PACE UNIVERSITY SCHOOL OF LAW

CRIMINAL LAW
PROFESSOR HUMBACH — December 12, 2024
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.

GENERAL INSTRUCTIONS:

OPEN-BOOK EXAM: You may use any written materials or electronic devices you want, but you are not permitted to communicate in any way with any other person or AI system.

GENERAL INSTRUCTIONS:

This examination consists of 60 multiple-choice questions to be answered using EXAM4. By now you should have downloaded EXAM4 (https://law.pace.edu/academics/registrarbursar/exam-information) and taken a Practice Exam on it. Please carefully review and follow the instructions supplied by the Registrar's office for taking the exam on EXAM4. Questions concerning the mechanics of taking the exam should be referred to the Registrar's office.

Answer each question selecting the *best* answer. Indicate your choice by clicking the letter on the Multiple-Choice screen in EXAM4. Confirm your answer and the question number on the left side of the screen. **If you want to delete or change an answer, follow the EXAM4 instructions using the "unlock" button. You should have already practiced deleting or changing answers on the Practice Exam to familiarize yourself with the process.** The answers you submit at the end of this exam cannot be later be changed.

You will receive 2 bonus points for correctly using EXAM4.

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

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

1 Defendant used various devices to listen through the wall between his apartment and his neighbor's bedroom. He has been indicted for "eavesdropping." There is no statute that prohibits eavesdropping, but the prosecutor maintains that eavesdropping is punishable as an offense under the common law. Defendant's lawyer has moved to have the indictment dismissed. Most modern courts would probably:

a. Deny the motion to dismiss because eavesdropping is a kind of conduct that can be punished as a new offense under the common law.

b. Grant the motion to dismiss because there is no statute that defines eavesdropping as an offense.

c. Deny the motion on the ground that eavesdropping is conduct that directly injures or tends to injure the public.

d. Deny the motion on the ground that seriously annoying conduct should not go unpunished.

2 Defendant is a drug dealer who supplied cocaine to an adult buyer who was in her third month of pregnancy. He has been indicted under a statute that makes it a crime "to provide a controlled substance to a child." Defendant has moved to dismiss the indictment on the ground that the word "child" in the statute means a person who's been born alive. In determining the meaning of the word "child" in the statute,

a. The court should normally stick to the standard dictionary definition.

b. The court should normally court consult up-to-date sources, such as the Internet and social media.

c. The court may properly refer to the established common-law meaning of the word "child" at the time the statute was enacted.

d. The court would normally consult with the legislature to determine whether it intended the word "child" to apply to a case like this one.

3 Suppose in the preceding question the court finds several prior judicial decisions interpreting the statute. All of them limit the statutory prohibition to children who are already born. The prosecutor argues, based on medical advances, that such cases are obsolete, and the court should expand the meaning of the statutory word "child" to include the unborn. Recognized legal arguments against such an expansion would include:

a. The expansion would be an unforeseeable judicial enlargement of the statute raising serious issues of fair warning under the Due Process clause.

b. Once a court has interpreted the statute to have a certain meaning, another court cannot later reinterpret it to have a different meaning.

c. Both of the above.

d. None of the above. There is no particular legal reason why the court should not expand, in its discretion, the statutory meaning of "child."

4 Defendant rode a stolen electric scooter across a state line. He is now charged under a statute that makes it a crime to "transport a motor vehicle across a state line without the permission of the owner." Defendant's lawyer claims the words "motor vehicle" in the statute were not meant to apply to electric scooters. Accepted methods by which the court could determine legislative intent would include:

a. Considering the apparent purpose of the statute based upon a reading of the statute as a whole.

b. Considering the circumstances or events that prompted enactment of the statute.

c. Considering the legislative history of the statute.

d. All of the above.

e. None of the above.

5 During a summer picnic, Defendant burned the burgers on his backyard grill. This caused a huge cloud of smoke to rise and float across the neighborhood. Defendant has been fined under a statute that prohibits "engaging in domestic activities that unnecessarily emit pollutants and greenhouse gasses into the atmosphere." On appeal, Defendant claims the statute is void for vagueness. The appeals court may properly find the statute vague and indefinite if:

a. Defendant can demonstrate that he did not understand that his conduct was prohibited by the statute.

b. The court concludes that the statute does not provide a reasonably ascertainable standard of guilt.

c. The court concludes that the statute invites arbitrary and discriminatory enforcement.

d. Both b. and c. above.

e. All of the above.

6 Defendant is a physician. She distributes pain pills as part of her practice. She sold some pain pills to an undercover agent posing as an addict in withdrawal. Now she has been indicted for distributing a controlled substance when it was "not reasonably medically necessary." Defendant claims the words "not reasonably medically necessary" are unconstitutionally vague and therefore the statute is unenforceable. Most courts faced with a statute like this would probably:

a. Hold that Defendant can be properly convicted even if the statute is unconstitutionally vague as long as her specific conduct could be validly prohibited by law.

b. Send the statute back to the legislature for clarification.

c. Endeavour to hold the statute constitutional by finding a narrowing interpretation that cures the alleged vagueness.

d. Dismiss the charges against Defendant because no one can be constitutionally convicted under a statute whose wording is not clear on its face.

