9.32 and 9.33) and (2) The justification of self defense was described as an "affirmative defense". At Ruth's trial, the trial court granted a defense request for a jury instruction on self-defense, but denied a defense request that the jury must find beyond a reasonable doubt that the Defendant did not act in self defense. Consistent with the new statute, the trial court instructed the jury that the defense was required to persuade the jury by a preponderance of the evidence that he acted in self defense. Ruth appealed following his conviction. As an appellate court judge, how would you respond to Ruth's claim that the trial court's instruction violated the principles of Mullaney and Patterson? (15 points)

An alarm rang and the three boys ran. An elderly janitor heard the alarm and investigated. He yelled for the boys to stop. All three kept running and the janitor chased after them. The janitor's foot came down on a rusty rake that had been left lying in the grass. The handle flew up and struck the old man on the head, knocking him unconscious.

Stocky's girlfriend, Lucy, who had stayed late at school for cheer-leading practice, was backing out of the parking lot when she saw Stocky and the others running away from the loading dock. "Help us!", Stocky yelled, "the cops will be here any second." Lucy stopped her car, opened the back door, and threw a blanket over the three boys as they huddled together on the floor of the back seat. Moments later a police squad car drove into the lot. Lucy ran towards the car and shouted: "They went that way" as she pointed down the highway. The officers turned around and drove off in the direction that Lucy had pointed. Lucy got back in her car and drove the other way while the 3 boys kept their heads low in the back seat.

Later that night, Rocky, overwhelmed by guilt, called the police to tell them the entire story of what occurred. Rocky, Stocky, Willy, Rocky's father, Lucy, and Suzy were all arrested. A member of the D.A.'s office, who was an alumnus of Godfrey High School, was infuriated by the police report. The prosecutor called the police officer for more information. After a few minutes of conversation, the police officer said: "You know the funny thing is that the goat was never in danger. The cheerleader in charge of the goat moved it after another cheerleader named Lucy told her that somebody from Babcock might try to harm it. The poor old goat that chased after those boys wasn't as lucky, he never came out of his coma and he died a few minutes ago." The prosecutor vowed to "file every charge I can think of". After a long night turning the pages of the Texas penal code, the prosecutor recommended that the following charges be brought against Rocky, Stocky, Willy, Rocky's father, Lucy, and Suzy (all citations to the Texas Penal Code):

Felony Murder (19.02(a) (3); Attempted Felony Murder (19.02 (a) (3) and 15.01; Conspiracy to Commit Attempted Felony Murder (19.02(a)(3) and 15.03 and 15.01; Involuntary Manslaughter (19.04); Negligent homicide (19.07); Burglary (30.02); Attempted Burglary (30.02 and 15.01); Criminal Mischief (28.03); Conspiracy to Commit Criminal Mischief (28.03 and 15.03); Reckless Damage and Destruction (28.04) and the "common law offense of aggravated goat abuse".

In addition, Rocky, Jr. also was charged with Solicitation of Burglary (15.03 and 30.02) and Solicitation of Felony Murder (15.03 and 19.02(a)(3). Lucy, was charged alone with 2 counts of Hindering Apprehension or Prosecution (38.05).

The prosecutor's charging recommendations were contained in a memo to the District Attorney. Noting that his assistant is long on determination but short on knowledge about criminal law, you are asked to review the memo. Your instructions are to concentrate on the offenses suggested by your associate, rather than to find other possible crimes to charge. Specifically you are asked:

- (1) Which of the listed offenses exist under Texas law?
(Explain your answer) (10 Points)
- (2) Of the offenses that exist, what combination of remaining crimes would be prohibited? Based on the facts that you have been given, which of the listed offenses could be omitted from the indictment and still be submitted to the jury as lesser included offenses? (25 points)

- (3) What possible defense arguments would you anticipate? Discuss the merits of any plausible defense argument and suggested prosecution rebuttal. (You are permitted to conclude that there is no plausible defense or prosecution apparent from the facts that you have been given for a particular charge or client if you explain your answer). Be sure to mention arguments which may be available only to one or a few of the several defendants. (25 points).

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4, Sec. 15.02. Criminal Attempt. (a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) If a person attempts an offense that may be aggravated, his conduct constitutes an attempt to commit the aggravated offense if an element that aggravates the offense accompanies the attempt.

