PACE UNIVERSITY SCHOOL OF LAW

CRIMINAL LAW
PROFESSOR HUMBACH — December 9, 2020
FINAL EXAMINATION — TIME LIMIT: 4 HOURS

IN TAKING THIS EXAMINATION, YOU ARE REQUIRED TO COMPLY WITH THE SCHOOL OF LAW RULES AND PROCEDURES FOR FINAL EXAMINATIONS. YOU ARE REMINDED TO PLACE YOUR EXAMINATION NUMBER ON EACH EXAMINATION BOOK AND SIGN OUT WITH THE PROCTOR, SUBMITTING TO HIM OR HER YOUR EXAMINATION BOOK(S) AND THE QUESTIONS AT THE CONCLUSION OF THE EXAMINATION.

DO NOT UNDER ANY CIRCUMSTANCES REVEAL YOUR IDENTITY ON YOUR EXAMINATION PAPERS OTHER THAN BY YOUR EXAMINATION NUMBER. ACTIONS BY A STUDENT TO DEFEAT THE ANONYMITY POLICY IS A MATTER OF ACADEMIC DISHONESTY.

LIMITED OPEN-BOOK EXAM: This is a limited open book exam, meaning that you may have and use your copy of the Dressler casebook (with all its normal underlining, highlighting and notations) but you may not bring along or use any other materials. The casebook is allowed so you will have the Model Penal Code, the only statute you will be asked about as such. However, you are, of course, permitted to use any part of your casebook during the exam.

GENERAL INSTRUCTIONS:

This examination consists of 55 multiple-choice questions to be answered using EXAM4. By now you should have downloaded EXAM4 (https://law.pace.edu/academics/registrarbursar/exam-information) and taken a Practice Exam on it.

- Open Exam4 and, following the instructions, fill out the information screens (the "Exam Mode" of this exam is OPEN LAPTOP+NETWORK).
- After you begin the exam (by pushing the "Begin Exam button), be sure you are toggled to the "Multiple Choice" answer screen using the buttons at the top.

Answer each multiple-choice question selecting the *best* answer. Indicate your choice by clicking the letter on the Multiple Choice screen. Confirm your answer and the question number on the left side of the screen. **If you want to delete an answer, follow EXAM4 instructions using the "unlock" button. You should have already experimented with this to familiarize yourself with the process on the Practice Exam.**

When you are finished with the examination (and are sure you're done), push the "End Exam" button at the top of the screen and submit your exam electronically using the screen that comes up next. I also recommend that you **save** a copy of your exam answers to your USB flash drive. When you see the screen that says your submission is successful, exit from Exam4 (button at top of screen).

Unless the context otherwise requires (such as where the question specifically says to apply the Model Penal Code), base your answers on general principles and rules of criminal law found in the case law and statutes of American common law jurisdictions. Do not assume the existence of any facts not set forth in the questions. When there are differences among the states (for example, on the meaning of "premeditated" murder), there should be something in the question that makes clear which approach you should use. If in doubt, use the majority rule or, if you only know one rule, use it. If the Model Penal Code is different from the traditional or "common law" approach, and do not use the MPC rule unless the question calls for it (*e.g.,* "[MPC]").

Facts for questions 1 to 10. Assume for these questions that the jurisdiction has a statute dividing the homicide offenses as follows:

First degree murder – premeditated
Second degree murder – all other murder
Voluntary manslaughter
Involuntary manslaughter
Criminally negligent homicide

Otherwise, the usual common-law definitions apply.

1 Defendant carelessly (and unaware of the risk) set up his backyard charcoal grill so it was a bit unsteady. The grill tipped over spilling fiery hot coals all around. Some on them landed on an open can of lighter fluid, causing an explosion in which V was killed. If the jury finds that Defendant failed to use ordinary care, Defendant would be guilty of:

a. Second-degree murder.

b. Involuntary manslaughter.

c. Criminally negligent homicide.

d. No homicide offense at all.

2 During a bar fight, Defendant accidentally killed V by whacking him with the baseball bat that the bartender kept behind the bar. If the jury finds that Defendant wanted to cause serious bodily injury but did not intend to cause death, Defendant would be guilty of:

a. Second-degree murder.

b. Voluntary manslaughter.

c. Involuntary manslaughter.

d. Criminally negligent homicide.

3 Suppose in the preceding question that the prosecutor tried to charge Defendant with felony murder using the assault on V as the predicate felony. Some courts would have a problem convicting Defendant of felony murder because:

a. Felony murder requires proof that Defendant committed a felony with the intention of causing the death of another person.

b. Felony murder requires proof that Defendant committed a felony with reckless disregard for the risk to human life.

c. Felony murder requires proof that Defendant committed a felony in such a way that causing death was reasonably foreseeable.

d. All homicides include assault and, so, Defendant's felonious assault (the supposed predicate felony) would merge into the homicide.