7 Which of the following is a "conduct" crime as opposed to a "result" crime?

a. Manslaughter.

b. Driving under the influence of alcohol or a controlled substance.

c. Destruction of evidence ("making documents, records, or other tangible objects unavailable as evidence in an official proceeding.")

d. Arson ("intentionally burning down a building").

e. Infliction of serious bodily injury by means of poison or noxious gases.

8 Defendant was driving down a road with a friend. Another car suddenly came out of a side road into their path of travel. Defendant pulled the steering wheel suddenly to one side which swerved his car into the next lane where he bumped another car that was in the process of passing him. Defendant is prosecuted for reckless driving.

a. Defendant should not be convicted if the jury finds that pulling the steering wheel suddenly to the side was a conditioned response.

b. Pulling the steering wheel suddenly to the side should not be considered a voluntary act if it wasn't the result of an exercise of the will.

c. Both of the above.

d. Defendant's conduct should not be considered a voluntary act because he did not intend to hit the car that was passing him.

e. All of the above.

9 Defendant was on her way home on a lonely back road when she saw the car ahead of her skid into the snowy ditch. She slowed down as she passed the other car but saw nothing in particular except that it was obviously stuck. She considered dialing 911 but decided she didn't want to get involved. Suppose the next morning the driver of the other car was found frozen and lifeless. Could Defendant be properly convicted of homicide because she did nothing to help?

a. Yes, if she could have saved the other driver at no risk to herself by simply dialing 911.

b. Yes, because the extreme conditions created a legal duty on Defendant to either offer help or at least call 911.

c. No. Defendant was legally entitled to mind her own business and had no legal obligation to involve herself in the needs of a stranger.

d. Maybe. A court would ordinarily leave it to the judgment of a jury to decide whether Defendant's omission was blameworthy enough to be a crime.

10 Late one night, Defendant got a call from a college buddy. He said he was in town and had no place to stay. Defendant told him: "Come on over and stay with me" His guest turned out to be obviously high on something and, after a short time, passed out. Defendant stretched him out on the couch and went to bed. Defendant could have called the EMTs, but he was tired and wanted to get to sleep. The next morning, his guest was unresponsive and turned out to be dead from an overdose. Was Defendant guilty of homicide by omission?

a. Yes, because he failed to perform a legal duty that people owe to guests in their homes.

b. Yes, because he had at least a moral duty to help his guest, and he can properly be held guilty of homicide for his omission to perform this duty.

c. Yes, because Defendant had a legal duty to his guest based on status since the two had known each other since college.

d. No.

11 Defendant was looking at a friend's gun collection in the friend's apartment. He picked up a pistol, which he thought was unloaded. It went off. The bullet went through the wall and seriously injured a person in the next apartment. Defendant is indicted under a statute that makes it a crime to "inflict serious bodily injury by means of a firearm." The statute (which you should assume is not a public welfare statute) is silent about mens rea. To obtain a conviction under this statute, the prosecutor must show that Defendant (MPC):

a. Either purposely or knowingly inflicted serious injury.

b. Purposely, knowingly or recklessly inflicted serious injury.

c. Purposely, knowingly, recklessly, or negligently inflicted serious injury.

d. None of the above. The prosecutor does not have to show any particular mens rea because the statute does not specify any.

12 Assume again that the statute in the preceding question is not a public welfare statute. Under the usual *common law* rules for interpreting criminal statutes, the prosecutor would be required to show that Defendant:

a. Intentionally inflicted serious injury.

b. Intentionally or recklessly inflicted serious injury.

c. Intentionally, recklessly or negligently inflicted serious injury.

d. None of the above. The prosecutor does not have to show any particular mens rea because the statute does not specify any.

13 Suppose in the preceding question that the statute made it a crime to "recklessly inflict serious bodily injury by means of a firearm." Using the basic modern common-law meaning of

recklessness (*e.g.*, *Cunningham* case), the prosecutor would ordinarily need to show:

a. That Defendant acted with a conscious objective to inflict serious injury.

b. That Defendant foresaw the risk that his conduct might cause serious injury, but he went ahead and took the risk anyway.

c. That Defendant was aware that his conduct was practically certain to cause serious injury.

d. That Defendant should have known that his conduct might produce serious injury.

14 Defendant was running from police. He turned and fired a shot at one of the pursuing officers. The officer was not hit but the bullet pierced the front window of a nearby antique shop. It destroyed a $50,000 vase on display. Defendant is charged with, among other things, violating a statute that forbids "malicious destruction of property." Using today's usual "elemental" conception of mens rea:

a. Defendant cannot properly be convicted on the property charge.

b. Defendant *can* be properly convicted on the property charge because shooting at a police officer would be considered a "malicious" act.

c. Defendant can be properly convicted on the property charge as long as there is proof that he intentionally pointed the gun and pulled the trigger.

d. Defendant can be properly convicted on the property charge because he acted with an anti-social state of mind and caused serious damage.

