PACE UNIVERSITY SCHOOL OF LAW

CRIMINAL LAW
PROFESSOR HUMBACH December 14, 2018
FINAL EXAMINATION TIME LIMIT: 4 HOURS

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

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

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

GENERAL INSTRUCTIONS:
This examination consists of 60 multiple-choice questions to be answered on the Scantron.

- Write your examination number on the "name" line of the Scantron. *Write it NOW.*
- Mark "A" in the "Test Form" box on the right side of the Scantron. *Mark it NOW.*
- Also, write your examination number in the boxes where it says "I.D. Number" on the right side of the Scantron. Use **only** the first 4 columns and *do not skip columns*. Then carefully mark your exam number in the vertically striped columns. You should mark only one number in each of the first four columns. Do it carefully. *This is part of the test.*

Answer each multiple-choice question selecting the *best* answer. Mark your choice on the Scantron 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 answers 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. If in doubt, use the majority rule. 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 At the behest of a local department store, a prosecutor obtained several indictments for “wardrobing,” which means buying expensive items of apparel, wearing them on one or two occasions, and then returning them to the store for a full refund. There is no statute that forbids this precise conduct, but the prosecutor reasons that wardrobing is fundamentally dishonest and harmful to the public—both to storeowners and to the eventual buyers of the clothes in question. Under the modern view:

a. The defendants’ motions to dismiss the indictments should be granted because there is no statute forbidding the conduct in question.

b. The indictments are proper if there is a statute that forbids somewhat similar conduct even if there is no prohibition that is directly on point.

c. The indictments would be a proper way to create a new common law crime if the court accepts the prosecutor’s reasoning.

d. The indictments should be dismissed on the grounds of vagueness and overbreadth.

2 Sam Cantwell has been indicted under a statute that prohibits "mopery in a public place” (he had been hanging out in the bus station with no intent to travel). The statute should be considered void for vagueness if the court finds that:

a. A person of ordinary or common intelligence could not understand what the statute does and does not prohibit.

b. The statute does not give adequately definite guidance to law enforcement as to what is and is not prohibited.

c. Both of the above answers are correct.

d. The statute uses words that do not have an official dictionary definition.

e. All of the above answers are correct.

3 Suppose in the preceding question it is found that, shortly before the statute was originally enacted in 1821, there were three cases in the jurisdiction that defined mopery quite precisely, as a common-law offense at that time. In considering whether Cantwell’s conduct falls within the statutory meaning of “mopery”:

a. The court should basically confine itself to the modern dictionary definition of the term.

b. The court would probably give great weight to the common-law definition of the term at the time the statute was enacted.

c. The court should attempt to determine what defendant Cantwell understood the word mopery to mean, if anything.

d. The court should apply the rule of ejusdem generis.

4 When a court finds the wording of a statute to be unconstitutionally vague,

a. The court generally has no choice but to declare the statute void in its entirety.

b. The court can uphold the statute if prior judicial decisions cure the vagueness by giving its terms a definite meaning.

c. The vagueness cannot be cured by judicial interpretations because courts cannot "amend" statutes.

d. The court should seek a ruling from the legislature giving an official interpretation of its intended meaning.

5 Brian Mesto has been convicted of possessing and using a controlled substance. The prosecutor argues that Mesto should serve a time in custody so he can undergo treatment to overcome his addiction and become a productive member of society. The rationale for punishment that the prosecutor appears to have in mind is:

a. Retribution.

b. Special deterrence.

c. General deterrence.

d. Rehabilitation.

6 Sally Chatwith, a teenager, was convicted of larceny for stealing a pair of heart-shaped earrings while working as a babysitter. Her lawyer argues that jail is not necessary because the prosecution process, booking by the police, etc. have already been so frightening that there's no way she'll risk repeating the experience by getting into trouble again. The rationale for punishment that her lawyer appears to have in mind is:

a. Retribution.

b. Special deterrence.

c. General deterrence.

d. Incapacitation.

7 Benny Lynch has been convicted of animal cruelty after he was found to have 93 cats, 40 dogs, three horses and a goat, all of which were malnourished and living under crowded and unsanitary conditions. As part of his sentence, the judge ordered Benny to refrain from acquiring or possessing live animals as pets or otherwise. The rationale for punishment that the judge appears to have had in mind is:

a. Deterrence.

b. Retribution.

c. Restitution.

d. Incapacitation.

8 Taylor Cavendish was out partying with friends from her office. As she drove home, she unintentionally struck and killed Barton Evans, who was walking along the side of the dimly lit road. Taylor is personally devastated and very remorseful but the prosecutor argues, nonetheless, that no one should just "get away with" causing death and Taylor deserves to spend several years in the penitentiary. The rationale for punishment that the prosecutor appears to have in mind is:

a. Deterrence.

b. Retribution.

c. Rehabilitation

d. Incapacitation.

