PACE UNIVERSITY SCHOOL OF LAW

CRIMINAL LAW
PROFESSOR HUMBACH December 14, 2021
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.

OPEN-BOOK EXAM: This is an open book exam to be taken via EXAM4 at home at the regularly scheduled time set by the Registrar's office. You may use any written materials or electronic devices you want in taking this exam, but you are not permitted to communicate in any way with any other person.

GENERAL INSTRUCTIONS:
This examination consists of 60 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. Please carefully review and follow the instructions supplied by the Registrar's office for taking the exam on EXAM4. Questions concerning the mechanics of taking the exam should be referred to the Registrar's office.

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

It is strongly recommended that you **save** a copy of your exam answers to your USB flash drive *before* exit from EXAM4. You may be unable to review your exam if you do not.

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. Where we studied important 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, do not use the MPC rule unless the question calls for it (*e.g.*, "[MPC]").

Note: "Both of the above" (and similar locutions) mean that *each one* of the above answers is, by itself, a correct statement.

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1 When Defendant moved out his apartment, he left behind several pet goldfish. The prosecutor charged Defendant under the animal cruelty statute. The prosecutor's problem is a 1946 state supreme court case holding that fish are not "animals" as that word is used in the statute. The prosecutor argues to the trial court that the 1946 interpretation is out of date, pointing to a recent study showing that fish are sentient and can suffer:

a. The trial court is free to interpret the statutory word "animal" to include fish because judges are not bound by other judges' interpretations of statutes.

b. There is a jurisdictional objection to interpreting the statute to protect fish because trial courts do not have jurisdiction to interpret statutes.

c. There is a constitutional objection to interpreting the statute to protect fish if doing so would be an unforeseeable judicial enlargement of the statute.

d. Both b. and c. above.

2 Defendant was indicted under a statute that forbids "selling or supplying alcohol to a person under 21 years of age." The "person under 21" in question was Defendant's unborn child. The child was born with fetal alcohol syndrome. Defendant contends that an unborn child is not a "person" within the meaning of the statute. In deciding how to interpret the statutory word "person," the court should:

a. Try to determine what the Legislature intended in enacting the statute.

b. Use the definition of "person" that the court thinks will best serve the interests of society.

c. Use the definition of "person" that the court thinks will be in the best interest of unborn children.

d. Stick to the dictionary meaning of "person" at the time of the statute's enactment.

e. Apply the dictionary meaning of "person" at the time the case is decided.

3 One important lesson of the *Marrero* (gun-possession) case is that:

a. The "unforeseeable judicial enlargement" principle is a nearly iron-clad constitutional protection from surprise expansions of criminal prohibitions.

b. Courts are strongly inclined as a matter of basic fairness to make sure criminal statutes provide fair warning of what the law does (and does not) punish.

c. A criminal statute will be considered almost per-se void for vagueness in cases where even the judges cannot agree on what it means.

d. None of the above.

4 Defendant was arrested while sitting in his car near a public school. He was hoping to catch a glimpse of his granddaughter after custody of the child had been awarded to his son's ex-wife. He is now being prosecuted under a statute that prohibits "loitering within 150 ft. of a public school without a legitimate purpose." One of his defenses is that the statute is void for vagueness because the words "legitimate purpose" are unconstitutionally indefinite. The chances that this void-for-vagueness defense will succeed are:

a. Pretty good because "void for vagueness" defenses are typically viewed with great favor by the courts.

b. Not good as long as the court can give the statute a limiting or narrowing construction that eliminates the statute's vagueness in its application to these facts.

c. Not good if the court thinks a person of ordinary intelligence would understand that Defendant's purpose was not a "legitimate" one.

d. Both b. and c. above.

e. Very bad because "void for vagueness" is no longer recognized as a defense.

5 If Defendant in the preceding question contends that the statute is unconstitutionally vague, which of the following (if any) would count as recognized arguments in support of that contention?

a. An argument that the statute does not give fair warning to a person of ordinary intelligence (as to what is and is not forbidden).

b. An argument that the statute does not provide a reasonably ascertainable standard of guilt to those charged with enforcing the law.

c. Both of the above.

d. None of the above.

6 Some courts have said that those "who deliberately go perilously close to an area of proscribed conduct should bear the risk of violation." This statement:

a. Is essentially a restatement, in different words, of the rule of lenity.

b. Is more or less the opposite of the idea behind the rule of lenity.

c. Would, if applied, have the effect of enlarging the law's prohibitions at the expense of freedom.

d. Both b. and c. above.

