

PACE UNIVERSITY SCHOOL OF LAW
Revised (corrected) version!!

CRIMINAL LAW
PROFESSOR HUMBACH
FINAL EXAMINATION

May 9, 2012
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 62 multiple choice questions. Answer the multiple-choice questions (if applicable) on the answer sheet provided.

- Write your **examination number** on the “name” line. *Write it NOW.*
- Mark "A" in the “Test Form” box on the right side of the answer sheet. *Mark it NOW.*
- Also write your examination number in the boxes where it says "I.D. Number" on the right side. Use **only** the first 4 columns and *do not skip columns*. Then carefully mark your exam number in the vertically striped area below. You should mark only one number in each of the first four columns.

Answer each question selecting the *best* answer. Mark your choice on the answer sheet with the special pencil provided. *Select only one answer per question.* **If you change an answer, be sure to fully erase your original answer** or the question may be marked *wrong*. You may lose points if you do not mark **darkly** enough or if you write at the top, sides, etc. of the answer sheet.

When you complete the examination, turn in the answer sheet together with this question booklet.

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. In those situations where 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]”).

1 Allison is charged with larceny for shoplifting a pair of earrings. Although she faces up to one year in jail, the prosecutor is offering her a deal: If Allison pleads guilty, he'll recommend that she be let off on probation (no jail time). Allison insists that she's innocent, but she wants to "get this over with" and is considering the plea deal.

- a. She should take the deal while she can since, by avoiding jail time, she can put this whole bad episode behind her.
- b. As her attorney, you should focus on helping Allison avoid going to jail as that is the only real danger that she faces in this situation.
- c. If Allison pleads guilty to shoplifting, she risks later collateral consequences that could seriously disrupt her life.
- d. There may be some so-called "collateral consequences" if Allison pleads guilty, but these rarely have much practical impact in most cases.

2 For the past two years, Warren has attended local high school football games where he takes pictures of the cheerleaders using a high-powered telephoto lens. This activity has led to concern among the girls' parents. Warren was indicted under the child pornography statutes but a judge dismissed an indictment. The prosecutor has now obtained an indictment against Warren for "causing emotional distress by invasion of privacy." The state has no statute creating such an offense, and the prosecutor says it is a new "common law offense."

- a. Common law crimes have a long history in our legal system, and courts often permit indictments for common law crimes when, as in Warren's case, people do harm but there is no statute in point.

- b. Though common law crimes have a long history in our legal system, most courts would not permit Warren to be prosecuted without a statute that forbids his alleged conduct.

- c. Whether or not there is a statute or law that prohibits Warren's conduct, it would be indictable as long as it has allegedly caused substantial harm to others

- d. A court that rigorously adheres to the principle of "legality" would probably be more inclined to permit Warren's actions to be indicted and prosecuted as common law crimes.

3 Timothy was charged under a statute that prohibits "standing or remaining near a public school without a proper purpose." The statute was enacted in order to deal with the problem of drug dealers hanging out on sidewalks in front of public schools and selling drugs to children on their way to and from classes. The statute should be held void for vagueness if a court finds that:

- a. Its wording would not give a person of common intelligence fair notice of what is and is not prohibited.

- b. Its wording would not give sufficiently definite guidance to persons in law enforcement.

- c. Both of the above.

- d. None of the above. There is nothing is seriously "vague" about this statute.

4 In the preceding question, Timothy’s lawyer also argues that the statute is invalid due to overbreadth (as opposed to vagueness):

- a. The assertion of invalidity for overbreadth has a good chance of succeeding because the statute seems to cover a lot of harmless (and therefore innocent) conduct.
- b. The assertion of invalidity for overbreadth does not have much chance because the wording of the statute gives fair notice to reasonably intelligent persons as to what is and is not prohibited.
- c. Since overbreadth and vagueness are essentially the same thing, an assertion of invalidity for overbreadth has about the same chance of succeeding as a challenge for vagueness.
- d. The assertion of invalidity for overbreadth does not have much chance because the legislature probably has constitutional power to punish conduct that is, in itself, harmless and innocent.

5 Dr. Peters is accused of murder under a statute that prohibits intentionally “causing the death” of another human being. The doctor had removed several vital organs for transplant after the decedent’s heart had stopped and efforts to revive him had failed. The prosecution argues that, in light of modern medical science, “death” means brain-death and there is some evidence that the decedent was not completely brain-dead when the organs were taken. The state courts have long defined the word “death” to mean cessation of heartbeat, and the legislature has never modified the murder statute to change this definition. To be consistent with the policies and rationale behind idea that courts should *not* recognize new common law crimes:

- a. The court should acknowledge medical realities and interpret the statutory word “death” in the way that it deems best suited to do justice.
- b. The court should respect the fact that legislature has not chosen to modify the statute and should therefore interpret the word “death” to mean cessation of heartbeat.
- c. The court should apply the rule of lenity and interpret the statute most favorably to the prosecution.
- d. The court should ask the legislature to supply it with a definition of “death” to use in this case.

6 In the preceding question, the prosecutor tells the court that Dr. Peters should be punished because doing so will make doctors think twice before they take vital organs from severely injured patients. Which of the traditional purposes of punishment does the prosecutor appear to have in mind?

- a. Retribution.
- b. Rehabilitation.
- c. Reform.
- d. Deterrence.
- e. Incapacitation.