9 Alois Hardy has been charged with cheating people out of money in a phone scam. The prosecutor argues that Hardy should receive a substantial prison sentence so that fear of consequences will cause others to refrain from trying similar scams in the future. The rationale for punishment that the prosecutor appears to have in mind is:

a. Retribution.

b. Special deterrence.

c. General deterrence.

d. Reform.

10 Some but not all rationales for punishment are directly concerned with protecting the public and reducing the amount of crime. Which of the following is *not* directly concerned with protecting public safety?

a. Rehabilitation

b. Deterrence.

c. Retribution.

d. Incapacitation.

e. More than one of the above.

11 Angie Ferman was out partying with some of her dorm friends. They drove to a bar in a town about 20 miles away. On the way home, late at night, Angie fell asleep in the back seat of the car. The driver thought he knew a shortcut but got off onto somebody's private land where he destroyed several ornamental bushes while trying to turn around. The police arrived and arrested everybody in the car, including Angie,

who was still alseep. Angie is prosecuted for trespass, defined as "unauthorized entry or presence on the land of another." Her best argument in defense is:

a. She did not know who the land belonged to.

b. Her conduct constituting the alleged offense did not include a voluntary act on her part.

c. She did not own the car.

d. She has no defense and should be convicted.

12 After sustaining a head injury, Jason Melville developed a condition that caused him to occasionally black out, without warning, for a few seconds at a time. Some months later, Jason was driving to work when he swerved off the road during a brief blackout. He plowed into a group of pedestrians, causing fatalities.

a. Jason appears to be guilty of reckless homicide (involuntary manslaughter).

b. Jason appears to be guilty of knowingly causing the deaths of others (voluntary manslaughter) because he knew he was subject to blackouts.

c. Jason does not appear to be guilty of any crime at all because his act of swerving the car while unconscious was not a voluntary act.

d. Jason does not appear to be guilty of any crime at all because swerving the car while unconscious from a disease should be deemed a natural event.

13 The so-called "voluntary act requirement" is:

a. A constitutional rule that prevents people from being convicted based on mere intentions.

b. A rule that is mostly of historical interest only because the law now also punishes "omissions."

c. A sufficient defense in cases where the defendant is charged with causing harms that were not reasonably foreseeable.

d. A rule of interpretation that the courts generally follow when interpreting and applying criminal statutes.

14 On a plane coming back from the coast, Draper ran into Talbot, an old Army buddy. Hearing that Talbot had not yet booked a hotel, Draper invited him to stay on the spare bed at his place. During the night Talbot took illegal narcotics, became ill and eventually passed out. Not wanting to risk having the police in his apartment poking around, Draper did not call 911. He found Talbot dead of an overdose the next day. The death was found to have been preventable with prompt medical intervention. Can Draper properly be convicted for his omission to seek necessary medical help?

a. Yes, because he had a moral obligation to seek apparently necessary medical help.

b. Yes, because he had a legal duty to seek apparently necessary medical help.

c. No, because he had no legal duty to seek medical help for his houseguest.

d. No, because he did not cause the death, the illegal narcotics did.

e. None of the above.

15 The reason for the answer to the preceding question is:

a. The law does not recognize the relationship between hosts and houseguests as one that creates a duty to provide assistance or rescue.

b. By inviting a person to stay at his home, Draper impliedly undertook a legal duty to provide medical assistance if necessary.

c. Breach of a moral obligation to provide aid is a recognized basis for criminal liability.

d. Draper's inaction would be considered the proximate cause of the death.

16 Castleton was driving down a highway on a cold winter's night. He saw the car in front of him spin out on a patch of ice and go into the ditch. As he slowly passed the other car, he could see that the driver appeared to be unconscious and in need of medical help. In the event the driver succumbed overnight, Castleton could be held criminally liable for omitting to provide help:

a. If Castleton was a medical doctor.

b. If Castleton could not reasonably expect that somebody else would come along and provide assistance.

c. Because Castleton was present when the other driver got into his predicament and therefore had a moral duty to help.

d. Any one of the above could make Castleton criminally liable.

e. None of the above would make Castleton criminally liable.

17 Several weeks ago Michael Erbetz, while out on parole, started a street fight in which he got shot. Despite medical efforts, he has not regained consciousness. The prognosis is that he almost certainly never will. A young mother has just arrived at the hospital after being in a car crash. She desperately needs temporary life support, but the machines are all in use. Erbetz's doctor suggests disconnecting the life

support devices from Erbetz and using them to save the life of the new patient.

a. The doctors may lawfully end Erbetz's life if his prospects for a full recovery are practically hopeless.

b. The doctors may lawfully end Erbetz's life as long as they have consent of his family.

c. The doctors may discontinue life support services to Erbetz if medical treatment would be of no further benefit or futile.

d. The doctors may discontinue life support services to Erbetz to free up the equipment for another patient who is more deserving.

e. More than one of the above.