4 Defendant belongs to a gang that got into a fight with members of a rival gang. The fight occurred on a city street at

7:30 pm on a summer evening, when people were out and about. The evidence shows that Defendant shot several times over the heads of rival gang members with an intent to warn them away but that a bullet from Defendant's gun went astray and killed a bystander. What is the maximum charge that could be supported by reasonable inferences from this evidence?

a. First-degree murder.

b. Second-degree murder.

c. Voluntary manslaughter.

d. Involuntary manslaughter.

e. Criminally negligent homicide.

5 During a robbery of Defendant's jewelry store, the teen-aged robbers cursed and shouted abusively at Defendant, which provoked him to a overpowering rage. As the robbers left the store and ran to their car, Defendant grabbed his gun from under the counter and angrily chased after them. Just as the car was screeching away from the curb, Defendant (furious with emotion) raised his gun and fatally shot one of the robbers through the car window. Defendant looks likely to be guilty of:

a. Second-degree murder.

b. Voluntary manslaughter.

c. Involuntary manslaughter.

d. Criminally negligent homicide.

6 Suppose in the preceding question that Defendant had shot and killed one of the robbers in the store while the robbery was still in progress. The other robbers are charged with felony murder in the death of their accomplice. Their lawyer has made a motion to dismiss the charge on the ground that none of the robbers committed the actual homicidal act but, rather, it was the lawful act of the robbery victim.

a. The motion should be granted if the court follows the agency approach to felony murder (for killings by someone other than a co-felon).

b. The motion should be granted if the court follows the proximate cause approach to felony murder (for killings by someone other than a co-felon).

c. Both of the above.

d. None of the above. The felony murder rule doesn't apply when the person killed one of the co-felons.

For the following question, assume the state does *not* apply the intrinsically dangerous felony doctrine "in the abstract."

7 The evidence shows that Defendant and his friend committed the felony of breaking into a tire shop and stealing a bunch of tires, which they loaded onto Defendant's pickup truck. In his haste to get away from the scene, Defendant

decided not to bother with securing the truck's tailgate, though he was aware of the risk. A few miles on, the back came open and tires poured out, colliding with a nearby car. A passenger in the car was fatally injured. Which of the following charges would *not* be plausibly supported by this evidence?

a. Felony murder.

b. Voluntary manslaughter.

c. Involuntary manslaughter.

d. Criminally negligent homicide.

8 Suppose in the preceding question that the alleged predicate felony was the crime of "breaking and entering with intent to commit a felony that is dangerous to life, limb *or* property." If the state *does* apply the intrinsically dangerous felony doctrine "in the abstract," this crime could serve as the predicate felony for a charge of felony murder:

a. Whether or not defendant committed it in a dangerous way.

b. Only if Defendant committed it in a way that was dangerous to life or limb.

c. Because there is no logical way to commit it *without* causing danger to life and limb.

d. None of the above. This crime could *not* serve as the predicate felony for a charge of felony murder.

9 Defendant is charged in the death a cousin who was slated to testify against Defendant in a civil suit in which Defendant stood to lose a great deal. The evidence shows that the victim and Defendant were seen driving in Defendant's car toward a secluded spot in the desert, that Defendant had taken a gun with him and that the victim was found dead from a bullet about a mile from the main road hidden at the bottom of a deep ravine. Defendant had not reported victim's death. What is the maximum charge that could be supported by reasonable inferences from this evidence?

a. First-degree murder.

b. Second-degree murder.

c. Voluntary manslaughter.

d. Involuntary manslaughter.

e. Criminally negligent homicide.

10 Defendant is charged with second-degree murder in the death of V, who Defendant stabbed with a steak knife at a fancy upscale restaurant. The evidence shows that Defendant approached V's table and politely asked the people there to "please tone it down." V didn't appreciate the request and responded saying that Defendant's problem was obviously his "big ears." This enraged Defendant, whose ears did in fact stick

out a bit. The two shouted back and forth and, when V called Defendant "Elephant Ears," Defendant grabbed up V's steak knife and stabbed V, inflicting the fatal wound. There is also some evidence (disputed) that V shoved Defendant offensively just before the stabbing. Defendant wants to plead provocation as a defense. Under the traditional approach:

a. If the defense is successful, Defendant will be guilty of voluntary manslaughter.

b. It would be crucial to the defense if Defendant can prove that V shoved Defendant offensively just before the stabbing.

c. Both of the above.

d. Evidence that Defendant was known to have a history of anger-management issues would also be helpful to the defense.

e. All of the above.