(c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

(d) An offense under this section is one category lower than the offense attempted, and if the offense attempted is a felony of the third degree, the offense is a Class A misdemeanor.

Sec. 15.02. Criminal Conspiracy. (a) A person commits criminal conspiracy if, with intent that a felony be committed:

(1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and

(2) he or one or more of them performs an overt act in pursuance of the agreement.

(b) An agreement constituting a conspiracy may be inferred from acts of the parties.

(c) It is no defense to prosecution for criminal conspiracy that:

(1) one or more of the coconspirators is not criminally responsible for the object offense;

(2) one or more of the coconspirators has been acquitted, so long as two or more coconspirators have not been acquitted;

(3) one or more of the coconspirators has not been prosecuted or convicted, has been convicted of a different offense, or is immune from prosecution;

(4) the actor belongs to a class of persons that by definition of the object offense is legally incapable of committing the object offense in an individual capacity; or

(5) the object offense was actually committed.

(d) An offense under this section is one category lower than the most serious felony that is the object of the conspiracy, and if the most serious felony that is the object of the conspiracy is a felony of the third degree, the offense is a Class A misdemeanor.

Sec. 15.03. Criminal Solicitation. (a) A person commits an offense if, with intent that a capital felony or felony of the first degree be committed, he requests, commands, or attempts to induce another to engage in specific conduct that, under the circumstances surrounding his conduct as the actor believes them to be, would constitute the felony or make the other a party to its commission.

(b) A person may not be convicted under this section on the uncorroborated testimony of the person allegedly solicited and unless the solicitation is made under circumstances strongly corroborative of both the solicitation itself and the actor's intent that the other person act on the solicitation.

(c) It is no defense to prosecution under this section that:

(1) the person solicited is not criminally responsible for the felony solicited;

(2) the person solicited has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution;

(3) the actor belongs to a class of persons that by definition of the felony solicited is legally incapable of committing the offense in an individual capacity; or

(4) the felony solicited was actually committed.

(d) An offense under this section is:

(1) a felony of the first degree if the offense solicited is a capital offense; or

(2) a felony of the second degree if the offense solicited is a felony of the first degree.

Sec. 19.02. Murder. (a) A person commits an offense if he:

(1) intentionally or knowingly causes the death of an individual;

(2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or

(3) commits or attempts to commit a felony, other than voluntary or involuntary manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

Sec. 19.05. Involuntary Manslaughter. (a) A person commits an offense if he:

(1) recklessly causes the death of an individual; or

(2) by accident or mistake when operating a motor vehicle while intoxicated and, by reason of such intoxication, causes the death of an individual.

(b) For purposes of this section, "intoxication" means that the actor does not have the normal use of his mental or physical faculties by reason of the voluntary introduction of any substance into his body.

(c) An offense under this section is a felony of the third degree.

Sec. 19.07. Criminally Negligent Homicide. (a) A person commits an offense if he causes the death of an individual by criminal negligence.

(b) An offense under this section is a Class A misdemeanor.

Sec. 22.02. Aggravated Assault. (a) A person commits an offense if he commits assault as defined in Section 22.01 of this code and he:

(1) causes serious bodily injury to another, including his spouse;

(2) causes bodily injury to a peace officer in the lawful discharge of official duty when he knows or has been informed the person assaulted is a peace officer; or

(3) uses a deadly weapon.

** (a) A person commits an offense if he commits assault as defined in Section 22.01 of this code and he:

(1) causes serious bodily injury to another;

(2) causes bodily injury to a peace officer when he knows or has been informed the person assaulted is a peace officer;

(A) while the peace officer is lawfully discharging an official duty; or

(B) in retaliation for or on account of the peace officer's exercise of official power or performance of official duty as a peace officer;

(3) causes bodily injury to a participant in a court proceeding when he knows or has been informed the person assaulted is a participant in a court proceeding;

(A) while the injured person is lawfully discharging an official duty; or

(B) in retaliation for or on account of the injured person's having exercised an official power or performed an official duty as a participant in a court proceeding; or

(4) uses a deadly weapon.

(b) The actor is presumed to have known the person assaulted was a peace officer if he was wearing a distinctive uniform indicating his employment as a peace officer.

(c) An offense under this section is a felony of the third degree.