18 Assume that Erbetz is unconscious, has no chance of recovery and cannot benefit from further treatment. The legal rationale for letting doctors discontinue life support would be:

a. Ending life support in such a case is a form of euthanasia and therefore is not treated as homicide under the law.

b. Life-and-death decisions sometimes have to be made when patients are near the end of life, and doctors are the ones who have to make them.

c. Ending life support can be seen as an omission, not an act, and omissions to continue treatment are not a crime if the duty to treat has come to an end.

d. Terminally ill patients who are unconscious with no chance of recovery can be considered legally dead under the more modern rule.

19 An argument broke out during a party at a private home. As the participants moved outside, Matt Clemson grabbed a metal bar he saw lying on the ground. After the argument turned into a fistfight, Matt swung the metal bar hard against Rob Davies' jaw, knocking out several teeth. Matt is on trial for assault with intent to cause serious bodily injury. Once the above facts were in evidence, the prosecution rested its case. The defense lawyer presented no evidence that Matt did not intend to cause serious bodily injury. The judge should charge the jury that:

a. "The jury should presume from the defendant's acts and the surrounding circumstances that the defendant intended to cause serious bodily injury."

b. "The jury is permitted to infer from the defendant's acts and the surrounding circumstances that the defendant intended to cause serious bodily injury."

c. "The defendant should be irrebuttably presumed to have intended the natural and probable consequences of his acts."

d. All of the above say essentially the same thing (the judge could properly use any of them).

e. None of the above. The judge should dismiss the prosecution because the prosecutor has presented no evidence of specific intent.

20 Suppose in the preceding question that, when Matt swung the metal bar, Davies ducked. Instead of hitting Davies, Matt smashed a large window that Davies was standing next to. Matt is charged with "malicious destruction of property." He defends explaining that he was aiming at Davies' head and was not even aware that he might break the window. If the jury believes Matt's explanation:

a. The jury still can properly find Matt guilty as charged because "malicious" means acting with a generally wicked or blameworthy state of mind.

b. The jury still might properly find Matt guilty of "maliciously" breaking the window since he should have foreseen that Davies might duck.

c. Matt appears to be guilty of an attempted assault (or battery) against Davies but not of the property crime that was charged.

d. Matt appears to be guilty of no crime whatsoever.

21 Dodge shot at Marcus with intent to kill but missed, instead hitting Clarke, who was standing nearby. If Clarke was killed, Dodge would be guilty of:

a. Negligently killing Clarke.

b. Recklessly killing Clarke.

c. Knowingly killing Clarke.

d. Intentionally killing Clarke.

22 Chad tampered with his Uncle Silas's brakes as a practical joke on Silas. The jury is persuaded that it never even occurred to Chad (who's a bit dim) that Silas would lose control of the car or that anyone would be injured, much less killed. If Silas crashed into Nome due to the bad brakes and Silas survived but Nome was killed, Chad would be considered guilty of (MPC):

a. Negligently killing Nome.

b. Recklessly killing Nome.

c. Knowingly killing Nome.

d. Purposely killing Nome.

23 Walking down a residential street one morning. Ollie Popp saw an old battered bicycle on the ground near the curb.

Believing it had been left for the morning garbage pick-up (i.e., "abandoned"), Ollie took the bike home, intending to keep it. In fact the bike had been carelessly left at the curb by the kid who owned it. Ollie is charged with larceny.

a. Ollie does not appear to be guilty of larceny on these facts because he did not have the requisite mens rea.

b. Ollie would not be guilty of larceny on these facts because the bike's owner was careless in leaving it out where anybody could take it.

c. Ollie *should* be found guilty of larceny on these facts unless the jury finds that he *reasonably* believed the bike had been abandoned.

d. Ollie *should* be found guilty of larceny on these facts because he took something that he knew was not his.

24 Carol Brody was traveling home from a family visit abroad. As she said goodbye, one of her cousins asked her to do him a favor and take back a small wooden carving that he'd promised to a friend. He said the friend would pick it up once she got home. Carol was stopped at the border and the carving was found to contain heroin. Carol has been charged under a statute that prohibits "knowingly importing a controlled substance."

a. Carol cannot properly be convicted unless she had actual knowledge that the carving contained heroin.

b. Carol can properly be convicted if the prosecutor can prove that she should have known the carving contained heroin.

c. Carol can properly be convicted if the prosecutor can prove that a reasonable person would have suspected that the carving contained heroin.

d. Even if the prosecutor can't prove Carol knew the carving contained heroin, she can still be convicted if the prosecutor can prove willful blindness.