11 Defendant has been accused of assault and asserts an affirmative defense.

a. Under the Constitution, the prosecution would have the burden of disproving the affirmative defense beyond a reasonable doubt.

b. Under the rule usually applied today, Defendant would have the burden of proof (persuasion) on the affirmative defense.

c. States are constitutionally free to assign the burden of proof on affirmative defenses to either the prosecution or the defense, as they see fit.

d. Both b. and c. above.

Facts for questions 12 to 15. Defendant is accused of murder in the shooting death of V. The death occurred during an alteration in a dark alley behind a neighborhood rec center.

12 When V's body was found, he was clutching a small metallic tin box of chocolates. Defendant wants to plead self-defense arguing that, in the dim light, he mistook the metallic tin box for a gun and shot V out of fear for his life. In order for Defendant to prevail in this defense, the jury will have to be persuaded that:

a. Defendant was actually in imminent peril of death or grievous bodily harm.

b. Defendant honestly believed that the use of deadly force was necessary to protect himself from imminent death or grievous bodily harm.

c. Defendant honestly *and reasonably* believed that the use of deadly force was necessary to protect himself from imminent death or grievous bodily harm.

d. The victim got what was coming to him.

13 Suppose at trial the prosecutor offers evidence tending to show that Defendant was the initial aggressor in the killing behind the rec center. Defendant objects on the ground that the evidence is irrelevant and will only prejudice the jury. Does it legally matter whether Defendant was the initial aggressor or not?

a. No. Even if the jury decides that Defendant was the initial aggressor, his legal right of self-defense would not be affected.

b. Yes. If the jury decides that Defendant was the initial aggressor, Defendant would be held to a higher standard of reasonableness on the use of deadly force.

c. Yes. If the jury decides that Defendant was the initial aggressor, his right to use deadly force in self-defense would be forfeited.

d. No. Even if Defendant was the initial aggressor and he provoked the use of force against himself, he'd still have a legal right to use deadly force for self-protection.

14 Suppose the altercation started when V just walked up to Defendant and punched him several times without provocation. Defendant turned and ran to his car, a block away, got a pistol and returned to the alley behind the rec center. V was still there. Defendant waived the pistol at V and said, tauntingly: "Now what are you going to do, Big Guy?" V picked up a skateboard (a weapon capable of causing death or serious bodily injury) and walked toward Defendant, acting like he was preparing to swing it at Defendant's head. That was when Defendant shot V. For purposes of Defendant's claim of self-defense:

a. Defendant was the initial aggressor.

b. V was the initial aggressor.

c. A court would decide whether Defendant was the initial aggressor based on what V said after Defendant came back with the gun.

d. A court would probably decide that Defendant and V were both the initial aggressor and that each had a right of self-defense against the other.

15 Suppose again that the altercation started when V attacked Defendant without provocation, punching him to the ground. This time assume that Defendant already had a gun with him. When V picked up a skateboard (a weapon capable of causing death or serious bodily injury) and prepared to swing it at Defendant's face, Defendant scrambled to his feet and saw he could safely get away, into the back door of the rec center. But that would be humiliating and Defendant didn't want to let

himself be publicly bested by V. So, instead, of escaping into the rec center, Defendant pulled out his gun and shot V.

a. Defendant had a right to shoot V in self-defense even though he could have safely gotten away (majority rule).

b. Defendant did not have a right to shoot V in self-defense because he could have safely gotten away (majority rule).

c. Both of the above.

d. Defendant had a right to shoot V in self-defense because it was necessary to save himself from humiliation (minority rule).

e. All of the above.

16 Defendant was asleep at home when he heard some scratching sounds on the back door downstairs. He grabbed a shotgun from under the bed, checked to be sure it was loaded, and crept down to the kitchen in the dark. Hiding behind some kitchen chairs, Defendant pointed the gun at the back door. Somebody outside was fiddling with the doorknob. Then, suddenly, the doorknob fell out of the door and rattled across the floor. The door slowly opened. When it was about halfway open, Defendant shot twice at the person standing just outside. Now charged with premeditated murder:

a. Defendant was not entitled to shoot in defense of habitation because the intruder had not yet entered the house.

b. Defendant *was* entitled to shoot in defense of habitation if he reasonably believed it necessary to prevent a forcible intrusion into his home.

c. Defendant was entitled to shoot in defense of habitation if he reasonably believed it necessary to prevent a forcible intrusion to commit a felony.

d. Defendant was entitled to shoot in defense of habitation if he reasonably believed it necessary to prevent a forcible intrusion to commit a violent felony.

