Concord University School of Law
Practice Essay

SOS -- Start on Skills

Instructions:

_These are the Instructions to take this SOS essay under "test-conditions." You may, however, take the essay any way that works for the group. You may set a 2 hour time-limit; you may set no time limit at all. You may even write the essay together, step-by-step, stopping to review whether IRAC has been properly followed._

This is a timed practice, and you should take no more than one hour to complete this exercise. Set a timer and allow no interruptions. Before you write, be sure you have memorized all of your definitions and rule statements so that you can recite them in the appropriate place. Remember that you cannot demonstrate your best analysis unless you use the IRAC formula. If necessary, review IRAC before you begin to write.

This is closed book and designed to test your ability to recognize legally significant facts, to reproduce on paper the proper rule statements and definitions, and to apply the relevant facts to the elements of the rule in order accurately to predict the legal outcome. You will need these skills to do your best on your final exams as well as on the FYLSE, if you are required to take it.

The best practice is to write an outline or an "issues list" before you begin to write. Under no circumstances should you spend more than 5 or 6 minutes on this overview. Yet, under no circumstances should you ignore it. If you make an issues checklist before you begin, you can go back and check off the issues at the end. On the other hand, if you do not have a checklist, it is too easy to lose your way as your write and totally forget to include an issue you, in fact, actually identified. To lose points through inadvertent omission is a frustrating – and unnecessary – outcome.

Getting Started: Set a timer and write your outline or issues list. Then, write the essay itself. When the timer rings, stop, draw a line across the page – and _keep going_ until completion. Note your Total Time clearly in parentheses for your reviewer. This will become an important diagnostic tool to help you improve your skills.

Finally:

1. Make and keep clean copies of this essay so you can practice rewriting it, especially if you find you cannot complete it in the required hour allotted. Candidly, you cannot practice writing too many essays. First, you will learn to think more rapidly, a real advantage on finals as well as on the FYLSE, if you are required to take it. Second, you will begin to recognize common and recurring fact patterns, another incalculable advantage, especially under time pressure. Certainly, if your time is running well over an hour, you should practice writing the same essay several times as your exams approach – until you can complete it in time.

2. When you receive your assessment back, pay attention to your weakest areas.
Do you need to work on memorizing the Rule Statements? Organizing? Applying the Facts? Stating a conclusion without being inconsistent or unsure? Does the structure of the essay wobble from Rule to Conclusion and back to the Issue? Are the facts analyzed before the Rule Statement if provided? Have you omitted the Rule Statement altogether?

Above all, remember that the tasks are familiar ones to all students everywhere. Hard work pays off. Cramming does not work. There are no short cuts to memorization.

Good luck.
Don arrived home at night and found Vic assaulting Don’s wife. Vic escaped before Don could apprehend him. Convinced that the legal system would never bring Vic to justice, Don spent three months searching for Vic so that he could take care of the matter himself.

Alex, whom Don did not know, had his own reasons for wanting Vic dead. Alex heard of Don’s desire to locate and retaliate against Vic. Hoping that Don would kill Vic, Alex sent Don an anonymous note giving Vic’s location. Don, taking a pistol with him found Vic where the note said he would be. After a heated argument in which Don accused Vic of attempting to rape his wife and Vic denied the accusation, Don shot Vic in the head.

Vic was rushed to a hospital where he was preliminarily diagnosed as "brain dead" and placed on life support systems for three days during which follow-up studies confirmed the permanent cessation of all brain function. A hospital physician then disconnected the life support systems which had kept Vic’s heart and respiratory systems functioning, and Vic was pronounced dead.

Don and Alex were both charged with murder. Evidence of the above facts was admitted at trial. The prosecutor argued that the murder was willful, deliberate, and premeditated and that it was committed during the commission of felonies of assault with a deadly weapon and burglary. Alex was alleged to have aided and abetted Don. The court instructed the jury on aiding and abetting and on premeditated murder, felony murder, burglary, and assault with a deadly weapon, but ruled that there was no evidence to warrant instructions on manslaughter. The jury convicted both Don and Alex of first degree murder. Both have appealed.

1. How should the appellate court rule on Don’s arguments that:
   a. The uncontradicted evidence established that the hospital physician, not Don, killed Vic? Discuss.
   b. The court erred in instructing on murder in the commission of a felony? Discuss.
   c. The court should have instructed on manslaughter? Discuss.

2. How should the appellate court rule on Alex’s arguments that:
a. The evidence is insufficient to support his conviction as an aider and abettor? Discuss

b. The evidence is insufficient to support his conviction of first degree murder even if it does support a finding that he aided and abetted Don? Discuss.