25 In the preceding question, one way for the prosecutor to get a conviction would be to show (MPC):

a. Carol was aware there was a high probability that the carving contained heroin (unless she actually believed it did not).

b. Carol believed there was a high probability that the carving contained heroin and took deliberate measures to avoid learning the truth.

c. Either of the above.

d. None of the above.

26 Gus Webber runs a small repair shop. He has been indicted for improper storage of flammable liquids (gasoline), a "public welfare" offense. Inspectors found it stored in glass bottles in a

messy storage closet. The prosecutor made no effort to allege or prove that Gus knew the bottles contained gasoline:

a. Gus should not be convicted on this evidence because there is no proof of mens rea.

b. Gus cannot be properly convicted unless the prosecutor proves that Gus knew the glass bottles contained gasoline.

c. Gus cannot be properly convicted unless the prosecutor proves that Gus knew it was illegal to store gasoline in glass bottles.

d. There is enough evidence here for Gus to be properly convicted.

27 Jocelyn bought a folding fish knife at a kitchen supply store. She was not aware that the knife would spring open at the push of a small button on the handle. She has been charged under a statute that says "it is an offense to possess a knife that springs open at the push of a button" (not considered a public welfare offense). The statutory penalty is "up to five years" in prison. In line with the U.S. Supreme Court cases we studied, the court's holding should be that:

a. Jocelyn cannot be properly convicted unless she knew her conduct was a crime.

b. Jocelyn cannot be properly convicted unless she knew the facts that made her conduct a crime.

c. It is irrelevant that Jocelyn did not know the knife has a push-button opener because the statute does not mention knowledge as an element.

d. The statute is unconstitutional because it purports to punish people who have no culpable mental state at all.

28 Doug Boron, age 19, used a fake ID to buy beer at a bar near campus. He is charged under a statute that makes it a crime "to knowingly use a means of identification of another actual person." Should the prosecutor have to prove that Doug specifically knew that the ID showed the name and age of some other actual person?

a. Yes, under the interpretive approach called for by the Model Penal Code.

b. Yes, under the interpretive approach taken in recent cases of the United States Supreme Court that we studied.

c. Both of the above.

d. None of the above. The only knowledge that this statute requires is that Doug knew he was using a means of identification.

29 Last year Filbert took several illegal deductions on his Federal income tax return, namely, "education expenses" for the cost of sending his dog to obedience school. He has now

been charged with "willfully filing a false return." Filbert claims that he honestly did not know the deductions were not permitted by law. He should *not* be convicted:

a. If the court finds he believed in good faith that the illegal deductions were permitted by the tax law.

b. Only if the court finds he believed in good faith *and reasonably* that the illegal deductions were permitted by the tax law.

c. Only if the court finds that a "reasonable person" could have believed that the tax law permitted the deductions.

d. Only if a reasonable tax lawyer or accountant could have believed that the tax law permitted the deductions.

30 Oberdorf took some friends out on the river for a pleasure ride in his motorboat. He made a daring high-speed turn that caused Gary to fall out of the boat about 1000 feet from shore. Gary swam to a nearly floating buoy and climbed on it. He was safe while sitting on the buoy but he became impatient waiting to be rescued. He tried to swim to shore and, unfortunately, got tired before reaching land and drowned. Oberdorf has been indicted for criminally negligent homicide. He would seem to have a good argument in defense under the:

a. De minimis doctrine.

b. Apparent safety doctrine.

c. Omissions doctrine.

d. Each of the above would provide a strong defense.

31 Fenway was driving at excessive speed on a narrow suburban street. A cyclist, alarmed at hearing his approach, swerved off the street into a steep driveway. As the cyclist stopped briefly in the driveway, a person working on a lawnmower at the top of the driveway lost control of the mower. It rolled down the driveway and hit the cyclist, breaking his leg. Fenway has been indicted for "negligently causing serious bodily injury." His lawyer is trying to construct an argument that Fenway's conduct should not be considered the proximate cause of the cyclist's injuries. Which of the following tests or factors would be relevant and helpful to Fenway:

a. The "de minimis cause" doctrine.

b. The voluntary human intervention rule.

c. The rule for unforeseeable coincidental causes.

d. None of the above. There is no plausible argument that Fenway's conduct should not be considered the proximate cause of the injuries.