17 Which of the following is *not* ordinarily considered an element of the necessity defense?

a. Defendant committed his alleged violation of law in order to prevent a significant evil.

b. Defendant had no adequate alternative to doing what he did.

c. Defendant was being threatened for an unlawful purpose.

d. The harm caused by the defendant’s conduct was not disproportionate to the harm avoided.

e. All of the above are ordinarily considered to be elements of the necessity defense.

18 A neighborhood bully told Defendant: “If you don’t steal me a six-pack of beer from the deli by tomorrow at noon, I’m going to beat the #@%&! out of you.” Genuinely terrified, Defendant tried to comply but he was stopped at the door of the deli. He is now being prosecuted for juvenile delinquency (shoptlifting). Defendant has asserted duress as a defense.

a. The defense is applicable on these facts and Defendant should not be convicted.

b. The defense is not applicable because Defendant was not subjected to an immediate threat of serious bodily injury.

c. The defense is not applicable because duress is not an excuse for shifting one’s own misfortune over to somebody else.

d. The defense is not applicable because there is no evidence that Defendant was acting for the general welfare but only to save his own skin.

19 Defendant borrowed his neighbor’s electric lawn mower without permission, mowed his lawn, and returned it to the neighbor’s garage. The local larceny statute, originally enacted in 1837, makes it a crime to “steal” the property of another. The common-law definition of “steal” in 1837 was “taking and carrying away personal property with intent to permanently deprive the owner of it.” Defendant has been indicted for stealing the lawnmower. Following the traditional rules for interpreting statutes, the court should:

a. Try to determine the legislature’s intent in enacting the statute, considering the meaning of “steal” that the word had at the time the statute was originally enacted.

b. Presumptively apply the common-law meaning of the word “steal” if it had an established common-law meaning at the time statute was originally enacted.
.
c. Both of the above.

d. Use the meaning of the word “steal” that will best advance the court’s own conception of the public good today.

20 At her local supermarket during a paper-towel shortage, Defendant found the paper-towel shelves empty. A few aisles later, he spotted two packets of his favorite brand of towels in somebody else’s cart. Glancing around quickly, Defendant saw nobody and so he grabbed the two packets and put them in his own cart. He was caught via surveillance video. The prosecutor realizes the local larceny statute doesn’t exactly cover these facts (because Defendant intended to pay the supermarket for the towels), but he wants to proceed against Defendant anyway, to provide an example to others. Can he properly do so?

a. Yes, because Defendant intended to permanently deprive the other shopper of the paper towels, which comes very near to the definition of larceny.

b. Yes, because Defendant engaged in knowingly bad behavior and can therefore be convicted of the crime (larceny) that comes nearest to covering what he did.

c. No, but Defendant can be properly convicted of *attempted* larceny because his sneaky and surreptitious actions showed that he knew his conduct was wrong.

d. No, Defendant cannot properly be convicted of a crime if his conduct was not prohibited by any statute.

21 In 2012, while in college, Defendant drove DWI away from a party and got into a collision. A passenger in the other car was killed. Defendant eventually made her way to Mexico, where she assumed a new identity. Six years ago she returned to the U.S., got married and now has two small children. She has been, to all appearances, a model citizen. After her whereabouts were discovered by chance, she has been apprehended and charged with manslaughter.

a. A utilitarian (like Bentham) would say Defendant should not be punished unless the punishment would produce an offsetting social benefit, such as deterrence.

b. A retributivist would say Defendant *should* be punished even if there'd be no social benefit, simply because she deserves it.

c. Both of the above.

d. Utilitarians and retributivists would likely agree there is no rational basis for punishing Defendant at all.

22 Defendant was arrested for burglarizing a home. While out on bail he was arrested again for burglarizing another home. He also has two prior convictions for burglary. The prosecutor says Defendant should be sentenced to substantial jail time "so he won't be able to keep doing this." Which of the traditional purposes of punishment does the prosecutor appear to have in mind?

a. Retribution.

b. Incapacitation.

c. Deterrence

d. Restitution.

e. Rehabilitation.

23 During a fight at school, Defendant hit her classmate on the head with a piece of wood. The prosecutor says Defendant should be sentenced to jail time "because she needs to pay for the serious harm that she's done." Which of the traditional purposes of punishment does the prosecutor appear to have in mind?

a. Incapacitation.

b. Deterrence.

c. Retribution.

d. Rehabilitation.

e. Rectification.

24 While shopping at a local store, Defendant picked up a pair of pliers and stuffed them in his pocket. He was stopped by store security as he tried to leave the store without paying. The prosecutor says that Defendant he should not be let off with probation because he should to be taught a lesson, so he won't try to shoplift again. Which of the traditional purposes of punishment does the prosecutor appear to have in mind?

a. Incapacitation.

b. Rectification.

c. General deterrence.

d. Special (individual) deterrence.

