

INTRODUCTION TO CRIMINAL LAW AND PROCEDURE: TAKE-HOME TEST

You have to answer **ALL** questions. For the scenarios, you will have to analyze the facts of the case in light of the definitional terms of the offence provided in the case. Both the facts and the law are hypothetical, but the cases take place in Canada where Canadian Criminal Law theory applies. Make sure that you don't make up or infer facts from the case. If there is not enough information about a fact in the case, say so. Draw **a chart to analyze the scenarios** as discussed in class (and the class notes and slides). This take-home exam evaluates your ability to apply the theories, methods, and principles that we discussed. Thus, **you have to apply the law as we discussed in class**, even if that is a simplification of the existing Canadian law. For example, if we discussed a certain rule with no exceptions, then you have to apply that rule as seen in class, even if there is an exception to that rule in Canada. Please note that everything we discussed during the live sessions is included in the notes and slides posted on the course website. So, if you missed a live session you still have the information on the course website. For the other questions, you do not need to answer in essay format. Bullet points, charts, and conceptual maps are accepted. Clarity and precision are essential. If you answer in essay format, please make sure that you **precede every argument or idea by its corresponding heading**. In all your answers, you must refer only to sources (topics, theories, elements, examples, readings, cases, etc.) that we discussed in class (or that are in the class notes and slides if you missed class). **No outside sources may be referred to or included in your answers.** You are not permitted to consult with anyone about this test. Please do not ask me questions about the test once this test is posted online. As a matter of fairness, I do not want to give answers to some students that others do not have the benefit (or detriment) of hearing. You will simply have to use your own judgment about how to handle any possible difficulties, including the interpretation of the questions and tasks. **Submission:** You need to **submit this evaluation to the Algoma University Moodle platform for this course by the deadline, i.e., October 26, 2020 by 5.30 pm EST**. If you have technical difficulties, you can send this this evaluation to me by email in an MS Word attachment. Please write "CRIMINAL LAW TEST" as the subject of the email. We will not have live sessions on Oct. 19, 21 or 26 so that you can work on this test. Our next live session will be on Oct. 28.

1. Analyze each element of the definitional terms of the following offences. In your analysis, include, where appropriate, all the relevant issues discussed and practiced in class (or slides and notes). Please organize your answer in a chart format. **(20%)**

Every one commits the offence of cheating who has in his/her possession an unauthorized electronic device during a university exam, knowing that such electronic device can be used to answer a question in such university exam.

Every one commits an offence who presents an academic work in a university course, knowing it to be authored by another person, with intent that the academic work should pass off as one's own; the burden of proof of that a work is not academic lies on the person who presented said work.

2. Make-up an offence, i.e., one that does not exist in the Canadian Criminal Code or any other penal code. Write the definitional terms of the offence, which must fulfill all of the following conditions: **(20%)**

- The offence respects the principles of Criminal Law, i.e., it is a valid offence.
- The voluntary act is dual.
- The actus reus must be susceptible of being committed by omission.
- Causation permits an intervening act.
- Social harm is definitional.
- Social harm is expressed as a wrongful result and as wrongful conduct. It also contains, at least, two attendant circumstances.
- Mens rea is subjective.
- Mens rea is general.
- Mens rea is dual.
- Mens rea includes, at least, intention.
- There is perfect symmetry between mens rea and every material element of the offence.

3. Analyze if Tom committed the crime of burglary in the following scenario. **(20%)**

Tom, a contractor, had a dispute with Jerry about his fees for installing a new dishwasher in Jerry's house. Tom charged Jerry \$500, which Jerry thought it was too much. Jerry complained profusely and said that this was theft. Tom googled the definition of theft in the Criminal Code and read it out loud to Jerry. "No," Jerry he said. "Theft is defined as intentionally taking property of another or negligently or recklessly taking

one's one property that was previously stolen". I am simply charging you for my work." Jerry insulted Tom, but ended up paying the full amount. When Tom came back home after a full day's work, he realized that he did not have his toolbox. Tom believed that Jerry had stolen it as a way to get back at him. That night, Tom entered Jerry's house without permission to get his toolbox. Tom found a toolbox, but quickly realized that it was not his and remembered having left his toolbox in his own car. Tom then left Jerry's house without taking anything, locking the door behind him. Burglary is defined as "intentionally breaking and entering a dwelling house of another with the intent to commit a crime therein."

4. Write the definitional terms of a made-up crime which contradicts John Stuart Mill's rationale for the criminalization of conducts, but which can be explained through the rationale for the criminalization of conducts that predominates in the civil law tradition. The crime has to comply with the principles of Criminal Law, i.e., it has to be a valid crime from a formal perspective. Additionally, identify and describe every step of the legislative process of your crime –including non Criminal Law aspects- in light of the predominant approach in the civil law tradition. Be succinct and specific. **(10%)**
5. Make up a scenario of a crime, including the facts of the case and the definitional terms of the offence. There must be 100% concurrence between the facts of the case and the elements of the definitional terms of the offence. The mens rea of your crime has to comply with the following conditions: mens reas has to be general and single. The type of mens rea in your scenario must be intention. The facts of the case must allow evidence of intent only by proof that the accused foresaw the consequence of his/her conduct as a substantial certainty. Briefly discuss the flaws, if any, of the evidentiary approach in your case. **(20%)**
6. Based on the following quote from the article authored by Kent Roach, write the definitional terms of the manslaughter offence following the author's proposed unitary approach, which is achieved by raising the constitutional standards to match criminal law standards. Briefly explain the rationale of your choice for the offence that you created. **(10%)**

A case can be made for closing the gap that has developed between criminal and constitutional law standards of fault. A unitary approach could be achieved either by raising constitutional standards to match the more robust criminal law standards or by having the minimum standards of the constitution eclipse the more robust, controversial, and older criminal law standards.