32 Vic Enright was driving extremely recklessly while legally intoxicated. He ran over a pedestrian. The pedestrian suffered serious head injuries and has not had detectable brain function

for several days. His heartbeat and breathing have been maintained by artificial means. Suppose the doctors declare him brain dead and, preparing to take his organs for transplant, remove the life support, which stops his heartbeat:

a. The cause of death would be considered to be the removal of the life support (cessation of heart and lung function) under the traditional rule.

b. Under a new rule more recently adopted in some states, the cause of death would be considered to be the conduct that caused cessation of brain function.

c. Both of the above.

d. None of the above.

33 Suppose in the preceding question that a jury convicts Enright of homicide for unlawfully causing the death of another with malice aforethought. Based on this conviction, it would be correct to say that:

a. Enright is guilty of murder.

b. Enright is guilty of premeditated murder.

c. Both of the above.

d. Enright has been falsely convicted because a there is no such thing as unintentional murder.

34 Wendell is a carpenter. He is accused of killing a co-worker with a nail gun during an on-the-job spat. He and the victim never got along very well and on this particular day they were really getting under each other's skin. The death occurred when the victim accidentally bonked Wendell with a long plank and Wendell suddenly spun around, took aim and fired off three nails.

a. The general rule is that Wendell would be guilty of premeditated murder as long as he shot with a specific intent to kill.

b. In some but not all states, Wendell would be guilty of premeditated murder only if he had time to consciously reflect on or weigh his decision to kill.

c. Because Wendell did not plan or pre-reflect on his decision to kill, no court would hold him guilty of premeditated murder.

d. There is no way that Wendell should be convicted of murder at all.

35 During an argument over politics, Stewart intentionally killed Martin with a bronze statuette. Stewart struck Martin as the latter was pulling Stewart's hair and calling him a "dirty fascist" using various ethnic slurs. If the jury believes that Stewart caused death intentionally while in heat of passion from adequate provocation:

a. Stewart should be convicted of manslaughter.

b. Stewart should be convicted of murder (but not premeditated murder).

c. Stewart should be convicted of causing death with malice.

d. Stewart should be acquitted of all charges.

36 Suppose in the preceding question that the evidence turned out to be unpersuasive that Martin actually grabbed Stewart's hair or did anything physical against Stewart. There is, however, ample evidence that Martin used highly provocative language and made uncalled-for insults aimed toward Stewart, and that Stewart's ungovernable passion was completely understandable based on Martin's words.

a. Many of the more recent cases would allow the jury to consider Stewart's provocation defense based on the words alone.

b. There is no reason under the traditional rule why the jury should not be instructed to consider Stewart's provocation defense based on the words alone.

c. Both of the above.

d. Mere words can never justify causing another's death, and the defense of provocation always requires a physical assault or battery of some kind.

37 Suppose that Stewart successfully pleads the "provocation" defense at his trial in the preceding question:

a. It should be treated as a complete defense to the homicide charge.

b. It would be treated as a defense to murder but not to manslaughter.

c. The provocation should be treated as negating malice.

d. Both b. and c. above.

38 During a wild party at a friend's home, Thorpe went upstairs to the bathroom. On the way, he passed a half-open door and glimpsed Marie, his partner of many years (and the mother of his children) in a bed with Phil, the host. Thorpe did nothing at the time but he was still brooding over the episode when, a few days later, he and Phil were out hunting and Phil cheerfully remarked: "You're a lucky guy, Thorpe. I can tell you from first-hand experience!" In a momentary surge of rage, Thorpe emptied his shotgun at Phil. On trial for attempted murder:

a. The provocation defense would probably not be allowed under the traditional rule.

b. The fact that Thorpe had time to cool off after the party would not necessarily exclude the provocation defense under some of the more recent cases.

c. Courts would probably not allow the provocation defense if Phil and Marie were not legally married at the time the events occurred.

d. All of the above.

39 Under the traditional approach, the jury would probably be allowed to consider the defense of provocation in which of the following cases?

a. At a bar, Victim dumped D's pitcher of beer over D's head and made humiliating comments causing people to laugh uproariously at D.

b. Victim taunted D after carelessly causing a case of soda to fall over on D's young child, causing the child serious injury.

c. D is charged with attempted murder for injuries he caused to Victim in a fist-fight that escalated into a brawl.

d. All of the above.

e. More than one but not all of the above.

40 Saasar and his family are refugees from a country that is embroiled in civil war. After seeing his younger sister in a car with a boy from her school, Saasar went up to the car and confronted the boy. When the boy responded with a racial slur aimed at Saasar's culture and ethnicity, Sassar pulled the boy from the car and beat him with a piece of pipe. He is now charged with attempted murder and claims provocation. The question is whether personal characteristics of the defendant (such as cultural background) should be considered in deciding on the provocation defense.

a. Personal characteristics of the defendant should not normally be taken into account at all in deciding whether the provocation defense applies.

b. Personal characteristics of the defendant can be properly taken into account in assessing the gravity of allegedly provocative words.

c. Personal characteristics of the defendant can be properly taken into account in assessing the level of self-control that the law expects.

d. Both b. and c. above.