7 Hank Walker is an upstanding citizen with an unblemished record. When he was showing his new pistol to a friend, it fired unexpectedly. The bullet went through the wall of the house and, tragically, hit a child playing across the street. Hank was convicted of criminally negligent homicide. At the sentencing stage, the prosecutor told the court that Hank should be punished because he

has “caused a child to die” and therefore should pay for the suffering he has caused. Which of the traditional purposes of punishment does the prosecutor appear to have in mind?

- a. Retribution.
- b. Rehabilitation.
- c. Reform.
- d. Deterrence.
- e. Incapacitation.

8 Mervin was convicted of stealing a steak from a supermarket display. Because this was Mervin’s third conviction, the judge sentenced him under the state’s “persistent offender” statute to a term of 75 years. Mervin’s previous convictions had both also been for theft. Insofar as the state’s statute requires or permits Mervin’s sentence in this case, it is probably:

- a. Unconstitutional because the Supreme Court interprets the Eighth Amendment to require close judicial scrutiny of penalties to be sure they are not disproportionate.
- b. Constitutional since it is only in rare or extreme cases that prison sentences are considered so disproportionate that they violate the Eighth Amendment.
- c. Unconstitutional because a person being sentenced for a given crime cannot properly be punished more severely on the basis of other crimes not currently before the court.
- d. Constitutional since prison sentences are neither “cruel” nor “unusual” and therefore can never be considered to violate the Constitution.

9 Dobbs was convicted under a statute that makes it a crime “appear in any public place while intoxicated.” He was arrested shortly after the bouncer at the Terry Lounge required him to leave the premises.

- a. The statute is probably unconstitutional because it purports to create a “crime” that does not include a voluntary act.
- b. When interpreting statutes that define crimes, courts will usually hold that the crime includes a voluntary act, but they are not constitutionally required to do so.
- c. The common law requirement that crimes include a voluntary act is old and venerable, and it cannot be overridden by mere legislation.
- d. There is no reason why the voluntary act requirement for crimes should prevent a conviction in this case as long as Dobbs voluntarily got drunk in the first place.

10 Granger was working in his garage when a neighbor came in to chat. Granger did not hear the neighbor walk up behind him and, suddenly feeling under attack, Granger turned quickly and struck his neighbor in the face with a wrench. Now Granger is being prosecuted for criminal battery. He wants to introduce expert testimony that his act was the result of a “conditioned response” acquired during military training, not a “voluntary act.”

- a. The court should exclude the testimony about “conditioned response” because it could not be relevant to whether Granger’s conduct constituted a crime.
- b. The “voluntary act” requirement is mostly just a historical curio and not a part of modern criminal law.

- c. As long as no *outside* force caused Granger to swing the wrench at his neighbor's face, his act would be considered "voluntary" as a matter of law.
- d. If Granger can provide substantial evidence to support his contention that the neighbor's injury to was not the result of a voluntary act, it would not be improper for a jury to acquit.

11 Jessica Wallis was at a party where she met Fred, a guy from the other side of town. Later, Fred accompanied Jessica back to her apartment where, both very drunk, they continued to party until Jessica passed out from a combination of alcohol and fatigue. When Jessica woke up an hour so later, she found Fred unconscious in the bathroom with drug paraphernalia lying around and a needle sticking out of his arm. Jessica did not want police snooping around her apartment and, feeling very tired, she went back to sleep. The next morning Fred was dead. The coroner has determined that he could have been saved if he'd received prompt medical attention. For failing to call 911 (or doing something similar), Jessica:

- a. Could properly be convicted of homicide because Fred was a guest in her home and she failed to get him needed emergency aid.
- b. Could properly be convicted of homicide because she failed to make even a simple phone call to save Fred's life.
- c. Could probably *not* be convicted of homicide because she apparently had no legal duty to provide assistance in this situation.
- d. Could probably *not* properly be convicted of homicide if Fred was at her home for an essentially immoral purpose.

12 Alex saw Bob at the side of the road stumbling around coatless as if in a daze. However, Alex took no steps to help. Later Bob, an Alzheimer patient who had wandered from his home a few blocks away, was found frozen to death in a snowdrift. There would be a legal basis for holding Alex criminally responsible in the death if:

- a. Alex was a paid caregiver hired by Bob's adult children to look after Bob.
- b. Alex was a licensed physician who lacked "good cause" for not trying to help.
- c. Both of the above.
- d. None of the above. Alex could not be held responsible for Bob's death because he did no harmful act.

13 After a serious accident caused by a drunk driver, Carl was placed on a respirator. It was the only thing keeping him breathing, and he was in a deep coma. After Carl's doctor determined that further medical treatment would be futile, he got the family's consent to remove the respirator. Carl ceased to breathe a short time later. Carl's doctor is not guilty of homicide:

- a. Because medical doctors may act to terminate a patient's life if the patient is better off that way.
- b. Because the doctor committed no "act" causing death. Removing the respirator was only an "omission" where there was not a duty to act.
- c. Because Carl's family was spared much pointless expense in keeping him alive for a just little while longer.
- d. None of the above. Carl's doctor would probably be considered guilty of homicide.