7 To settle a personal grudge, Defendant disseminated truthful but embarrassing personal information about a colleague. The colleague has complained to the prosecutor and

she agrees that Defendant should be punished. She is, however, unable to find a criminal statute that covers his conduct. Under the general rule today,

a. It would be proper to prosecute and punish Defendant's conduct as a common law crime.

b. The prosecutor can probably persuade the court to create a new crime of "disseminating personal information without proper purpose."

c. Defendant may be lawfully prosecuted and punished only for conduct that has previously been prohibited by statute.

d. Defendant can be properly convicted if the prosecutor first persuades the Legislature to adopt a statute that makes Defendant's past conduct a crime.

8 Defendant was sitting with the spectators at a contentious administrative hearing. The crowd started to get unruly and the Presiding Administrator gave a stern lecture on hearing room decorum. Just as the Presiding Administrator was finishing up the lecture, Defendant was stung on the neck by some kind of insect and he emitted a loud "Owww!" Defendant is charged with disrupting an administrative proceeding. A plausible line of defense would be to rely on:

a. The voluntary act requirement.

b. The void-for-vagueness principle.

c. Necessity and duress.

d. Natural law.

9 Driving cross country at night, Defendant pulled over to the roadside in a small village to nap in his car. He was arrested and charged under an "Anti-vagrancy Law" that prohibits "sleeping in a vehicle on a public street." Defendant argues the law is overbroad, pointing out that, among other things, it promotes unsafe behavior (driving while drowsy) and would even apply to passengers who fall asleep in a car being driven by another. Defendant's overbreadth defense has a good chance of succeeding under the so-called rational basis test:

a. Because courts often strike down statutes that irrationally promote unsafe behavior or otherwise are not in the public interest.

b. Because the "Anti-vagrancy Law" irrationally forbids innocent conduct (such as a passenger's dozing off in a car being driven by another).

c. Both of the above.

d. None of the above. Modern courts usually defer to legislative judgments and leave broad discretion to legislatures to decide what conduct to criminalize.

10 Defendant received a blow to the head when his car collided with a light pole. He staggered out of the car bleeding

profusely and was approached by a passerby who wanted to assist. Defendant groaned incoherently and shoved at the passerby, causing her to fall. Defendant has been indicted for assault. The shove would probably *not* be considered a punishable act:

a. If the jury finds that Defendant was not conscious at the time that he shoved the passerby.

b. If the jury finds that Defendant's response to the passerby's approach was a conditioned response.

c. If the jury finds either of the above.

d. If the jury finds that Defendant was seriously and deliriously intoxicated at the time that he shoved the passerby.

e. If the jury finds any one of a., b. or d. above.

11 The so-called voluntary act requirement:

a. Is a constitutional rule that is part of due process.

b. Only exists in states that apply the MPC.

c. Is a common-law rule of interpretation.

d. Makes it unconstitutional to punish harm caused by omissions.

12 Defendant, a ride-share driver, picked up a young mother and child at the airport on a cold winter night. The address the mother asked to go to turned out to be a vacant lot. The mother and child had nowhere else to go so Defendant took them to her own home. At Defendant's home the child got extremely distraught and the mother began to beat him. Defendant was shocked and confused and did nothing to prevent the beating. The child was severely injured. Defendant has been indicted for child abuse on an "omissions" theory. Defendant can be properly convicted:

a. If the court concludes the child wouldn't have been injured if Defendant had taken steps to stop the mother's actions.

b. Because Defendant had a duty to the child based on the child's status as a guest in her home.

c. Because Defendant had a duty to the child based on the mother's status as a guest in her home.

d. None of the above. It does not appear on these facts that Defendant can be properly convicted.

13 Driving down a lonely and icy road late at night, Defendant saw the car ahead of her slide down an embankment. As she passed by the car, Defendant observed it was stuck in the snow and the wheels were spinning. Defendant thought about stopping to check if the driver needed help but it was late and Defendant wanted to get home. So she didn't stop. The next morning police found the driver frozen to death in the car.

a. Due to the weather conditions, Defendant probably had a moral duty to help and, if so, she would be guilty of homicide for violating that duty.

b. Because of the weather conditions, Defendant had a *legal* duty to help and, if so, she would be guilty of homicide for violating that duty.

c. Both of the above.

d. There appears to be no basis on these facts for holding Defendant guilty of homicide.