* As amended by Acta 1979, 66th Leg., pg. 367, ch. 164, § 3, eff. 9-1-79 (Last legis. vote 5-3-79)

** As amended by Acta 1979, 66th Leg., pg. 1521, ch. 655, § 2, eff. 9-1-79 (Last legis. vote 5-24-79)

Sec. 28.03. Criminal Mischief. (a) A person commits an offense if, without the effective consent of the owner:

(1) he intentionally or knowingly damages or destroys the tangible property of the owner; or

(2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person.

(b) An offense under this section is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than \$5; or

(B) except as provided in Subdivision (4)(B) of this subsection, it causes substantial inconvenience to others;

(2) a Class B misdemeanor if the amount of pecuniary loss is \$5 or more but less than \$20;

(3) a Class A misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$200;

(4) a felony of the third degree if:

(A) the amount of pecuniary loss is \$200 or more but less than \$10,000;

(B) regardless of the amount of pecuniary loss, the actor causes in whole or in part impairment or interruption of public communications, public transportation, public water, gas, or power supply, or other public service, or diverts, or causes to be diverted in whole, in part, or in any

manner, including installation or removal of any device for such purpose, any public communications, public water, gas, or power supply;

(C) regardless of the amount of pecuniary loss, the property is one or more head of cattle, horses, sheep, swine, or goats;

(D) regardless of the amount of pecuniary loss, the property was used for the production of cattle, horses, sheep, swine, or goats; or

(E) regardless of the amount of pecuniary loss, the damage or destruction was inflicted by branding one or more head of cattle, horses, sheep, swine, or goats.

(5) a felony of the second degree if the amount of the pecuniary loss is \$10,000 or more.

(c) For the purposes of this section, it shall be presumed that a person whose name public communications, public water, gas, or power supply is on was last billed and who is receiving the economic benefit of said communication or supply, has knowingly tampered with the tangible property of the owner if the communication or supply has been:

(1) diverted from passing through a metering device; or

(2) prevented from being correctly registered by a metering device; or

(3) activated by any device installed to obtain public communication, public water, gas, or power supply without a metering device.

(d) The term public communication, public transportation, public water, gas, or power supply, or other public service shall mean, refer to, and include any such services subject to regulation by the Public Utility Commission of Texas or the Railroad Commission of Texas or any such services franchised by the State of Texas or any political subdivision thereof.

Sec. 28.04. Reckless Damage or Destruction. (a) A person commits an offense if, without the effective consent of the owner, he recklessly damages or destroys property of the owner.

(b) An offense under this section is a Class C misdemeanor.

5.
Sec. 30.02. Burglary. (a) A person commits an offense if, without the effective consent of the owner, he:

- (1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony or theft; or
- (2) remains concealed, with intent to commit a felony or theft, in a building or habitation; or
- (3) enters a building or habitation and commits or attempts to commit a felony or theft.

(b) For purposes of this section, "enter" means to intrude:

- (1) any part of the body; or
- (2) any physical object connected with the body.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a felony of the second degree.

(d) An offense under this section is a felony of the first degree if:

- (1) the premises are a habitation; or
- (2) any party to the offense is armed with explosives or a deadly weapon; or
- (3) any party to the offense injures or attempts to injure anyone in effecting entry or while in the building or in immediate flight from the building.

Sec. 38.05. Hindering Apprehension or Prosecution. (a) A person commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense, he:

- (1) harbors or conceals the other;
- (2) provides or aids in providing the other with any means of avoiding arrest or effecting escape; or
- (3) warns the other of impending discovery or apprehension.

(b) It is a defense to prosecution under Subsection (a)(3) of this section that the warning was given in connection with an effort to bring another into compliance with the law.

(c) An offense under this section is a Class A misdemeanor.

HYPOTHEetical SELF DEFENSE STATUTE FOR QUESTION II (2)

Sec. 8.08. Self-Defense. (a) Except as provided in Subsection (b) of this section, it is an affirmative defense to prosecution that a person is justified in using self defense. A person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other's use or attempted use of unlawful force.

(b) The use of force against another is not justified:

- (1) in the response to verbal provocation alone;
- (2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c) of this section;
- (3) if the actor consented to the exact force used or attempted by the other; or
- (4) if the actor provoked the other's use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against the actor.

(c) The use of force to resist an arrest or search is justified:

- (1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.