25 Defendant, Vice Mayor of Lorrinville, was overheard promising a contractor a lucrative municipal project if the contractor would "take care of" some repairs to the driveway at Defendant's home. The prosecutor argues that Defendant should receive a substantial prison sentence as a warning to others. Which of the traditional purposes of punishment does the prosecutor appear to have in mind?

a. Rehabilitation.

b. Special (individual) deterrence.

c. General deterrence.

d. Retribution.

e. Incapacitation.

26 Defendant regularly attends high-school football and basketball games. He always arrives early to get in seat in the front row just in front of where the cheerleaders perform. Many parents have been bothered by Defendant's alleged "leering" and also by the fact that he sometimes takes pictures that he posts online. The parents have complained to the prosecutor but, after diligent research, the prosecutor cannot find any statute on point. Under the modern approach:

a. The prosecutor can properly indict Defendant for a common law crime because his conduct offends the morals and standards of decency of the community,

b. Even if Defendant's conduct is not within the wording or intent of the "Peeping Tom" statute, it is close enough to justify a conviction under it.

c. The best solution would be for the prosecutor to have the court to amend the "Peeping Tom" statute so that it covers Defendant's conduct.

d. The prosecutor cannot not properly seek an indictment or try to get a conviction for conduct that is not prohibited by statute.

27 Defendant fell down drunk at the Morris Saloon. He was carried out to the sidewalk by the bartender and several patrons. A few minutes later, as Defendant still lay wasted on the ground, the police came and arrested him for "appearing on a public street while in an intoxicated condition." Following his conviction, Defendant appealed. Under the usually preferred construction of criminal statutes:

a. Defendant would have a strong argument that the statute presupposes a *voluntary* appearance.

b. Defendant would probably lose because he did, in fact, "appear" on a public street while intoxicated.

c. Defendant would probably win because the language of the statute does not mention mens rea.

d. Defendant would probably lose because voluntary intoxication is never a defense.

28 In criminal law, a "voluntary act" means:

a. A bodily movement after at least some conscious pre-reflection.

b. A willed movement or exercise of the will.

c. An act of will, a gesture or even just a spasm, uncoerced by the actions of another.

d. An intentional act.

29 Defendant underwent specialized military training in which he allegedly developed a conditioned response of reacting violently toward people approaching him from behind. Years later, on his way home from the bus stop at night, Defendant assaulted V with his umbrella after V (who was a fast walker) came up suddenly behind Defendant and tried to walk past him. At trial, Defendant wants to present expert testimony concerning "conditioned response" as part of his defense. The evidence should be:

a. Admitted because, on these facts, Defendant may be able to show that the assault was a conditioned response, and not a voluntary act.

b. Excluded because persons who commit violent assaults cannot avoid punishment by claiming they were "unconscious" at the time.

c. Admitted because wartime training for national defense is a favored basis for excusing aggressive conduct.

d. Excluded because “conditioned response” is not a recognized defense.

30 In order to successfully defend himself against the assault charge in the preceding question:

a. It would be enough for Defendant to show that, due to his training, he is subject to having violent conditioned responses in situations like this one.

b. Defendant needs to show more than just that he is subject to having violent conditioned responses in situations similar to this one.

c. Defendant must persuade the jury that V was partially at fault for walking up behind him without warning.

d. Defendant needs only to convince the jury that he was functionally unconscious at the time of the assault.

31 It is said that one of the reasons for the so-called voluntary act requirement is that the law should not punish thoughts, for example, fantasizing about committing a crime.

a. But the law of attempt can come close to punishing thoughts in that it allows convictions based on culpable intentions plus acts that are not crimes in themselves.

b. But the law of conspiracy comes close to punishing thoughts in that it allows convictions based on a mere agreement to commit crime, with no criminal acts at all.

c. Both of the above.

d. None of the above,. A person cannot be convicted of either attempt or conspiracy without proof that he did acts that are socially harmful in themselves

32 Defendant invited a person she’d just met in a bar to come back to her apartment for a nightcap. Her guest went to the bathroom, self-administered some narcotics, and O.D.’d on the floor. Defendant, who was out on probation, feared she might be sent back to prison, so she didn’t want to call the police or an ambulance. Instead, she left her apartment and went to stay the night with a friend. Meanwhile, her guest (who would have survived with prompt medical attention) died on the bathroom floor, Now Defendant has been charged with homicide by omission.

a. Defendant should not be convicted because it does not appear that she had a legal duty to provide help.

b. Defendant is probably guilty because, as a host, she owed her guest a legal duty to provide assistance in an emergency.

c. Defendant is probably guilty because. as a host, she owed her guest a moral duty to provide assistance in an emergency.

d. Both b. and c. above.