14 Archie was preparing some heroin for injection when he accidentally tipped over his burner and ignited the draperies. The fire spread to the next apartment where, unknown to Archie, his neighbor, Toby, was asleep. Toby sustained serious burns. Archie is charged under a statute that makes it an offense to “maliciously cause bodily injury to another person.” His lawyer makes a motion to dismiss the indictment. To convict Archie of the crime charged:

- a. The evidence must show that Archie had a specific intent to cause Toby’s injuries.
- b. The evidence must show that Archie had a specific intent to cause Toby’s injuries or, at least, had actual knowledge that Toby was asleep in the next apartment.
- c. It is enough if the evidence shows that Archie committed an illegal act in preparing the heroin for injection.
- d. It is enough if the evidence shows that Archie recklessly caused Toby’s injuries.

Facts for Jake Peters questions.

Jake Peters owed a big gambling debt to Lee Denkin. The latter had threatened “painful consequences” if Peters did not pay up, and fast. Last night, Peters saw Denkin driving with a passenger on the coastal highway. When the two cars came to a high cliff, Peters sped up next to Denkin’s car and forced it over the cliff. Peters admits he knew that both Denkin and his passenger would almost certainly be killed in the crash. Now he is charged with two counts of murder.

15 Peters asserts that he had no wish or desire to cause the passenger’s death. If jury believes this:

- a. He could still be considered to have purposely killed the passenger under the MPC.

- b. He could *not* be considered to have intentionally killed the passenger as the term “intentional” is generally understood in common law usage.
- c. Both of the above.
- d. He could still be considered guilty of murdering the passenger under the MPC.

16 Assume the jury finds that Jake Peters intended to kill Denkin but that he sincerely hoped the passenger would survive. As it turned out, Denkin miraculously escaped without injury but the passenger was killed. As the term “intentional” is generally used in common law jurisdictions:

- a. Peters may be guilty of attempted murder but could not properly be found guilty of intentional murder.
- b. Peters can properly be found guilty of intentional murder.
- c. The most serious crime that Peters has committed is reckless homicide (manslaughter).
- d. The most serious crime that Peters has committed is criminally negligent homicide.

17 Assume again the jury finds that Peters intended to kill Denkin but that he sincerely hoped the passenger would survive. Suppose this time, however, that both the passenger and Denkin are killed in the crash over the cliff. As the term “intentional” is generally used in common law jurisdictions:

- a. Peters can properly be found guilty of two counts of intentional murder.

- b. Peters could properly be found guilty of only one count of intentional murder.
- c. The most serious crime that Peters has committed against the passenger is reckless homicide (manslaughter).
- d. The most serious crime that Peters has committed against the passenger is criminally negligent homicide.

18 Gary Kline was indicted under a statute that prohibits “knowingly possessing or transporting eagle feathers in interstate commerce.” Kline was caught while he was transporting the feathers on a road that connects two small towns in Kansas but passes for a short distance through Colorado. Kline admitted he knew he was transporting feathers, but denies knowing (1) that the feathers were from eagles, and (2) that the road passed through Colorado (the fact that provides the basis for Federal jurisdiction). If the mens rea requirement of this statute is interpreted according to the approach called for by the MPC:

- a. The prosecution would have to prove that Kline actually knew both (1) and (2).
- b. The prosecution would have to prove that Kline actually knew (1) but not (2).
- c. The prosecution would have to prove that Kline actually knew (2) but not (1).
- d. The prosecution would not have to prove that Kline actually knew either (1) or (2).

19 Wayne wanted to put a scare into Patricia, who had snubbed him earlier that evening. He shot a rifle bullet through a window of the room where Patricia was sleeping, carefully aiming high so the bullet

would pass above her. Unfortunately, however, just he fired, Patricia stood up to get a glass of water. The bullet hit her shoulder. Wayne is charged with “intentionally or recklessly causing serious bodily harm” in a state that retains the common law conception of “intentional” but uses the MPC definitions of reckless and negligent. Wayne asserts that he honestly believed Patricia was asleep and that he was not consciously aware that she might stand up (*i.e.*, he was “sure” the bullet would pass harmlessly over her). If the jury believes Wayne’s assertions:

- a. He could nonetheless properly be convicted of “intentionally” causing serious bodily harm as that word is generally used in common law jurisdictions since his act was intentional.
- b. He could nonetheless properly be convicted of “recklessly” causing serious bodily harm.
- c. He could not properly be convicted under this statute, but he could be convicted under a statute that prohibits “negligently” causing serious bodily harm using a deadly weapon.
- d. Wayne’s criminal intention to shoot the window should be sufficient malice to meet the mens rea requirement for conviction under this statute.

20 It is traditionally said that a primary purpose for strict liability crimes is to:

- a. Punish people who do harmful things.
- b. Promote social welfare.
- c. Prevent unfairness.

- d. Create a trap for the unwary.

21 Kermit was prosecuted under a federal law that prohibits possession of certain weapons, including hand grenades, unless they are properly registered. In order to obtain a conviction of Kermit under present law, the prosecutor would have to prove that Kermit:

- a. Knew he was in the possession of hand grenades.
- b. Knew that the hand grenades in his possession were unregistered.
- c. Was aware of and understood the statute that imposes the registration requirement.
- d. All of the above.

22 Davidson picked up a morning newspaper from a stack near a hotel reception desk. He was arrested for theft. He had assumed, erroneously, that the newspapers were complimentary, just as they had been at several other hotels where he'd recently stayed. He would have a defense to a charge of petty larceny if:

- a. He honestly believed that the hotel supplied the newspapers on a complimentary basis, whether or not his belief was "reasonable."
- b. He honestly and reasonably believed that the hotel supplied the newspapers on a complimentary basis.
- c. Either one of the above.
- d. None of the above. Taking somebody else's property is larceny, and Davidson has taken somebody else's property.

