THE UNIVERSITY OF WISCONSIN LAW SCHOOL

Final Exam in Intro. to Sub. Criminal Law
Course No. 726-001
Tuesday, December 9, 2008
8:30 a.m. - 12:30 p.m.

Exam No: __________________________

TIME FOR EXAMINATION: 4 (Hours) closed book

This examination consists of 5 (pages) (including this cover page)
Selected Statutes (11 pages) are attached.
Be sure you have all the pages!
Scratch paper will be provided in the exam room.

PLEASE PUT YOUR EXAM NUMBER (NO NAME) ON THE EXAM ITSELF AND ON EACH BLUEBOOK OR PAPER HANDED IN.

GRADES: Once the professor submits all of the students' grades for the course, they will be processed, a list of the courses will be posted in front of the Main Office (Room 5110) indicating the date they were sent to the UW Registrar. Go on-line to http://my.wisc.edu to check grades.

IMPORTANT: Students: Remember that not all students take the exam at the same time. Be careful about discussing the exam in public. Make sure that you do not pass on information about the exam to students who have not taken it. Intentionally doing so is a violation of the Law School Rules.

For laptop exams: Return the exam itself to the proctor.
For non-laptop exams: Return the exam itself and your answers (blue books) to the proctor.

INSTRUCTIONS: Please limit your answers to the word limits indicated in the questions. Slight deviation from the limits is acceptable, but substantial deviation is not. Statutes are provided for the State of Grace. Other than in the Statutes, the law in the State of Grace is identical to the law in the neighboring State of Wisconsin.
QUESTION 1 (40% of grade)

1. One afternoon, Dave told John that he was going to have sex with his girlfriend that night, “whether she wants to or not.” Dave shows John a date rape drug which he says he has had for six months. In fact, Dave does not have a girlfriend. Dave is charged with attempted sexual assault under Grace Statutes 940.225(4) and 939.32. As judge, will you submit the crime charged to the jury? Answer in 75 words or less. (15 points)

2. Dave, John and Bill went out drinking in the Grace bars every Wednesday night. They rotated designated driver responsibility week to week. On a Wednesday night the three went out and Dave and John became intoxicated. Bill, the designated driver for that night, drove Dave and John home in Dave’s car. On the highway, Bill operated Dave’s car at over 100 mph. He lost control and in the ensuing collision John was killed. Dave has been charged with violation of the Grace Statute which provides as follows: “Whoever, in anticipation of his intoxicated condition, causes another to operate a motor vehicle, and any person dies as a result of such operation, is guilty of a Class D felony.” The legislature passed this statute in response to an interest group dedicated to reviving prohibition who argued that designated driver program encouraged drinking. The defense has moved to have the charge dismissed on the grounds that it is unconstitutional. You are the trial judge. Rule on the defense motion in 125 words or less. (20 points)

3. Assume that there is an additional section in the Grace Statute enumerated in question 2, above. This additional section specifies “It is an affirmative defense if the accused establishes by a preponderance of the evidence that the operation of such motor vehicle was the result of an agreement between the defendant and the victim.” Assume that the defense motion in question 2 was dismissed. Would the additional section change this result? Explain your conclusion in 75 words or less. (20 points)

4. When Victoria was 10 years of age, her mother, Mandy, married Bob whom she had met the previous year. A year after the marriage, Victoria complained to Bob about severe pain in her joints. Without Mandy’s permission or knowledge, Bob took Victoria to see Dr. Jones who diagnosed Victoria as having a rare blood disease which, if untreated, would cause paralysis of her legs, then arms, and ultimately would cause her death. Dr. Jones prescribed medication for Victoria which she immediately began taking and which caused her symptoms to disappear. Mandy practices a religion (The Church of The Old Master) which does not permit its adherents to take medication, believing instead that prayer cures disease. In situations in which prayer does not cure diseases, the adherents of this religion, including Mandy, believe that the consequences are God’s ordained will and should not be interfered with by humans.
At the age of 11, Victoria became a member of The Church of The Old Master. Upon her baptism into this church, she informed her mother about the medication and they agreed Victoria would not continue to take the medication. Bob urged Mandy to order Victoria to take the medication and tried, to no avail, to persuade Victoria to take it.

When Victoria’s symptoms reappeared, she and her mother prayed daily for her recovery, but within a year, Victoria died of the rare disease. Mandy and Bob have each been charged with first degree reckless homicide in violation of Grace Statute 940.02. You are the trial judge.

A. Mandy’s lawyer had her client examined by a psychiatrist who diagnosed her as suffering from “Acute Religious Disorder”. This condition is described in the Diagnostic and Statistical Manual of the American Psychiatric Association as a disorder in which those suffering from it have a deeply exaggerated belief in God’s willingness to interfere in the affairs of humans on earth. Those suffering from it often experience a deep feeling of powerlessness in the face of life’s uncertainty and adversity. The psychiatrist has treated hundreds of patients in the State of Grace who suffer from this disorder. The defense has made an offer of proof, that the psychiatrist will testify to his diagnosis of Mandy and the indications of her condition, as specified above. The prosecution objects. Rule on the motion and explain your answer in 100 words or less. (15 points)

B. Assuming a proper request, what verdict or verdicts will you submit to the jury as to each defendant? What verdicts do you expect the jury to return?