14 A patient was brought to a hospital with serious injuries. He is currently on life support. Removal of the life support equipment would probably lead to the patient's death in a short time. According to the case we read in class, the treating physicians may lawfully remove the life support equipment:

a. If they determine that the patient is in a vegetative state.

b. If they determine that further medical treatment would have no reasonable chance provide benefit to the patient even though he is not brain dead.

c. If the patient, though not brain dead, has been unconscious for more than two weeks.

d. As long as the Patient's family is in agreement.

e. None of the above. It would be unlawful for the treating physicians to remove the life support equipment

15 Same facts as the preceding question. If the treating physicians remove the life support equipment, then (according to the case we read in class):

a. Their conduct would probably be deemed to be murder.

b. Their conduct should be legally analyzed as an omission, not an act.

c. Their conduct should be legally analyzed as an act, not an omission.

d. Their conduct should be legally analyzed as justified euthanasia.

16 Same facts as the preceding question except it was not the treating physicians who removed the life support equipment. Instead, the equipment was removed by the patient's nephew, who wanted to terminate the patient's misery. Under the more modern approach:

a. The nephew's conduct would probably be legally analyzed as an omission rather than an act.

b. The nephew's conduct would probably be treated murder unless the patient was already brain dead at the time the nephew removed the equipment.

c. The nephew's conduct would probably be legally analyzed as justified euthanasia because he was a blood relative of the patient.

d. If the nephew's conduct stopped the patient's heart, it would be punishable as murder even if the patient was brain dead.

17 While hiking on private property Defendant picked up some antique nails that he found lying around an old burned-out cabin. He was indicted under a statute that codified the common-law definition of larceny. In his defense, Defendant asserts that he honestly believed the nails had been legally abandoned. Defendant should be found *not* guilty:

a. As long as Defendant honestly believed that the nails had been legally abandoned.

b. As long as Defendant honestly *and reasonably* believed that the nails had been legally abandoned.

c. Only if Defendant honestly *and correctly* believed that the nails had been legally abandoned.

d. None of the above. As long as Defendant knew the nails were not his, he committed larceny by taking them.

18 Defendant got in her car to go pick up a friend at the train station. When the car didn't start, Defendant recalled that her neighbor usually left a key to his car hanging in his garage. Defendant knocked on the neighbor's door but, when there was no answer, Defendant just took the neighbor's car without asking. Before she got back (the car unharmed), the neighbor noticed the car was missing and reported it stolen. Under the MPC definition of larceny, Defendant would probably:

a. Be guilty of larceny of the car because she took it and drove it away without permission.

b. Not be guilty of larceny of the car if she took it intending to return it a short time later and in good condition.

c. Be guilty of larceny of the car because there was no evidence that the neighbor ever intended to legally abandon it or permit her to take it.

d. Not be guilty of larceny of the car as long as she returned it with a full tank of gas.

e. Not be guilty of larceny of the car under the doctrine of "necessity."

19 Defendant was convicted of driving 57 mph in a 55-mph zone. The applicable statute makes it a misdemeanor to "operate a motor vehicle in excess of the posted speed limit."

The crime that Defendant was convicted of would best be classified as:

a. A result crime.

b. A conduct crime.

c. Neither a result crime nor a conduct crime.

d. Malum in se.

20 As a precaution against bedbugs, Defendant sprayed down his hotel bed with rubbing alcohol. The alcohol somehow caught fire. The ensuing blaze caused major damage to the room. Defendant has been indicted under the local arson statute which prohibits "maliciously burning a dwelling, hostel, hotel or other place of human habitation or abode." Under the usual interpretation of statutory mens rea requirements, the court would probably hold that the statute requires the prosecutor to prove that:

a. Defendant was motivated by feelings of malice toward the hotel owner or management.

b. Defendant acted with a generally wicked, evil or blameworthy state of mind.

c. Defendant intentionally caused the fire damage to the hotel room.

d. Defendant intentionally or recklessly caused the fire damage to the hotel room.

21 Suppose in the preceding question the prosecutor can prove that Defendant caused the fire but cannot prove that he did so intentionally. As far as mens rea is concerned (assuming the court applies the "elemental" conception), Defendant can be properly convicted:

a. If the jury finds that Defendant acted recklessly in causing the fire.

b. If the jury finds that that Defendant foresaw the substantial risk of fire and took the risk anyway.

c. If the jury finds either of the above.

d. If the jury finds that Defendant reasonably should have foreseen the risk of fire.

e. If the jury finds any one of a., b. or d. above.

