

Preparing for and Taking Final Examinations  
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**FINAL EXAMINATION**

This is a three hour "open book" examination. You are free to consult any written materials of your choice. You may not consult with any other person about the matters contained in the examination nor may you disclose the contents of the examination to any other person while it is in progress.

The examination consists of two questions. **Your answer to each question may be no longer than 4 pages in length.** Exams must either be typed -- double-spaced, with no more than 325 words per page -- or handwritten on the paper provided with no more than one line of text per blank line and with the margins observed. Note that, for typists, this is a **PAGE AND WORD** limitation. **ANY PORTION OF AN ANSWER EXCEEDING THE SPACE LIMITATIONS WILL BE DISREGARDED.**

FOR TYPED EXAMS, A COVER PAGE IS PROVIDED. PUT YOUR EXAM NUMBER AT THE TOP OF THE COVER PAGE NOW, AND SIGN THE ACADEMIC HONESTY STATEMENT WITH YOUR EXAM NUMBER BEFORE HANDING IN THE EXAM. For handwritten exams, an answer packet is provided. Note that two extra pages have been provided for re-writing, if necessary. Discard these pages if they are not used.

In light of the space limitations, responses should be well thought out, carefully organized, and concisely and artfully composed.

## EXAMINATION QUESTIONS

### FACT PATTERN FOR QUESTION ONE

#### Page Limitation: Four Pages

Upon graduation from law school you decided to join the public defender's office in the beautiful State of New Columbia. As a brilliant young lawyer, you moved up quickly and now defend homicide and serious felony cases. This morning, you were assigned your latest case: State v. Martin Clark. Clark has been arrested and faces homicide and other charges as a result of his activities that are connected with the deaths of Arthur Anders and Sam Seed. The case has been fully investigated. As you read the file, you learn the following facts.

For many years Clark has worked as a factory foreman. About six months ago, Clark took a position with Timeout, Inc., a pharmaceutical manufacturer and distributor. Clark's primary responsibility on the floor of the factory was overseeing the shipping of medications in bulk form to pharmacies and doctors' offices throughout the State of New Columbia. As foreman, of course, he did not physically handle any shipments; rather, he supervised the forklift operators, truck drivers and others on the shipping floor. He also signed off on the accuracy of the paperwork for each shipment, certifying contents, quantity, destination, and so forth.

After a couple of weeks, Clark learned more about the company's practices. The main drug manufactured by Timeout is a hypertension medication known as QDT. QDT is designed to be prescribed in cases of acute, potentially life-threatening hypertension. Under FDA guidelines, QDT has a shelf-life of 24 months, after which it must be destroyed. As a service to its customers, Timeout has a policy of "buying back" from them any expired QDT that might be on the customers' shelves at the end of the 24 months.

Clark soon became suspicious that the company was not, in fact, destroying these expired quantities of QDT. His suspicions were based on the fact that, once a month or so, unexplained additional quantities of QDT would show up on the shipping floor. He also knew that the expired QDT was brought into a room and locked up, but he never saw it being destroyed. In addition, he thought he once overheard Sam Seed, the president of Timeout, telling another employee that "re-labeling QDT is safe because its actual shelf-life is 37 to 42 months," though Clark had no idea in what context this statement was made.

Clark worried that someone might get seriously hurt if the company was, as he suspected, recycling expired QDT. Even if Seed was right about its actual shelf life, Clark realized that a recycled bottle could stay on the shelves as long as 48 months. And then, what would prevent the company from recycling it a second time? Clark tried to convince himself that Seed wasn't so nefarious as to allow thousands of bottles of bad QDT to be out on the market. He considered confronting Seed about his suspicions, but, in the end, decided it was none of his business.

In actuality, Clark's suspicions were well founded. Once a month, several trusted employees would come to work in the middle of the night, enter the locked storage room containing the expired QDT, and re-label the bottles and boxes as good for another 24 months. They would then randomly mix this recycled QDT with the boxes of good QDT that were already on the shipping floor for loading into trucks the next morning.<sup>1</sup>

About a month ago, Arthur Anders arrived at the office of his internist, Dr. John Noall, after experiencing severe headaches and intermittent nosebleeds. As part of the examination, Dr. Noall took Anders's blood pressure, which was life-threateningly high. The doctor decided to administer QDT. He obtained a sample of the drug out of the closet and told Anders to swallow three pills – the correct dosage for acute hypertension. Dr. Noall then completed AA's physical examination and sent him home.

It turned out that Anders had been administered twice-recycled QDT, which had lost 95% of its potency. Later that night, while watching his team lose on Monday Night Football, Anders's high blood pressure caused him to have a massive brain hemorrhage, and he died instantly.

Once Anders's autopsy revealed that he had virtually no (effective) QDT in him, the police began investigating. They traced the problem back to the Timeout factory and obtained a search warrant.

Clark has not yet been formally charged. Your first task on the case is to write a memorandum analyzing his potential liability under Section 963 and murder. The State of New Columbia has adopted the Model Penal Code as its criminal law in all pertinent respects except for Section 963.

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<sup>1</sup> According to notes in the file, there is one possible New Columbia statute on point, Section 963 of the New Columbia Criminal Code. Section 963 reads:

“Any person who knowingly places into the stream of commerce any prescription drug that is mislabeled in any material manner shall be guilty of a felony and shall be sentenced up to ten years imprisonment and \$1,000,000 in fines, or both.”

You may assume that federal law is not relevant to your analysis of this case.