41 Collins is charged with negligently causing the death of a friend in a nasty rock-climbing accident. Collins had been in charge of handling the safety lines. Under the rule for criminally negligent homicide that is usually applied today, Collins should be convicted:

a. If the friend's death was caused by ordinary negligence on the part of Collins.

b. If the friend's death was caused by an elevated level of negligence, such as gross negligence, on the part of Collins.

c. Only if the friend's death was caused by a highly elevated level of negligence amounting to recklessness.

d. If the negligence on the part of Collins was sufficiently great to warrant holding him liable for negligence in a civil suit for wrongful death.

42 Raymond became angry when he was yelled at by his teacher. He went to the restroom and made a fire in the disposal bin for paper towels. His hope was that the smoke would cause the school to be shut down for the day. However, the fire got out of hand and the fire department was called. One of the firefighters was killed when he fell off the fire truck as it sped to the school to answer the call. Raymond has been charged with arson (a felony) and murder.

a. The murder charge must be dismissed if there is no evidence that Raymond intended to cause the firefighter's death.

b. The murder charge must be dismissed because Raymond did not cause the firefighter's death.

c. Both of the above.

d. Raymond could be properly convicted of causing death with malice (i.e., murder) if the evidence supports the arson charge.

43 Ezra Stutz entered an open construction site at night with a specific intention to steal. He stole some electrical junction boxes, wiring and other gear, a felony. He was seen by a passing police car and ran off with his loot. One of the police officers in the car took a shot at Stutz and missed. The stray bullet entered a nearby house and killed one of the occupants. Stutz is charged with murder for causing the death.

a. In many states, Stutz would probably not be considered guilty of felony murder because his predicate felony was not particularly dangerous.

b. In many states, Stutz should not be considered guilty of felony murder because it was the police officer, and not Stutz, who directly caused the death.

c. Both of the above.

d. Under the general rule in just about every state, Stutz probably would be considered guilty of felony murder.

44 Willa Rodds has no medical license but, nonetheless, opened an oncology practice. She advertised that she could cure cancer by means of homeopathy (an unproven technique). Benton paid her $20,000 for treatment but later died because he passed up the chance to receive proper medical attention. Willa

is indicted for murder. It is a felony to "offer medical services without a license in a manner that poses a risk to life or the physical or psychological well-being of others." For felony murder, the state's courts require a predicate felony that is inherently dangerous in the abstract.

a. The murder indictment can properly stand because Willa's felony would be considered inherently dangerous.

b. The murder indictment would probably be dismissed because Willa's felony would not be considered inherently dangerous.

c. The felony murder rule should not apply because, on these facts, Willa did not act with malice aforethought.

d. The felony murder rule should not apply because the patient died of cancer, not due to Willa's conduct.

45 Jeb and Tony robbed a liquor store. The owner shot Jeb in the neck, causing his death. Tony is charged with killing Jeb.

a. Under the "proximate cause" approach, which most states follow, Tony should be guilty of felony murder in the death of Jeb because he put the causes into motion.

b. Under the "agency" approach, which most states follow, Tony should be guilty of felony murder in the death of Jeb.

c. Under the "agency" approach, which most states follow, Tony would *not* be considered guilty of felony murder in the death of Jeb.

d. Under the "proximate cause" approach, which only a minority of states follows (at most), Tony should *not* be considered guilty of felony murder.

46 In order to convict a person of a crime:

a. The Constitution requires the prosecution to prove every element of the crime beyond a reasonable doubt.

b. The prosecution usually has the burden of proving every element of the crime, but the state can shift that burden of proof to the defendant by statute.

c. The prosecution has the burden of proving at least a majority of the elements of the crime beyond a reasonable doubt.

d. The state is generally free to dispense with the need for proof beyond a reasonable doubt by creating presumptions that given elements of a crime are present

47 The murder statutes of a certain Midwestern state define murder as "causing death by actions intended to cause the death of another person." They also provide an affirmative defense for "heat-of-passion" if the defendant can show that his deadly conduct was provoked by an adequate cause calculated

to inflame a reasonable person to act with ungovernable passion.

a. These statutes would be unconstitutional because they relieve the state of the burden of proving malice, which is a key element of murder.

b. These statutes would be constitutionally valid even though they give the defendant the burden of proof (i.e., persuasion) on the heat-of-passion issue.

c. An absence of heat-of-passion would be considered an element of the crime under these statutes.

d. More than one of the above is true.