22 Defendant borrowed a classmate's car to do some errands. The police stopped Defendant for a taillight violation and found a packet of meth under the front seat. Defendant is charged under a statute that forbids "knowingly … transporting a controlled substance." As far as men rea is concerned, Defendant can be properly convicted (MPC):

a. If the jury finds that Defendant actually knew there was meth in the car.

b. If the jury finds that Defendant was aware of a high probability of meth in the car and that he didn't actually believe otherwise.

c. If the jury finds either a. or b. above.

d. As long as the jury finds that Defendant either knew or reasonably should have known that there was meth in the car.

23 Defendant deliberately set fire to a house he owned because he wanted to collect the insurance money. He knew there was a risk that somebody might be in the house, but he was pretty sure there was not. In fact, V was in the house and succumbed in the blaze. Defendant would be guilty of:

a. Intentionally burning the house and intentionally causing the death of V.

b. Intentionally burning the house and recklessly causing the death of V.

c. Recklessly burning the house and recklessly causing the death of V.

d. Intentionally burning the house and recklessly causing the death of V.

24 Angry at his neighbor, Defendant drove toward the neighbor at high speed and almost hit him. Fortunately, no one was hurt in the incident, but Defendant was charged with "operating a motor vehicle in a wanton and irresponsible manner with intent to cause death or grievous bodily harm." In order to prove the element of intent:

a. The prosecutor needs to get psychiatric evidence to show what was in Defendant's mind.

b. The prosecutor can rely on a legal presumption that persons intend the natural and probable consequences of their acts.

c. The prosecutor can show proof of Defendant's actions and the surrounding circumstances and urge the jury infer his intent from these facts.

d. The prosecutor must get Defendant to confess what his intention was.

25 Skiing downhill at high speed, Defendant flew over a big bump and ran into V, who was standing out of sight just below. V was badly hurt. Defendant was indicted under a statute that makes it a crime to "cause serious bodily injury to another." The statute does not mention mens rea. Under the usual (and MPC) approach to interpreting such a statute with respect to mens rea, Defendant could properly be convicted under this statute:

a. If the jury finds that he acted recklessly in causing V's injuries.

b. If the jury finds that he acted with criminal negligence in causing V's injuries.

c. If the jury finds either of the above.

d. Only if the jury finds that he intentionally or knowingly caused V's injuries.

26 Defendant was showing off his newly-acquired karate skills. Claiming he could kick "right up to a window without touching it," he forcefully kicked several times at store-front windows. His first two attempts went fine but, on the third, he misestimated and shattered the glass. He has been indicted under a statute that forbids "reckless destruction of property." The prosecution can establish the mens rea needed to support a conviction:

a. By persuading the jury that Defendant was aware of the risk that he would misestimate and shatter the window.

b. By persuading the jury that Defendant *should have been* aware of the risk that he would misestimate and shatter the window.

c. By persuading the jury of either of the above.

d. None of the above. The prosecution must persuade the jury that Defendant knew it was practically certain that he would misestimate and shatter the window.

27 Just for fun, Defendant ripped a soap dispenser off the wall of a restroom in his college's student activity center. He took it back to his dorm room. He was charged under a statute that prohibits "stealing or knowingly converting property belonging to any college or university in the state." The statute does not express any mens rea requirement for "stealing." In deciding whether Defendant can properly be convicted of stealing under this statute, the court should consider that:

a. Mens rea requirements are generally favored, especially in the case of crimes (such as larceny) that carried mens rea requirements at common law.

b. Implied mens rea requirements are generally *dis*favored and courts do not read them into statutes when the legislature hasn't provided for them expressly.

c. Mens rea requirements are not especially disfavored, but courts do not read them into statutes when the legislature hasn't provided for them expressly.

d. It would exceed the court's judicial function for it to add a mens rea requirement into a statute when the legislature did not put it there explicitly.

28 Defendant is a landlord. He did not provide adequate lighting in the public areas of his building and he's been charged under the Housing Code. Defendant claims he didn't know the light bulbs were not working properly. There is nothing in the Housing Code about mens rea. If the court decides that the Housing Code is a public welfare statute:

a. Defendant can probably be convicted for violating the Housing Code without proof of mens rea.

b. Conduct violating the Housing Code would be considered *mala prohibita*.

c. Defendant's failures to comply with the Housing Code would probably be considered strict liability offenses.

d. All of the above.