23 Sean and Patty are both in high school. They started seeing each other on a regular basis and, after a few weeks, decided to have sex. However, Patty is age 16 and applicable law stipulates that persons under age 17 are incapable of giving consent. The prosecutor has charged Sean with rape. In a majority of states, Sean should be able to successfully defend against the charge as long as he can prove that:

- a. He honestly believed that Patty was 17 years old, whether or not his belief was "reasonable."
- b. He honestly and reasonably believed that Patty was 17 years old.
- c. Both of the above
- d. He honestly and reasonably believed that the age of consent was 16.
- e. None of the above

24 When Kramer attempted to make a left turn at the corner of Elm and Main, he negligently misjudged the speed of an oncoming car. The other driver, a texting teenager, failed to notice Kramer's turn in time to avoid him. The impact of the collision deflected Kramer's car into a pedestrian, who unfortunately was killed. The pedestrian had just stepped off the curb against the light. She wouldn't have been hit if she hadn't illegally stepped into the street.

- a. Kramer cannot be held criminally for the pedestrian's death because his act was not the sole cause.
- b. Kramer cannot be held criminally for the pedestrian's death because, due to the pedestrian's illegal act, Kramer could not be considered a "but-for" cause of death.

c. Kramer cannot be held criminally for the pedestrian's death because, due to the fact that the teen was texting, Kramer could not be considered a "but-for" cause of death.

d. Kramer was a cause in fact of the pedestrian's death.

25 Suppose in the preceding question that the pedestrian was not hit in the collision itself but, instead, was struck by another car a minute or so later, as she was helping the dazed teenager get out of her car.

a. The pedestrian's free choice to go out into the street to help the teenager would, as a superseding cause, almost necessarily prevent Kramer's acts from being considered the proximate cause of the pedestrian's death.

b. If the driver who struck the pedestrian was driving in a reckless manner, that would be highly relevant to whether Kramer was the proximate cause of the pedestrian's death.

c. Both of the above.

d. Kramer cannot be considered the proximate cause of the pedestrian's death because, on these facts, he was not even a but-for cause.

26 In a gunfight between two rival gang members, Silver was caught in the crossfire. He was hit by two bullets, the first shot by Allen and the second, a moment later, shot by Beatty. Silver died a short time afterward. Allen was also killed in the gunfight, and Beatty is being prosecuted for killing Silver. The court has ruled that Allen's acts cannot be attributed to Beatty and vice versa. In which of the following situations could Beatty be convicted of "causing the death" of Silver?

a. The bullet fired by Beatty would have been sufficient in itself to cause Silver's death and Allen's bullet would also, in itself, have been sufficient to cause Silver's death.

b. The bullet fired by Beatty was not sufficient in itself to cause Silver's death but it caused him to die sooner than he would have from the mortal wound by Allen.

c. Both of the above.

d. The medical examiner testified at trial that either bullet "could" have been the cause of death.

e. All of the above.

27 Hadley is accused of murdering a man in a state that adheres to the modern American common law conception of "murder." In order to support a conviction:

a. The prosecutor must present evidence that Hadley killed with malice aforethought.

b. The prosecutor must present evidence that Hadley killed either knowingly or intentionally.

c. The prosecutor must present evidence that Hadley killed with premeditated malice.

d. The prosecutor only has to present evidence that Hadley killed unlawfully.

28 Kirkland is accused of causing the death of Baker with malice aforethought. In order to support a conviction in a state that adheres to the common law conception of “malice aforethought”:

- a. The prosecutor would have to present evidence that Kirkland killed Baker with some amount of pre-reflection, weighing or contemplation ahead of time.
- b. The prosecutor would have to present evidence that Kirkland killed Baker “intentionally” (in the common law sense of the word).
- c. It would be sufficient for the prosecutor to present evidence that Kirkland killed recklessly with wanton and willful disregard of the risk to human life or an abandoned and malignant heart.
- d. It would be sufficient for the prosecutor to present evidence that Kirkland killed Baker with any mens rea applicable to a homicide offense.

29 Kirkland is accused of premeditated murder in the death of Baker.

- a. In some states Kirkland would not be properly convicted of this crime unless the evidence shows that he acted after an opportunity for pre-reflection, weighing or contemplation of his intention to kill.
- b. In some states the prosecutor could properly obtain a conviction merely by showing that Kirkland had a specific intent to kill Baker.

c. In some states, no real distinction is made between premeditated murder and a killing done with a specific intent to cause death.

d. All of the above.

30 Lincoln fatally wounded Duggles in a bar fight. Prior to the killing, insults had been shouted and bottles had been thrown. The evidence is uncontroverted that the killing was intentional. Nonetheless, the jury could properly decide that Lincoln is not guilty of murder if it is convinced that:

- a. He killed without malice.
- b. He killed upon adequate provocation.
- c. Both of the above.
- d. None of the above. If the killing was intentional, the jury could not properly decide that Lincoln is not guilty of murder.

31 During a heated argument over a parking space, Carver said many nasty insulting things to McClantry. Taken together, these verbal insults were easily enough to make an ordinary person extremely angry and lose self-control, *i.e.*, capable of acting out of passion rather than reason. McClantry became so furious that he grabbed a piece of iron and bashed Carver over the head, intentionally causing his death. McClantry is put on trial for murder: McClantry was the first to use force.