48 Eliot owed a large gambling debt to Trebes. On Monday, Trebes approached Eliot in a dark parking lot and said: "If I don't get paid by Thursday, you'd better plan on spending some time in the hospital." Eliot knew that Trebes often carried a gun, but he didn't show it at the time. As Trebes turned to walk away, Eliot grabbed a large stone and smashed it over Trebes' head. Eliot is charged with murder.

a. The charge should be dismissed because all of the elements of self-defense are present.

b. The charge should be dismissed as long as Eliot honestly and reasonably feared for his life.

c. The defense of self-defense does not appear to apply because the imminence requirement is not met.

d. The defense of self-defense does not appear to apply because Eliot provoked the threat by not paying his debt.

49 Suppose in the preceding question that Trebes pointed a gun at Eliot as he made his demand and threat. Trebes then put his gun away and started walking off. Eliot ran up from behind and hit him with the stone:

a. Eliot would have the defense of self-defense because he had just been threatened with a deadly weapon.

b. Eliot would have the defense of self-defense because Trebes was still carrying a deadly weapon and could use it at any time.

c. Both of the above.

d. Eliot would not have the defense of self-defense because he would now be considered the initial aggressor.

50 Wescott got into a violent argument with a man he rear-ended at a traffic light on the dark and lonely road. When Wescott ran to his car and locked the doors, the other man pursued him and started smashing the car's windows with a tire wrench. Not wanting to abandon his car and fearing for his

safety, Wescott pulled a gun from under the seat and shot the other man. He is charged with murder. The jury should be told that it may find for Wescott based on self-defense:

a. Only if it finds that Wescott actually needed to use deadly force to protect himself from imminent death or grievous bodily harm.

b. If it finds that Wescott honestly believed it was necessary to use deadly force to protect himself from imminent death or grievous bodily harm.

c. If it finds that Wescott honestly *or* reasonably believed it was necessary to use deadly force to protect himself from death or grievous bodily harm.

d. If it finds that Wescott honestly *and* reasonably believed it was necessary to use deadly force to protect himself from imminent death or grievous bodily harm.

51 While Fuller was watching a game on TV in his apartment he heard an argument break out on the street below. He looked out the window and saw weapons drawn. He quickly grabbed his own gun, checked to see it was loaded and headed down to the street, gun in hand. In the ensuing melee, Fuller was forced to defend himself by shooting one of the guys who'd been arguing in the street. Fuller is charged with murder and wants to claim self-defense.

a. The defense of self-defense is probably available if Fuller honestly and reasonably believed he had to use deadly force to protect himself.

b. The fact that Fuller chose to arm himself and join the dispute could induce the court to disallow the claim because Fuller provoked the need to use deadly force.

c. The fact that Fuller chose to involve himself in the dispute should make no difference to his claim of self-defense because he had a right to go into the street.

d. There is no way Fuller could be considered the initial aggressor because the fight was already in progress before he even got involved.

52 Denton caught Lightfoot stealing hubcaps from his car. The two got into an argument. As Lightfoot started to leave with one of the hubcaps, Denton reached inside his car and grabbed a gun. Denton shouted "stop!" and Lightfoot turned to look. Seeing the gun, Lightfoot raised the heavy (and potentially deadly) hubcap in the air and approached. Denton pulled the trigger causing a fatal wound.

a. Denton should be able to claim self-defense because he was being threatened with the upraised hubcap.

b. Denton cannot claim self-defense because he would be considered the initial aggressor.

c. Denton should be able to claim self-defense because Lightfoot brought the whole thing on himself by engaging in larcenous conduct.

d. Denton should be able to claim self-defense because he was trying to protect his property.

53 Two months ago, Stanton was robbed while walking near his home. For protection, he bought a gun that he carried in his coat. Last night, as Stanton was walking home from the bus, a man approached from the other direction in the dark. Stanton crossed the street as a precaution, but the other man also crossed and continued to approach. The two got close and the man said something. Stanton, now scared and thinking he was being robbed again, pulled out the gun and shot. The other man, as it turned out, had no weapon. On the question of whether Stanton acted as a reasonable person for purposes of self-defense.

a. The court can properly tell the jury it can consider the fact that Stanton had previously been robbed in that same area.

b. The court can properly tell the jury to consider Stanton's relative size, age and fitness compared with the other man.

c. The court can properly tell the jury to consider circumstances such as the darkness and whether the victim's behavior would have aroused suspicions.

d. The court can properly tell the jury that it may consider more than one of the above.

e. The court should tell the jury to use an entirely objective standard of reasonableness and not consider any of the above.