29 Defendant, age 15, is charged under a statute that forbids "sexual relations with a person who is under age 16." Defendant admits to sexual relations with his girlfriend, also age 15, but he says he honestly believed she was 16 at the time.

a. Defendant cannot properly be convicted under this statute if he can prove he honestly believed that his girlfriend was 16 (majority rule).

b. Because Defendant's conduct was morally wrong, some would say that he acted with culpability-type mens rea under the "moral wrong" doctrine.

c. It would be proper to convict Defendant under this statute only if the prison sentence is nominal (majority rule).

d. None of the above.

30 Defendant bought a used car. A few days later he received a ticket under a "public welfare" traffic law that forbids driving with tinted windows that block more than 30% of the light. It is probably a good defense that:

a. Defendant had no idea that the car's windows blocked more than 30% of the light.

b. Defendant had not noticed that the car's windows were tinted at all.

c. Defendant did not know there was a law on tinted windows or that it established 30% as the maximum allowed.

d. The used car dealer had tinted the windows without telling Defendant.

e. None of the above.

31 Defendant was arrested for possessing a push-button folding knife, He was charged under a statute that prohibits "knowingly possessing a folding knife that opens by the push of a button." To support a conviction under the MPC approach, the state must prove that:

a. Defendant knew he possessed a knife but not that he knew it opened by the push of a button.

b. Defendant knew he possessed a knife *and* that he knew it opened by the push of a button.

c. Defendant knew he possessed a knife and that he should have known it opened by the push of a button.

d. Both b. and c. above.

32 Defendant is on trial for vehicular homicide. The evidence is that he ran down a pedestrian who was crossing the street. To support a conviction, the prosecution must prove (among other things) that:

a. Defendant's conduct was the sole but-for cause of death.

b. Defendant's conduct was among the but-for causes of death.

c. There were no intervening causes in the chain of causation.

d. The pedestrian's conduct was not a but-for cause of the accident.

e. More than one of the above is correct.

33 Defendant is on trial for vehicular homicide. Testimony shows that he recklessly ran over a person who was lying in the street after being wounded in a knife fight. A medical expert called by the state testified that she could not say whether the knife wound would have been fatal in itself. It was her opinion, however, that Defendant's conduct *could have* accelerated the victim's death. Defendant can be properly convicted of vehicular homicide:

a. On this testimony alone.

b. If there's additional medical testimony that Defendant's conduct had definitely accelerated the victim's death.

c. If there's additional medical testimony that the knife wound *combined with* Defendant's conduct caused death (though neither alone was enough).

d. Both b. and c. above.

e. Only if there's additional medical testimony that the knife wound was not a contributing cause of the victim's death.

34 Defendant hit V with a bludgeon inflicting a wound that would have caused V's death in about 30 minutes. Moments later, a police officer tried to apprehend Defendant for the attack and, in the process, accidentally shot V, causing V to die instantly.

a. Defendant's conduct would not be considered the cause of V's death.

b. Defendant's conduct would be considered a but-for cause of V's death.

c. Defendant's conduct would be considered the sole cause of V's death.

d. The police officer's conduct would be considered the sole cause of V's death.

35 Late one night Defendant stopped at a traffic light. Another car was already waiting at the light. The other driver yelled to Defendant "Wanna drag?" Defendant nodded and gunned his engine. When light changed, both drivers took off as fast as they could. A few hundred yards down the road, the other driver lost control at high speed. He smashed fatally into a wall. Defendant is charged with criminally negligent homicide. He should be acquitted because:

a. The other driver killed himself by losing control of his car.

b. The other driver initiated drag race by challenging the Defendant to race.

c. Both of the above.

d. None of the above. Defendant could probably be convicted as charged.

36 During a wilderness trip Defendant's reckless conduct put V in a very precarious situation. The direct cause of V's death was, however, a rockslide triggered by a bungled rescue effort of others on the trip. Defendant's conduct could be considered the proximate cause of V's death if the others' rescue efforts (constituting the direct cause of death) were:

a. Foreseeable as a consequence or result of Defendant's reckless conduct.

b. Directly responsive to Defendant's reckless conduct.

c. Both of the above.

d. None of the above. Defendant's conduct could not be considered the proximate cause of the death if the acts of others were the direct cause.

37 Defendant is a 14-year high-school student. She has just been convicted of stealing cosmetics from a drugstore. The prosecutor argues that Defendant should be sentenced to serve substantial time in a juvenile facility "to set an example for others so they won't be tempted in the future." The rationale for punishment that the prosecutor appears to have in mind is:

a. Special deterrence.

b. General deterrence.

c. Incapacitation.

d. Retribution.