33 Defendant hitched a ride with a stranger. As the car traveled along, he heard pounding and moans coming from behind the back seat. The driver acted like he didn't hear these sounds and, because the driver was a little weird, Defendant decided not to ask questions. It was discovered the next day that the driver had locked his 4th-grade son in the car's trunk as punishment for getting in a fight at school. Defendant is being prosecuted for child abuse under a statute that makes it a crime to "intentionally or recklessly cause harm or suffering to a minor." Under the common law rules concerning crimes by omission, should Defendant be convicted?

a. Yes, because his silence was an omission that caused harm and suffering to a minor.

b. Yes, because he violated the moral duty to help a child in need.

c. Both of the above

d. No, because he had no legal duty to act.

34 At a family reunion picnic, Defendant saw 3-year old Mary Kate run off by herself into the woods surrounding the picnic grounds. If Defendant does not say or do anything and Mary Kate comes to harm, Defendant could be held criminally responsible for not preventing the harm if:

a. She is Mary Kate's mother.

b. Mary Kate's mother is paying her to be the child's babysitter during the picnic.

c. Both of the above.

d. Defendant knew that no one else saw Mary Kate run into the woods.

e. All of the above.

35 After a serious accident, Patient entered a vegetative state from which he was virtually certain never to recover. Further medical care would not be beneficial to Patient, and his family has consented to disconnecting the life-support machinery. If the doctor disconnects the life-support and Patient's heart stops beating, would the doctor would be guilty of criminal homicide?

a. No, because doctors are legally authorized to end the lives of their patients when the medical prospects for recovery are extremely poor.

b. No, because removing life-support is considered an "omission," and doctors have no duty to provide treatment to patients who can no longer benefit from it.

c. Both of the above.

d. No, because the courts have held that removing life-support cannot be considered a homicidal "act."

e. All of the above.

36 The law generally allows people to refrain from providing assistance to others who are in need:

a. Except when there is a legal duty to act, such as a duty created by status (relationship), statute, or contract.

b. In part because (it is said) people should be generally free to keep to themselves and mind their own business.

c. Both of the above.

d. Except when the need for assistance is very dire and pressing (e.g., life-threatening) and aid would be easy to provide.

e. All of the above.

37 A lazy beachgoer left his beach chair on the beach over night instead of carrying it back to his house. Shortly after sunset, Defendant saw the chair and believed it was abandoned. In that belief, he took it to his car and drove off. Defendant has now been identified by means of a surveillance camera at the entrance to the beach. Is he guilty of larceny?

a. No, as long as he honestly believed the chair had been abandoned.

b. No, but only if he honestly *and reasonably* believed that the chair didn't belong to anybody.

c. Yes, for the simple reason that he took somebody else's chair. The inner workings of his mind are not relevant.

d. Yes, if he didn't have the owner's actual permission to take it.

38 Suppose Defendant in the preceding question pleaded "mistake of fact" in his defense. The most accurate way to think of this plea is as:

a. An affirmative defense.

b. A negation of an element of the offense of larceny.

c. Both of above.

d. None of the above. "Mistake of law" and "mistake of fact" are generally not permissible defenses in a criminal case.

39 Defendant's car was messed up in a fender-bender. The other driver was blatantly at fault. Already irritated, Defendant got even more annoyed when the other driver taunted him and

said he wouldn't pay a dime. Defendant jumped in his car, threw it in reverse and hit the gas, deliberately trying to back over the other driver. The latter jumped out of the way, but Defendant hit a lamppost, causing it to topple. Now Defendant is charged with violating a statute that prohibits "intentional damage to or destruction of property,"

a. Defendant's wrongful intent to run over the other driver would be transferred to hitting the lamppost, satisfying the mens rea element of the crime charged.

b. The prosecution must prove that Defendant specifically intended to damage or destroy the lamppost.

c. Defendant's conduct was highly culpable and that's normally enough today to satisfy the element of mens rea.

d. Defendant's angry state of mind would satisfy the mens rea requirement on this case.

40 Suppose in the preceding question that Defendant was also charged with attempted assault, and that "assault" is defined as "intentionally causing bodily harm to another." How would the prosecution prove the statutorily prescribed mens rea?

a. The testimony of psychology experts would generally be required to show what was in Defendant's mind at the time that he acted.

b. There is a legal presumption that persons intend the ordinary and natural consequences of their acts.

c. The jury may infer, based on the circumstances, that Defendant intended the ordinary and natural consequences of his acts.

d. When a person does a malevolent act, the intention to cause injury is legally implicit.