- a. There would appear to be, under the traditional common law rules, enough evidence here to charge the jury on the issue of provocation.

b. Although Carver’s provoking conduct may consist of “mere words,” it has always been the general rule that words alone can support a defense of provocation.

c. These facts would present a rather clear case of “provocation” as the term is used in the Model Penal Code.

d. More than mere words must be shown under the traditional common-law rules regarding provocation.

32 Suppose that McClantry hit Carver only after Carver had given McClantry a couple of hard shoves with a walking cane and called him a “dirty [slur],” using an ugly term that disparaged McClantry’s ancestry. In evaluating Carver’s words on the issue of adequate provocation, a court should (under cases we studied in class):

a. Take McClantry’s race or ethnicity into account in determining the standard of self-control that he is legally required to observe.

b. Take McClantry’s race or ethnicity into account in determining gravity of the provocation.

c. Both of the above.

d. None of the above. The court may take McClantry’s age and sex into account, but should by no means consider his race or ethnicity on the issue of adequate provocation.

33 Traditional circumstances required to be present in order to support a defense of provocation include (if *all but one* of the following are true, select the one that is *not* true):

a. Finding one’s spouse in an act committing adultery.

b. Extreme assault or battery.

c. Falsely defaming or impugning the chastity of the defendant’s female relatives.

d. Injury or abuse to a close relative of the defendant.

34 Ray Johnston stabbed and killed his neighbor in a blind fury. Moments before, his wife had told him that the neighbor sexually molested their 2-year-old daughter earlier in the day. As it turned out, his wife was mistaken and the neighbor was totally innocent. Johnston’s lawyer wants to assert the defense of extreme emotional disturbance (MPC):

a. Johnston’s erroneous belief would be relevant to the defense only if, under all of the facts and circumstances, a reasonable person would have believed that his neighbor had actually molested child.

b. The defense should apply if the jury decides that Johnston’s reaction was an understandable human response given his honest belief that his neighbor had actually molested child.

c. The defense would not apply because there was, in fact, no abusive conduct by the neighbor.

d. The defense would not apply because Johnston’s alleged emotional disturbance was based on “mere words.”

Facts for Simmonds questions

The evidence against Simmonds shows the following: Frustrated at traffic, he pulled his car onto a moderately crowded sidewalk and drove down it, honking madly at the startled pedestrians who scattered out his way. One person was a little too slow, however, and Simmonds did not try or, at least, did not manage to swerve before

running him down. (The exact point is disputed). Now Simmonds has been charged with homicide in a state that follows the MPC.

35 If the jury concludes that Simmonds did not intend to kill or hurt anybody (which is why he honked his horn):

- a. There would still be sufficient evidence to properly convict him of murder.
- b. There would still be sufficient evidence to properly convict him of manslaughter.
- c. Both of the above (*i.e.*, depending on the jury's assessment of the other evidence, he could be properly found guilty of either murder or manslaughter).
- d. The only thing that Simmonds could properly be convicted of is negligent homicide.

36 The jury could convict Simmonds of *murder* if:

- a. He admitted that, at the last moment, he decided in a pique of anger to go ahead and run down the slow pedestrian.
- b. There is evidence manifesting extreme indifference to the value of human life.
- c. He was fleeing from a convenience store robbery that he had just committed.
- d. All of the above.

37 Assuming that Simmonds' conduct was not otherwise felonious (*i.e.*, ignoring the felony-murder doctrine), if Simmonds did not intend to kill or hurt anybody, then in order to be guilty of:

- a. Murder, the jury would have to be persuaded that he was aware of the risk that his conduct could cause death.
- b. Manslaughter, the jury would have to be persuaded that he was aware of the risk that his conduct could cause death.
- c. Both of the above.
- d. Negligent homicide, the jury would have to be persuaded that he was aware of the risk that his conduct could cause death.
- e. All of the above.

38 Suppose that Talbot did the exact same thing as Simmonds (in the preceding questions) except that in Talbot's state manslaughter is defined as "causing death by criminally negligent conduct," using the MPC definition of criminal negligence. Unlike the MPC, however, the state's statutes have no crime of "reckless" homicide. The prosecutor wants to introduce evidence that, when Talbot started driving down the sidewalk, he was on his cell phone and said: "I've got to get off the phone now. If I'm not careful here, I might kill somebody." Talbot's lawyer objects to this evidence.

- a. It is legally irrelevant whether Talbot was aware of the risk of death, so the court should not permit this evidence for the purpose of showing such awareness.
- b. There is no good reason why the court should exclude this evidence for the purpose of showing that Talbot was aware of the risk of death.
- c. There is no basis on the facts given here for deciding whether this evidence is legally relevant or not.

- d. This evidence is clearly admissible since it shows that Talbot was fully aware of the risk that he was creating.

39 Don Petrie bought a picnic table, which came disassembled in a large long box. The store personnel tied the box to the top of Don's car. The ropes went around the sides of the box and over the top, plus there was a rope tying the box to the front of the car. There was, however, no tie to the back. On his way home, Don had to come to a sudden stop and the box (not tied in back) slipped forward off the car and crashed into the minivan in front of him. A passenger seated in the rear of the van was killed. Don is charged with criminally negligent homicide.