38 Defendant noticed a small dog inside a locked car. He interpreted the dog's yipping as a call for help. Defendant broke one of the car's windows to "save the life" of the dog (which belonged to the owner of the car). It turns out the dog was in no actual danger. Defendant was charged with "willful destruction of property." The public defender argues that Defendant does not deserve to be punished because his motives were praiseworthy. The rationale for punishment that the public defender appears to have in mind is:

a. Retribution.

b. Rehabilitation

c. Restitution.

d. Deterrence.

39 In reviewing Defendant's sentence on appeal, one of the appellate judges, Judge Horth, wrote that Defendant should receive a long prison term to protect the public from his demonstrated dangerous propensities. Judge Watkins countered that the 5-year sentence imposed by the trial court was enough to teach Defendant a lesson so he wouldn't repeat his offense later on. The rationales for punishment that the judges appear to have in mind are:

a. Retribution in the case of Judge Horth, and rehabilitation in the case of Judge Watkins.

b. Incapacitation in the case of Judge Horth, and general deterrence in the case of Judge Watkins.

c. Incapacitation in the of Judge Horth, and special deterrence in the case of Judge Watkins.

d. Retribution in the case of both judges.

40 In the preceding question, based on the judges' stated reasons:

a. Both judges appear to have utilitarian rationales for punishment in mind.

b. Judge Horth appears to have utilitarian rationales in mind while Judge Watkins is thinking of retribution.

c. Judge Horth appears to be thinking of retribution while Judge Watkins has utilitarian justifications in mind.

d. Both judges appear to have retributive justifications for punishment in mind.

41 Defendant is charged in the death of a co-worker suspected of making advances toward Defendant's girlfriend. To support a conviction for murder under the common law rule, the prosecution must show that Defendant killed:

a. With malice aforethought

b. With premeditation.

c. Both of the above (they are both the same thing).

d. After ample time for reflection.

e. All of the above.

42 In a rush to get to a dinner party, Defendant tried to pass in a no-pass zone. She collided with an on-coming car. A person in the on-coming car is now on life support. The doctors want to harvest her vital organs for transplant. Under the modern approach to defining death, the doctors can lawfully remove victim's organs:

a. Once the victim's heartbeat and breathing can be maintained only with artificial life support.

b. Once the victim is "brain dead."

c. Once the victim enters a sustained vegetative state.

d. Once any one of the above occurs.

43 Defendant was being held at a pre-trial detention facility. He was constantly bullied by his cellmate who teased him about his mannerisms and goaded him to "man up." During a moment of particularly intense verbal harassment, Defendant's anger suddenly boiled over and he stabbed the cellmate fatally with a makeshift blade. To support a conviction for first-degree premeditated murder:

a. It would be enough in some states for the prosecutor to persuade the jury that Defendant caused death with a specific intent to kill.

b. The prosecutor would be required in some states to persuade the jury that Defendant had sufficient time for prior consideration and reflection before he stabbed.

c. Both of the above.

d. None of the above. All the prosecutor ever has to do is persuade the jury that Defendant acted with malice aforethought.

44 Same facts as the preceding question. In a majority of states, Defendant could not get the charge reduced from murder to voluntary manslaughter because:

a. The provoking conduct consisted of mere words.

b. Defendant brought the problem on himself by getting himself arrested and put in jail.

c. Defendant's response to the provocation was not proportionate.

d. None of the above. Defendant probably *could* get the charge reduced from murder to voluntary manslaughter

45 Suppose in the preceding question that Defendant wants to assert an "extreme emotional disturbance" (EED) defense modeled on the MPC.

a. If the court accepts that the EED defense applies, Defendant would be completely exonerated from homicide charges in the death of his cellmate.

b. The EED defense would only to apply if there was a reasonable explanation or excuse for Defendant's actions in response to the teasing and goading.

c. The EED defense would be inapplicable if there was a substantial "cooling off" period before Defendant killed in response to the victim's words.

d. The EED defense would not be available because Defendant's fury was set off by mere words.

46 Defendant and his friends were playing with a powerful hunting bow that one of them had gotten for his birthday. Defendant said he could split an apple balanced on V's head. The others scoffed and bet he could not. The attempt failed, unfortunately, and the arrow fatally injured V. The state does not accept the felony-murder doctrine. Under the more modern conception of recklessness, a conviction for non-intentional murder:

a. Could be based on proof that Defendant's conduct involved a very high risk of death, even if Defendant was not actually aware of that risk.

b. Could be based on proof that Defendant's behavior involved such a high risk of death that Defendant must be deemed to have known the risk.

c. Would require proof that, when Defendant shot the arrow, he was aware of and disregarded the great risk of death.

d. Would require proof that Defendant had a psychopathic indifference to causing death, quite apart from whether he was aware of the risk.

e. None of the above. There's no such thing as non-intentional murder other than felony murder.