54 It was after 10:00 p.m. when Lanie Cotter, alone at home with her young daughter, heard scratching on the outside of her front door. Peering through a window, she spied two men crouched down working on the lock. She grabbed the shotgun her husband had left with her, loaded it and stood about 15' from the door. When the door flung open, she let loose with a blast from the gun, killing one of the men and seriously injuring the other. Neither man was armed and, it turns out, they were accidentally at the wrong house. Does Lanie have a plausible case for "defense of habitation" as a defense?

a. No, because the men had not crossed the threshold and into the house when she shot.

b. No, because she used deadly force before trying to get them to leave with non-deadly force.

c. No, because deadly force may not be used in the defense of property.

d. Yes.

55 Kay Gartner was walking down the street on a sunny summer day when she saw a car with a small dog inside. The

dog seemed lively and jumped around when she approached the car window, but Kay became concerned about the dog's welfare. She smashed the car window and let the dog out, and then she stayed at the scene until the owner returned. The owner called the police who booked Kay for intentional destruction of property. Depending on the jurisdiction, Kay may have trouble using the necessity defense:

a. If she could easily have used her cellphone to call a locksmith, who would have been there and opened the car within 10-15 minutes.

b. Because the harm that she was trying to prevent was not caused by an "act of God" or force of nature.

c. Because there was apparently no immediate and dire need to break the car window.

d. All of the above.

56 A witness in an upcoming robbery trial got a call from a man who said: "You'd better say that you're 'not sure' about your eyewitness identification when you get on the stand, or you'll definitely be sorry." The man recited some details about where the witness lived, worked, etc. and the severe beating he would receive. At the trial, the witness changed his story, fudged the identification and was charged with perjury. The witness wants to claim duress as a defense. Which of the following are among the usual elements of duress?

a. A threat of death or serious bodily injury if the witness did not do what he was told.

b. A well-grounded fear that the threat would be carried out, either immediately or at some time in the future.

c. No reasonable possibility of escape.

d. All of the above correctly state elements of duress.

e. More than one but not all of the above are correct.

57 Burt Sylla engaged in an exchange of communications on the Internet with Carolyn, who told Sylla she was 16 years old. When Carolyn asked Sylla if he wanted to see some "dirty pictures" she'd taken of herself and some school friends, Sylla responded yes. Carolyn was in fact a 32-year old police undercover officer posing as a minor. She sent some lewd but "legal" pictures (of teens over 18, faces not shown) and the two arranged to meet. Sylla was caught and charged with attempted possession of child pornography. Under the MPC approach to the law of attempt:

a. Sylla probably would not be convicted as charged because receiving non-illicit pictures could not constitute a "substantial step."

b. Sylla probably could not be convicted as charged because there were no actual illicit pictures and so the completed offense was factually impossible.

c. Sylla probably *would* be convicted as charged because his acts would have constituted the completed offense if the facts had been as he believed them to be.

d. Sylla probably *would* be convicted as charged because his acts came dangerously close to committing the completed offense.

58 Three teens, with no records of serious misbehavior, decided it would be fun to rob a convenience store. They took ordinary pocket-knives to threaten the clerk, got in a car that one of them borrowed and drove to the store. They got to the store's parking lot, but in the end they did not go in the store. Instead, they drove home without robbing the store. Two of the boys bragged about their abortive exploit at school, and all three were charged with attempted robbery. Based on these facts (if properly corroborated):

a. The jury should find them guilty as charged under the "last act" doctrine.

b. A jury could properly find them guilty of attempted robbery under the MPC.

c. Both of the above.

d. They cannot be guilty of attempted robbery because they never actually attempted to commit a robbery.

59 A jury could properly decline to convict in the preceding question if the jury finds *as a fact* that:

a. The boys' actions (as opposed to things they said) did not unequivocally show that they ever actually intended to commit a crime.

b. It was always probable that the boys would desist from carrying out the crime (as, in fact, they did).

c. With the small knives they carried, it would have been factually impossible for the boys to intimidate the clerk, who kept a gun hidden behind the counter.

d. All of the above.

e. More than one but not all of the above.

60 A rug merchant was approached by a suspicious character who offered him a chance to buy some stolen rugs at very low prices. "Well, he thought to himself, *my* trucks have been robbed twice in the last month, so why not? It will give me a chance to get even." Just after the rugs were delivered, the police arrived. The deal turned out to be a sting and the rugs that were delivered were ones that had previously been stolen from the merchant's own truck. He had just paid to buy back his own rugs! Now he's charged with attempt to receive stolen property.

a. There's a good chance the hapless merchant would be allowed to assert the defense of legal impossibility under the traditional common-law approach.

b. There's a good chance the hapless merchant would be allowed to assert the defense of legal impossibility under the MPC approach.

c. Both of the above.

d. None of the above. The defense of impossibility has never been recognized in a case such as this.

<End of examination.>