- a. In most states, Don could be properly convicted if the jury decides that he failed to use the care that would have been used by a reasonable person.
- b. In MPC states, Don could be properly convicted if the jury decides that he failed to use the care that would have been used by a reasonable person.
- c. Both of the above.
- d. In both MPC states and non-MPC states, the courts today would generally require the jury to find a higher level of negligence (such as gross negligence) in order to convict Don of criminally negligent homicide.

40 Ray Krause entered a convenience store at 11:16 p.m. He pointed a gun at the clerk and demanded all the cash. As he ran from the store, Ray tripped and dropped the gun. It discharged when it hit the ground, and the bullet hit a man who had just pulled his car into the parking lot.

- a. Ray is probably guilty of murder.

- b. Ray cannot properly be held guilty of murder because he did not mean to drop the gun.

c. Ray cannot properly be held guilty of murder because the required element of "malice aforethought" is missing.

- d. Ray cannot properly be held guilty of murder because he had no intent to kill.

Facts for Eliot-Duane questions.

Last Friday, Eliot and Cheryl went to have a drink after work at Margot's Roadhouse. Cheryl's former boyfriend, Duane, showed up and made some rude remarks. Eliot told Duane to "shove it," and Duane pulled out a hunting knife and waved it menacingly. This was a big mistake because Eliot had a gun, which he pulled out and aimed at Duane. Sneeringly manfully, Duane (who was about 10 feet away) took a step forward and snarled: "What do you think you're doing with that?" Eliot pulled the trigger three times.

41 At Eliot's murder trial, the prosecutor wants to present evidence that Eliot could have retreated with complete safety, for example, by simply making a clear threat to shoot Duane if he did not drop the knife.

- a. In most states, Eliot would have had a duty to retreat if he could do so with complete safety.
- b. In most states, Eliot was entitled to defend himself with deadly force even if he could have safely run away instead.
- c. In most states, Eliot would have been permitted to kill in self-defense even if the jury decides (based on some additional evidence, not stated here) that Eliot was the initial aggressor.

d. In most states, Eliot would have been permitted to use the gun in self-defense if the jury finds it would have been shameful and cowardly to let Duane's rude remarks to pass without a decisive response.

42 Suppose that Duane's buddy, Stoddard, had been watching this whole thing and, when Eliot threatened Duane with a gun, Stoddard pulled out a gun of his own and shot Eliot in the back. In a prosecution of Stoddard for murder:

- a. Stoddard could not successfully claim justification to use deadly force because he was not himself being threatened.
- b. In deciding whether Stoddard's use of deadly force was justified, it would not matter if he knew that Duane was the initial aggressor.
- c. Stoddard can probably succeed with the defense that deadly force was justified as long as he reasonably believed that Duane would have been justified in using deadly force to protect himself.
- d. Stoddard can probably succeed with the defense that deadly force was justified as long as Stoddard was not the first to use or threaten deadly force.

43 Suppose that Duane did not pull a knife on Eliot but merely threatened to "beat the crap out of" him if Eliot did leave the bar immediately. Duane weighed about 100 pounds more than Eliot and worked as a furniture mover, so Eliot had good reason to fear bodily injury (even if not "serious"). Not wanting this to happen, Eliot pulled out his gun and shot Duane when Duane threw a first punch at Eliot. Under these circumstances:

- a. Eliot's use of deadly force was legally justified.

b. Eliot's use of deadly force would have been legally justified if he had first tried without success to reason with Duane.

c. Eliot's use of deadly force was legally justified because Duane deliberately tried to humiliate Eliot and cause him to lose respect in front of other people.

d. Eliot's use of deadly force was not legally justified on these facts.

Facts for Jim Gardner questions

Last year, Jim Gardner's car was carjacked. The experience terrified him and has been the source of nightmares. Yesterday, while he was stopped at a traffic light, a scruffy looking 20-something carrying a metallic object ran up to Jim's car shouting words that Jim couldn't quite understand. Memories of carjacking sprang into Jim's mind, and he pulled out the gun he'd bought for self-defense, firing one shot. It turns out that the man he shot was only trying to panhandle some change from drivers who were stopped at the light. The "metallic object" was the tinfoil on a partially eaten candy bar.

44 In a prosecution for attempted murder, Jim should be permitted to assert self-defense as a defense:

- a. As long as he can prove that he honestly believed that the use of deadly force was reasonably necessary for self-protection.
- b. As long as he can prove that he honestly and reasonably believed that the use of deadly force was reasonably necessary for self-protection.
- c. Only if he can prove that the use of deadly force was *in actuality* necessary for self-protection.

d. As long as he did not initiate the encounter but was only minding his own business as a law-abiding citizen.

45 In deciding whether Jim Gardner was justified in using deadly force in self defense:

a. It is relevant that his car was carjacked last year and the experience left him traumatized.

b. Jim's own prior experiences should not be relevant since the standard is an objective one that is based entirely on what an "ordinary" person in Jim's situation would believe.

c. Jim's own prior experiences should not be relevant since his own particular background and personal characteristics have nothing to do with what is objectively reasonable.

d. The standard is a subjective standard, and the standard would be met if Jim actually believed that the use of deadly force was justified.