47 Angry at a referee's call at a football game, Defendant fired five shots randomly in the direction of the seats on the other side of the stadium, killing one of the people seated there. The most appropriate charge on these facts would be:

a. Intentional murder.

b. Malignant or abandoned heart murder.

c. Murder based on intent to cause grievous bodily harm.

d. These facts would not support any kind of murder charge at all—only manslaughter or criminally negligent homicide.

48 Defendant was cleaning a gun in his kitchen when it went off accidentally, causing the death of a person in a neighboring house. Due to a prior conviction, it was a felony for Defendant to possess the gun. Can Defendant be properly convicted of felony murder under the majority rule?

a. No, because the death was accidental and unintended.

b. No, if Defendant legitimately needed the gun for self-defense.

c. Yes, if the court considers Defendant's illegal possession of the gun to constitute an inherently dangerous felony.

d. Yes, because murder is a felony.

49 Suppose in the preceding question that the gun went off accidentally but just missed the person in the neighboring house, and the shot didn't kill or hurt anybody.

a. Defendant could be properly convicted of attempted felony murder.

b. Defendant could be properly convicted of attempted involuntary manslaughter.

c. Both of the above.

d. None of the above.

50 Defendant was arrested while transporting a stolen car to a certain address in a nearby town. He claimed that he was acting under duress, alleging threats to kill him and his family if he didn't do as he was told. The prosecution hotly contests Defendant's evidence on the issue of duress. With respect to the affirmative defense of duress, the judge should charge the jury that:

a. The prosecution has the burden of proof (traditional common law rule).

b. The prosecution has the burden of proof (under the rule now generally applied in most states).

c. Both of the above.

d. Neither the prosecution nor the defense has the burden of proof; the jury should simply decide if duress was a factor (majority rule).

51 Defendant got into a violent argument with V at work. After Defendant called V a meathead, V slashed at Defendant with a weed cutter, but missed. Defendant then fatally struck V's head with a crowbar. When Defendant struck V, he reasonably believed V was about the slash again and would inflict a potentially deadly wound if Defendant didn't hit him with the crowbar. Defendant is on trial for homicide.

a. A jury could properly find that Defendant had a right to self-defense to do as he did on these facts.

b. Defendant probably did not have a right of self-defense on these facts because he would be considered the initial aggressor.

c. Defendant probably did not have a right of self-defense on these facts even though V would be considered the initial aggressor.

d. In most states, Defendant would have had a duty to retreat, if he could, when he saw that V had a weapon.

52 In the preceding question, Defendant would *not* be entitled to acquittal based on self-defense if:

a. Defendant struck V with the crowbar intending to cause death.

b. Defendant struck V with the crowbar knowing there was a high probability of causing death.

c. Defendant struck V with the crowbar while evincing total indifference to whether the blow would cause V's death.

d. The jury finds (based on possible additional evidence) that Defendant was the initial aggressor.

e. All of the above.

53 A robber approached Defendant on the street at night. He pressed a knife against Defendant's side and demanded Defendant's wallet. Reaching toward a pocket, Defendant replied: "Sure, Bud, you need this more than I do. Here..." Whereupon Defendant pulled a gun from his pocket and pointed it at the robber. The robber dropped the knife, said "Never mind" and turned to run. Defendant shot him as he departed. The state's law of self-defense law has no special provision for robbery. Defendant is indicted on homicide charges:

a. He should be acquitted based on the law of self-defense.

b. Defendant appears to be guilty of murder.

c. The robber would be considered the initial aggressor even after his attempt to retreat.

d. The case would be treated as one of mutual combat in which neither party would be considered the initial aggressor.

54 In the presence of several witnesses, V threatened to kill Defendant, a drug competitor. V showed the witnesses the ornate handgun that he said he was going to use. Independently and unaware of V's threats or plans, Defendant decided to kill V. Defendant ambushed V on a lonely street near the latter's home. As V fell dying from Defendant's bullet, V pulled out the ornate gun. The gun was still in V's hand when police

found him. Defendant has been indicted for murder and claims self-defense. The witnesses will truthfully testify as to V's threats and that V said he'd use the ornate gun to carry them out.

a. Defendant is legally entitled to claim self-defense and appears to have evidence available that could support such a claim.

b. Defendant is *not* legally entitled to claim self-defense but appears to have evidence available that could support such a claim.

c. Defendant is *not* legally entitled to claim self-defense and does not appear to have evidence available that could support such a claim.

d. Defendant is legally entitled to claim self-defense but does not appear to have evidence available that could support such a claim.