41 Snooks paid Defendant $200 to receive a package for him at Defendant's home. Defendant got the package and took to Snooks, as instructed, unaware that he was being videoed by surveillance cameras. He later admitted that he thought it was "highly probable" that the package contained illegal drugs and that he didn't doubt that it did. However, there's no evidence he had actual knowledge of the contents, and nothing shows that he made any effort to either gain or avoid such knowledge. The package turned out to contain illegal drugs. Defendant is charged with "knowing possession of narcotics."

a. Defendant could be deemed to have "knowing" possession under the MPC version of the willful blindness doctrine.

b. Defendant could be deemed to have "knowing" possession under the Federal version of the willful blindness doctrine, as delineated by the Supreme Court.

c. Both of the above.

d. This is not an appropriate case for the willful blindness doctrine because Defendant was being paid by another to receive and turn over the package.

42 Defendant has been indicted under a statute that makes it a crime to "stalk, pursue or follow another person is such a way as to cause alarm or raise reasonable fear and apprehension in such person." The statute says nothing about mens rea and it's not a so-called "public welfare" statute:

a. When criminal statutes do not contain any express requirement of mens rea, courts lean toward the assumption that none was intended.

b. The court may decide to read a requirement of mens rea into the statute even if the statute itself does not expressly provide for one.

c. When statutes prohibit conduct that is either malum in se or similar to common-law crimes, courts are inclined to read a mens rea requirement in the statute.

d. Both b. and c. above.

43 While traveling abroad on vacation, Defendant got a bad cold and went to a pharmacy, which recommended that he take a cold medication called Tablux. He bought a bottle and had it with him when he came through U.S. Customs on his way home. The Tablux was found and Defendant was arrested for smuggling a forbidden substance. The statute sets punishment for "knowing violation" of its import prohibitions (including Tablux). To obtain a conviction, the prosecutor must prove that Defendant:

a. Knew the facts that made his conduct a crime (i.e., that he was carrying Tablux into the country).

b. Knew there was a law that prohibited his conduct (i.e., that importing Tablux was a violation of law).

c. Both of the above.

d. Either knew or recklessly disregarded that his conduct overstepped the boundaries of the law.

44 A statute makes it a crime to "knowingly possess a knife that opens by spring-activation on the push of a button." Defendant, a carpenter, bought a knife at a hardware store to use in his profession. Later, he was stopped by the police, searched and charged under the statute. The state can prove that Defendant knew he had a knife but not that he knew it was spring-activated. Is proof that Defendant knew he had a knife sufficient to convict for "knowingly" possessing a spring-activated knife?

a. Yes, under the U.S. Supreme Court's favored approach to interpreting statutes such as this.

b. No, under the U.S. Supreme Court's favored approach to interpreting statutes such as this.

c. Yes, under the holdings in some lower-court Federal and state cases despite the U.S. Supreme Court's favored approach.

d. Both b. and c. above.

e. None of the above. The U.S. Supreme Court has not stated that it has a favored approach to interpreting statutes such as this.

45 While driving over the speed limit on a curvy road, Defendant carelessly sideswiped a cyclist, knocking him into the ditch. Though not seriously hurt, the cyclist was taken to a hospital where, due to medical errors, he sustained further injuries that resulted in his death.

a. Defendant's conduct could be regarded as the *proximate* cause of the death even if the further injuries were due to a physician's ordinary negligence.

b. Defendant's conduct would be a *but-for* cause of the death even if the treating physician was grossly negligent in causing further injuries.

c. Both the above.

d. Defendant's conduct would be regarded as the *proximate* cause of the death even if the further injuries were due to a physician's gross negligence.

e. All of the above.

46 Assume that Defendant's conduct was a but-for cause of V's death but the death occurred indirectly through a series of intervening events and actions of others. Which of the following would *not* likely be regarded as a superseding cause for purposes of determining proximate causation?

a. An unforeseeable coincidental intervening event.

b. A foreseeable intervening event that occurred in response to Defendant's criminal conduct.

c. An omission to provide crucial aid, which would have saved V's life, by a person who had a legal duty to do so.

d. All of the above would likely be regarded as superseding causes for purposes of determining proximate causation.

e. None of the above would likely be regarded as superseding causes for purposes of determining proximate causation.

47 An unknown person stabbed V in anger outside a social club. The stab wound would have caused V's death in 20 minutes. Seven minutes later, as V lay helpless in the public street, Defendant came around the corner in a car and carelessly ran over V, resulting in instant death. Defendant has been indicted for criminally negligent homicide.

a. Defendant should be acquitted because he was not the real cause of V's death; the unknown person was.

b. Legally, Defendant's conduct was both a but-for cause and the proximate cause of V's death.

c. Defendant's careless conduct looks like a coincidental rather than a responsive cause of V's death but it was arguably foreseeable.

d. Both b. and c. above.

e. Defendant should not be held responsible for V's death because he couldn't help it that V was lying out in the street.