46 Suppose the person approaching Jim Gardner's car really was a carjacker, and he demanded that Jim get out of the car and leave the motor running. Jim wants to assert as a defense that he used deadly force for the purpose of keeping his car from being stolen. Such a defense would be legally viable (MPC):

a. If the carjacker was trying to force Jim out his car on a sub-zero winter night so that, if he didn't use deadly force, he'd find himself in substantial danger of serious harm from exposure to the cold.

b. If the carjacker had forced Jim to get out of his car at gunpoint and, thereafter, Jim pulled his gun as the carjacker was putting it in gear to drive it away.

c. Both of the above.

d. Under no circumstances, because the use of deadly force is simply not justified for the purpose of protecting mere property.

47 Perkins was enjoying a meal with wine with friends at a local restaurant when one of them, Orson, suddenly and unexpectedly had some kind of seizure. With the help of two other people, Perkins got Orson into his car and rushed off toward the hospital. On the way he was stopped by the police and cited for DWI. The defense of necessity:

a. Would probably apply under these circumstances.

b. Would probably not apply inasmuch as there appear to have been good alternatives.

c. Would probably apply (irrespective of alternatives) as long as the court was convinced that the risk of driving under the influence was less serious than the risk to Orson from not getting him to a hospital.

d. Would probably not apply because DWI is a strict liability offense.

48 The night before he was to testify in a robbery trial, Truman got a phone call from a man who said that Truman's "family would suffer" if he identified Mark Rubus as one of the robbers. On the stand the next day, Truman said he "wasn't sure" if Rubus was the man he saw at the scene, even though previously he'd positively identified him from photos and in a lineup. If Truman is later prosecuted for perjury, the defense of duress would not apply (MPC):

- a. If the jury concludes that a person of reasonable firmness in Truman's situation would have been able to resist the threats.
- b. Because the threats were not of *immediate* death or serious bodily injury.
- c. Because the phone call did not threaten harm to Truman personally but to others.
- d. All of the above.

49 Tony got mixed up with a street gang. One thing led to another and he ended up shooting a clerk in a convenience store during a robbery being committed by him and several of his new friends. The clerk died of his wounds and Tony is charged with murder. He wants to assert that he was forced by various physical threats to take part in the robbery and commit the homicide.

- a. The common law has traditionally allowed duress as a defense to murder.
- b. Duress can be validly asserted as a defense to murder under the MPC.
- c. Both of the above.
- d. None of the above. Duress is not regarded as a defense to the crime of murder under either the MPC or the common-law cases.

50 After an evening of very heavy drinking, Esther got into screaming frenzy at a police officer who was arresting her boyfriend for a minor offense. At one point she shoved the officer from behind, causing him to lose his balance and almost fall down. She is charged with two offenses: First, simple assault, and second, "assaulting an

police officer with intent to hinder the performance of public duties." As part of Esther's defense, her lawyer wants to present evidence that she was very highly intoxicated. The prosecutor objects, arguing that this evidence is "irrelevant."

- a. The evidence may be relevant to the first charge but not the second.
- b. The evidence may be relevant to the second charge but not the first.
- c. The evidence may be relevant to either or both of the charges.
- d. Evidence of intoxication would probably not be relevant to either of the charges since intoxication, if voluntary, is simply never a defense.

51 Valerie Davis is representing a mentally ill homeless man who pushed a student off a subway platform for no apparent reason. She plans to plead insanity as a defense. Under the traditional *M'Naghten* rule, the defense could succeed if Davis is able to prove that, as a result of mental illness, her client:

- a. Did not know the nature and quality of his act.
- b. Did not know that his act was wrong.
- c. Either of the above.
- d. Had an irresistible and uncontrollable impulse to do what he did.
- e. Any of the above (*i.e.*, a, b, or d).

52 While defending a mother charged with drowning her children, Kate Reynolds is assembling expert testimony to show that, due to psychotic delusions, her client lacked substantial capacity to appreciate the wrongness of what she had done. Such evidence would be most suitable to support an insanity defense:

- a. Under the Model Penal Code definition of insanity.
- b. Under the traditional *M'Naghten* rule.
- c. Under the test of insanity that is most widely accepted in American jurisdictions today.
- d. Under the “product” (or *Durham*) test of insanity, which is applied in a number of American jurisdictions.
- e. All of the above (*i.e.*, it would tend to support an insanity defense of any of the above).

53 While visiting a large American city with her 4-month old in late winter, a Danish woman left the child outside on the sidewalk in a stroller while she went into a café for a cup of coffee with a friend. She was charged with “aggravated child abuse,” defined as (among other things) “intentionally neglecting to care for a child.” She wants to introduce evidence that, in Denmark, it is customary and normal for mothers to leave children in strollers outside restaurants because, it is believed, the fresh air is healthy for the child (compared with the restaurant environment). The prosecutor objects to allowing this evidence to be introduced:

- a. The evidence is relevant to a valid cultural defense and the court should let it in.
- b. What is normal and customary in Denmark could not be relevant in any way to the defendant’s guilt or innocence under the laws in the United States.

c. The customary practice that the defendant was accustomed to at home in Denmark could plausibly be relevant to show that she lacked the required mens rea for the crime charged.

d. The normal and customary childrearing practices in Denmark would be relevant in determining what constitutes “abuse” in the case involving a Danish baby who is only temporarily in the United States.