55 After consuming more than a six-pack of beer, Defendant drove at high speed on the wrong side of a divided highway, just for thrills. He avoided oncoming traffic for a couple of miles and dodged numerous cars. Finally, Defendant managed to get himself back on the correct side of the highway. He was almost immediately pulled over by a deputy sheriff and booked for attempted murder. Defendant's best argument in his own defense is:

a. He did not have specific intent to kill.

b. If it hadn't been for the beers, he'd never have driven on the wrong side of the highway.

c. He didn't cause any crashes, so no harm was done.

d. None of the above. Defendant has no valid argument against a charge of attempted murder.

56 Defendant discovered that his girlfriend was exchanging sexually explicit texts with V, an old fishing buddy. Defendant invited V on an overnight fishing trip to Lake Farewell and packed a loaded pistol for the trip. On the way to the lake, during a traffic stop, police found the pistol in the trunk and took Defendant into custody. The prosecutor has evidence that Defendant recently said he was going to kill V on the trip and has charged him with attempted murder. Based on the above:

a. A court following the traditional common law of attempt would probably find there isn't enough to show the proximity and present intent for attempted murder.

b. A court using the MPC approach to attempt would probably conclude that there *is* enough to show the substantial step required for attempted murder.

c. Both of the above.

d. There is not enough to show attempted murder under either the common law or MPC because Defendant never actually tried to kill V.

57 Defendant, a high school English teacher, had sexual relations with a boy in her class. Based on school records, she honestly and reasonably believed that the boy was 15. But the records contained a typo and the boy was in fact 16. The statute defines statutory rape as "sexual relations with person who is not yet 16 years of age."

a. Defendant looks to be guilty of statutory rape under the majority rule.

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b. There is a plausible argument that Defendant is guilty of attempted statutory rape according to the MPC version of attempt.

c. Defendant cannot be guilty of attempted statutory rape under the MPC version of attempt because statutory rape was legally impossible under these facts.

d. More than one of the above.

58 As Perpetrator was walking through a parking lot with two friends, he saw an expensive watch on the dash of a locked car. Perpetrator said: "I'm going to break into that car and steal that watch." One of his friends, Defendant-1, said: "I'll keep a look out for cops." But no cops came and Defendant-1 gave no warnings. The other friend, Defendant-2, said nothing but also decided to act as lookout (as he later admitted). He, too, never saw anybody and didn't need to give a warning. All three were later arrested for the break-in and theft based on security camera recordings. Who can be held guilty as accomplices?

a. Both Defendant-1 and Defendant-2.

b. Defendant-1, but not Defendant-2.

c. Defendant-2, but not Defendant-1.

d. Neither Defendant-1 nor Defendant-2.

59 Suppose again that Perpetrator, walking through a parking lot with two friends, said: "I'm going to break into that car and steal that watch." As Perpetrator picked up a rock to smash the window, one of his friends, Defendant-1, picked up a different rock and said: "Here, try this one," which Perpetrator did (though first rock would have worked just fine). The other friend, Defendant-2, was opposed to the whole idea but said and did nothing until he noticed somebody coming and spontaneously muttered "Oh no!" Perpetrator heard him, saw the person coming and all three ran from the scene. Who can be held guilty as accomplices in the attempted theft?

a. Both Defendant-1 and Defendant-2.

b. Defendant-1, but not Defendant-2.

c. Defendant-2, but not Defendant-1.

d. Neither Defendant-1 nor Defendant-2.

60 Perpetrator got a hold of his uncle's gun and showed to his friend, Defendant, saying: "I'm going to go stick up the liquor

store and get some money for Saturday night. You back me up." Defendant said okay but added: "Promise you're not going to shoot anybody." Perpetrator promised. During the robbery, the store clerk pulled out a gun and Perpetrator shot first, badly wounding the clerk (an assault). Defendant looked on in shock. Under the "natural and probable consequences" rule:

a. Both Defendant and Perpetrator would be guilty of attempted felony murder.

b. Both Defendant and Perpetrator would be entitled to claim self-defense since the clerk pulled a gun first.

c. Defendant would be guilty of robbery but not assault.

d. Defendant would be guilty of both robbery and assault.

<End of examination>