Answer this question in 400 words or less. (30 points)
QUESTION 2 (25% of grade)

Charlie, Frank, and Bob are partners in a small business. Charlie is the contractor who builds small houses. Frank is the architect who designs them and sells the houses. Bob, who is also vice president of the Grace State Bank, obtains financing for the necessary construction loans. The Grace State Bank provides these construction loans and then turns around when the houses are complete and an offer to purchase has been made, and provides mortgages to borrowers who buy these houses. The principal buyers of these homes are low income wage earners. Business was not very good until Frank suggested to Bob that he be less stringent in approving mortgages. The more risky the borrowers the bank lent to, the more possible it was to sell the houses, because more people were able to obtain mortgages from the Grace State Bank. When Bob expressed concern about the riskiness of the loans, Charlie pointed out to him that if he could bundle them into groups of 12, he could sell the mortgages to Fanny Mae, a federal lending institution, who would then bear all the risk of default. Frank then urged the buyers to provide false information about their creditworthiness so that they could get mortgages. He told Bob not to look too hard at this information when he considered loans. Bob then became even more free with the Bank’s credit, lending to less and less creditworthy buyers of these homes. He realized that the more bundles he could create, the more he could pass on the risk of default on the loans to Fanny Mae. At first, default on the loans didn’t occur, because when default seemed imminent the home owners were able to sell the homes for a higher price than they paid for them and pay off the mortgage before it could be foreclosed upon.

Charlie, the contractor, decided to hire illegal aliens to build houses because he could pay them less than American laborers and make more money for the partnership. In addition, he realized that if he used less expensive materials, the partnership could make still more money, so he did so. He realized that by the time the houses started falling apart because they never had the value they were supposed to have, ownership of the house would have changed hands enough times to make it impossible for the new owners to seek redress from the partnership.

When the housing market collapsed, the current owners of many of the homes defaulted on their mortgages because they were unable to pay them or sell the homes. Fanny Mae referred the practices to the prosecutor in the State of Grace who is contemplating two charges against the three partners. The first charge is conspiracy to steal in violation of Grace Statutes 939.31 and 943.20. The second charge is employment of illegal aliens as parties to the crime in violation of Grace Statutes 939.05 and 943.31. You are an assistant district attorney. Your boss tells you to write a memo on whether to issue these charges against the three men. Do as your boss orders, in 750 words or less.
QUESTION 3 (35% of grade)

Every summer a group of street people descend on Capitol City in the State of Grace to panhandle, drink and smoke dope. Most of them live on the street and in parks that dot the city, although some have the wherewithal to rent small apartments and rooms. This loosely knit group hang out together in one local park partying, engaging in casual sex and occasionally stealing from one another. Dave is one of this group who, for reasons no one quite knows, wears a kilt that looks like a dress. He keeps a stash of money, booze and weed in the wooded corner of the park where he sleeps. One night Bob, another street person, was really high and descended on the corner where Dave was sleeping. He stood over Dave with his fist cocked and ordered him to tell him where his stash was. Dave did so and Bob took all the money, wine and weed in it.

As the summer wore on the street scene became increasingly rough with more and more thefts and fights and heavier partying. The thefts and fights seemed invariably to follow upon the heavy partying, when the various street people got high on the increasingly strong dope introduced into the city. Three times over the course of the last month of summer, Bob got drunk and high and threatened Dave, who gave up his stash, which he moved in response to each theft. Dave, fearful of the deteriorating situation at the park, took to carrying a gun which he concealed under his kilt. The situation got so bad that Dave, who had a monthly allowance from his parents, moved out of the park and rented a room. He’d ride his bike down to the park for the day and return home late at night, usually high, sometimes with a girl. One night, as Dave rode along on his bike toward his apartment with a girl, Tammy, riding on the handlebars, Bob stepped out into the street, held up his hand and said “Hey, faggot, off the bike.” In a statement to the police, Tammy said that Bob did not seem high or drunk but clear-eyed. When Bob demanded money from Dave, Dave turned his bike to try to ride away. Bob knocked Tammy off the handlebars and pushed Dave onto the ground. Dave then pointed the gun into the air above his own head and discharged it. Bob rushed him, and grabbed the hand in which Dave held the gun. They wrestled around on the ground until Dave was on top of Bob, when the gun discharged killing Bob with a shot that entered his shoulder. The bullet’s trajectory left it lodged in Bob’s heart. Dave has been charged with First Degree Intentional Homicide in violation of Grace Statute 940.01.

You are a law clerk to the trial judge, who at the trial’s conclusion, asked you to write a memo of 1000 words or less indicating what verdicts he should submit to the jury, assuming all verdicts supported by the evidence are requested. He also asks you what verdict you expect the jury to return.