54 Rachel, a heroin addict, has been indicted under a state statute that makes it a crime to “be addicted to narcotic drugs.” Based on a ruling of the U.S. Supreme Court with respect to a similar statute, the law under which Rachel has been charged is probably:

- a. Unconstitutional under the Eight Amendment (which prohibits cruel and unusual punishment).
- b. Constitutional, since a small rewording of the statute could accomplish the same result anyway.
- c. Unconstitutional, because narcotics addiction is a kind of “insanity,” and due process requires the states to let defendants prove insanity as a defense.
- d. Constitutional, because narcotics addiction is a serious national problem.

55 Wilcox shot and seriously wounded Grady during a fight at a dance hall. There is evidence of adequate provocation. On the other hand, the evidence of intention to shoot, though enough to go to the jury, is hotly disputed. What’s undisputed is that Wilcox was very tipsy and, during the moments before it went off, was pointing his gun around at various people in a careless manner. Based on this evidence, the prosecutor has a basis to charge Wilcox with:

- a. Attempted voluntary manslaughter.
- b. Attempted involuntary manslaughter.
- c. Both of the above.
- d. None of the above.

Facts for Daria questions

Daria's doctor gave her a prescription for a painkiller. It is a controlled substance. The prescription specified two refills, expressed by the number "2" in space next to the word "refills." Daria placed a number "1" right in front of the "2", making it look like the prescription called for 12 refills. She has not yet used the prescription.

56 Has Daria already done enough to commit the crime of attempted fraudulent acquisition of a controlled substance?

- a. Probably yes, under the common law approach to defining attempts.
- b. Probably yes, under the MPC approach to defining attempts. :
- c. Both of the above.
- d. None of the above.

57 In the preceding question, the reason why the correct answer is correct is that Daria's act of adding the number "1":

- a. Satisfies the proximity test.
- b. Satisfies the dangerous proximity test.

c. Constitutes a substantial step that is strongly corroborative of criminal purpose.

d. Constitutes a substantial step that comes very close to the "last act" needed to carry out her criminal purpose.

58 Suppose that, unknown to Daria, the law prohibits more than 2 refills on prescriptions for controlled substances and that, therefore, the pharmacist would have caught the falsification anyway, so it was virtually impossible for Daria to accomplish her criminal purpose. Under the MPC:

- a. She would not be guilty of attempt because it was factually impossible for her to use the prescription to commit the actual completed offense.
- b. She would not be guilty of attempt because she has not yet attempted to use the falsified prescription to acquire a controlled substance.
- c. She would not be guilty of attempt because her acts have not yet brought her dangerously close to causing any actual social harm.
- d. None of the above. She could be, and probably would be, found guilty of attempt.

59 Angry at his neighbor, Victor decided to make a small bomb to put in his mailbox. He bought some copper wire, special batteries, and short steel pipes, actions which a jury could find substantially corroborated his criminal plan. In addition, at a picnic with friends the previous week, he discussed how to construct such a device and stated that he had "a good mind" to make one "for a certain person." On these facts Victor could more likely be found guilty of a criminal attempt:

- a. Under the MPC's approach, which places great weight on mental culpability, even though Victor did nothing that was actually harmful or came dangerously near to causing harm.
- b. Under the common law approach so long as his actions substantially corroborate his criminal intent.
- c. Under the "severance of purpose" approach.
- d. None of the above. On these facts, Victor could not properly be convicted of a criminal attempt under either the common law or MPC approach.

60 Janice, a registered nurse, is being tried on a charge of attempted murder after she administered an excessive amount of painkiller in the IV of a comatose patient. In instructing the jury, the judge has stated that attempted murder consists of an intentional act done with one of the following: Intent to cause death, intent to cause great bodily harm, knowledge that death will result, or intent to commit a dangerous felony. Which of these mental states, if any, did the judge erroneously include in his charge?

- a. He erroneously included intent to cause death, knowledge that death will result, and intent to commit a dangerous felony.
- b. He erroneously included intent to cause death, intent to cause great bodily harm, and knowledge that death will result.
- c. He erroneously included intent to cause death, intent to cause great bodily harm, and intent to commit a dangerous felony.

- d. He erroneously included all but intent to cause death.
- e. None of the above. The judge properly included all of these mental states in his charge.

61 While Sinclair was in the county jail, he was assigned to a work crew outside the fence. Bostick smuggled him a mobile phone so he could make contact with Bostick after making a planned escape while working on the crew. When Sinclair was re-captured, he claimed that he'd angered some gang members at the jail and, after several death threats, had to flee because of fear for his life. If the court agrees that these threats gave Sinclair a viable defense to the crime of escape, Bostick (being tried as an accomplice) should also be able to avail himself of the defense if the court treats the defense:

- a. As a defense of justification.
- b. As an excuse defense.
- c. Both of the above (*i.e.*, whether the defense is regarded one of justification or excuse).
- d. None of the above. The defense is personal to Sinclair, and an accomplice can never use somebody else's defense.

62 Just before Carole T. was about to turn 16 she attended a party at the home of a friend whose parents were out of town. Carole suggested to one of the boys, Kevin B., that the two of them go "out back" and have sex. Kevin, who was just over 16, agreed. The applicable law states that a person under age 16 is incapable of giving consent to sexual relations and, after Carole's father complained to the district attorney, Kevin is prosecuted for statutory rape. In light of the fact that the alleged criminal act occurred at Carole's suggestion and instigation:

- a. Carole is guilty of statutory rape as a principal (in the first degree).
- b. Carole is guilty of statutory rape as an accomplice.
- c. Carole can probably be held guilty of, at least, criminal solicitation.
- d. None of the above.

<End of examination.>