48 In a hit-and-run incident Defendant struck V, a pedestrian, and left him lying in the street, seriously injured but not fatally. A short time later, an ambulance driver came around the corner and carelessly ran over V, resulting in instant death. Defendant could be held criminally responsible for causing the victim's death if the ambulance driver's conduct were deemed to be:

a. A responsive intervening cause of V's death.

b. A foreseeable though coincidental intervening cause of V's death.

c. Both of the above.

d. An unforeseeable, coincidental intervening cause of V's death.

e. All of the above.

49 Defendant owned an unpopular restaurant and he decided to burn it down for the insurance. The evidence shows he bought a gallon of kerosene and took it, along with a armload of old clothing, to the restaurant's basement. He laid everything out so it would be ready to set on fire later that night. He then went back home, Defendant was arrested for attempted arson ("intentional burning of a building") before he could do anything more to complete his plan. If all these facts, including Defendant's intentions, are proved at trial:

a. Defendant could be properly convicted of attempted arson under the general common-law rules concerning attempts.

b. In some states (but not all) there is probably enough evidence here to convict Defendant of attempted arson.

c. Both of the above.

d. Defendant could be properly convicted of attempted arson under the last act doctrine because he did everything necessary except the last act.

e. Defendant could not be properly convicted of attempted arson under the MPC because he did nothing beyond mere preparation to commit a crime.

50 Desperate to get money for Prom Night, Defendant borrowed his dad's realistic looking "cigarette-lighter" gun and set out at dusk to find somebody to rob. He was still looking for a victim when he was accosted by the police as he hid in the shadows holding the novelty gun. Defendant told the police what he'd planned to do, said he was sorry and hoped to be let go. Instead, he was taken into custody and charged with attempted robbery. The court has ordered that his confession to the police be suppressed (inadmissible at trial) because Defendant had not been read his constitutional *Miranda* warning. Would it be proper to convict Defendant of attempted robbery on this evidence?

a. Yes, under the common-law dangerous proximity test because he was dangerously close to committing robbery.

b. No, according to the objectivist approach to attempt because there's no admissible evidence that he ever did anything that, in itself, showed criminal intent.

c. No, according to the subjectivist approach to attempt, because there's no admissible evidence that he ever did anything that is, in itself, illegal or wrong.

d. Both a. and b. above.

51 Suppose in the preceding question that Defendant's confession to the police had *not* been ruled inadmissible as evidence.

a. There would be a pretty strong case for convicting Defendant using the traditional common-law distinction between attempts and mere preparation.

b. There would be a pretty strong case for convicting Defendant under the so-called "substantial step" rule.

c. Both of the above.

d. There still would not be a case for convicting Defendant under any widely accepted test.

52 Under the usual analysis, which of the following (in any) cannot be a crime?

a. Attempted involuntary manslaughter.

b. Attempted voluntary manslaughter.

c. Attempted felony murder.

d. Neither a. nor c. can be a crime, but b. can.

53 Without permission, Defendant sneaked away the key to his ailing grandmother's safe deposit box while she was dozing. He planned to steal the gold coins that she'd once showed him she kept there. When he got to the box, however, it was empty. The contents had already been removed. Would Defendant be guilty of attempted larceny?

a. No (under the traditional rules) because it was impossible in fact to commit the planned offense.

b. No (under the traditional rules) because it is legally impossible to steal from an empty box.

c. Yes, under the Model Penal Code definition of attempt..

d. More than one of the above is correct.

54 Defendant is charged with attempted possession of heroin. The alleged crime occurred when an undercover agent, pretending to be a smuggler, offered to sell Defendant $10,000 worth of the narcotic. The pretend-smuggler brought Defendant a package that contained sugar and not heroin. When Defendant reached to take the package, he was arrested. Would it be proper to convict Defendant as charged?

a. No, because there never was any heroin to possess and it was impossible for Defendant to try to possess a non-existent thing.

b. No, because the undercover agent tricked Defendant, who never would have done what he did if he’d known the package contained sugar.

c. Yes, under the Model Penal Code definition of attempt.

d. No, because the only thing the Defendant ever attempted to do was to possess was a package of sugar.

55 Defendant and a friend were in a convenience store during their school lunch break. The friend told Defendant that he planned steal some beer. Defendant did not say anything. His friend hid 3 cans of beer in his backpack and the two of them exited the store without paying. Defendant is guilty as an accomplice:

a. If he told his friend he’d look out for the store clerk.

b. If he privately decided that he’d look out for the store clerk but didn’t say or indicate to his friend that he'd going to do so.

c. If he just stood by and said nothing to encourage his friend to steal the beer but didn’t try to stop him either.

d. All of the above.