15 Defendant threw a brick at a fellow worker's head on a construction site. It missed. Defendant has been charged with attempted aggravated assault. The statute prohibits "intentionally causing or attempting to cause serious bodily harm to another person." How would the prosecution ordinarily go about proving that Defendant intended to cause serious bodily harm when he threw the brick?

a. By putting psychologists and other expert witnesses on the stand to testify what was in Defendant's mind at the time he acted.

b. By taking advantage of the legal presumption that persons intend the natural and probable consequences of their actions.

c. By proving what Defendant did and the circumstances and urging the jury to infer Defendant's intention from his conduct.

d. By putting Defendant on the stand and asking him to testify what he was thinking when he threw the brick.

16 Defendant is accused of committing a robbery. The police strongly suspect that he's the guilty party, but there are

identification issues, so they're not completely sure. During his initial interview with his public defender, the lawyer asked Defendant if he did it. A more senior attorney in the public-defender's office, who later took over the case, expressed surprise to see in the file that the question was asked.

a. Some take the position that it would amount to willful blindness for the defense attorney to *not* ask the question.

b. Many criminal defense lawyers would not ask this question because the client's answer might limit their flexibility in fashioning a defense.

c. The defense lawyer's primary concern should ordinarily be whether the state has credible evidence to convict, not whether the client actually did it.

d. All of the above.

17 Defendant accepted a ride home from a person at work. She knew her coworker was a gun hobbyist and might carry guns in his car. They were stopped by the police who found a handgun hidden under the back seat. Defendant has been charged with knowing possession of a firearm. The law defines "possession" to include "occupying or riding in an automobile in which a gun is known to be present." Defendant contends that she honestly didn't know there was a gun in the car. The state applies a willful blindness doctrine.

a. Defendant cannot be properly convicted unless the prosecution proves she was actually aware there was a gun in the car.

b. Defendant *can* be properly convicted if the jury finds she knew there was a high probability of a gun in the car and didn't actually believe there wasn't (MPC).

c. Defendant can be properly convicted if she didn't make diligent inquiry as to the presence of a gun in the car since she had good reason to suspect one. (MPC).

d. Defendant can be properly convicted if she didn't make diligent inquiry as to the presence of a gun in the car since she had good reason to suspect one. (Federal).

18 Defendant operates a website that caters to chia seed growers. Unbeknownst to Defendant, certain criminal elements have been using his website to convey coded messages as part of a money laundering scheme. He has been charged under a statute that makes it a crime "to facilitate communications in aid of money laundering [or certain other financial crimes]." The statute specifies no mens rea. Defendant offered evidence as to his lack of knowledge, but the prosecutor objected. She said the evidence was irrelevant since mens rea is not an element of the crime. Under the usual common law rules of statutory interpretation for criminal statutes:

a. The court will be more likely to exclude the offered evidence as irrelevant if it concludes that the statute is a "public welfare" law.

b. Courts generally favor strict liability crimes and are reluctant to read mens rea requirements into statues, so the prosecutor's objections will probably be upheld.

c. Many courts hold that, if the legislature did not express a mens rea requirement in a statute, the court is not allowed to add one by "interpretation."

d. Both b. and c. above.

19 Defendant is charged under a statute that makes it a crime "to steal school property." The court views the prohibited conduct as essentially a form of common-law larceny, which traditionally requires proof of intent. Defendant admits that he intentionally took some old maps that were lying around near the garbage dumpster, but insists he thought they were trash and had the status of abandoned property. The prosecutor argues that it's irrelevant whether Defendant thought the maps were abandoned property. Under the usual common law rules of statutory interpretation for criminal statutes:

a. The prosecutor is correct since the statute specifies no mens rea.

b. Because the court views the prohibited conduct as a form of common law larceny, it would probably interpret the statute to require mens rea.

c. The court should not read an intent requirement into the statute because intention under these circumstances is hard to prove.

d. Theft of school property is a serious problem, and the court should smooth the way to prosecution by refusing to read a mens rea requirement into the statute.

20 Defendant knows a guy who sells guns privately. He bought one for self-protection. He is now charged under the Federal statute that makes it a crime "to possess a fully automatic gun that is not registered [as prescribed by law]." Defendant concedes that he knew his gun was not registered, but he claims he did not know it was fully automatic. According to the Supreme Court,

a. As long as Defendant knew his gun wasn't registered, that's all the mens rea that's needed to convict him under the statute.

b. A gun owner cannot properly be convicted under the statute unless he knows he possesses a gun that is fully automatic.

c. Guns are inherently dangerous instrumentalities and, therefore, the registration statute is a strict liability law.

d. Because the statute imposes a stiff penalty (up to 10 years), it cannot constitutionally be regarded as a strict liability law.

21 Defendant is a drywall installer. He was stopped by the police on suspicion of carrying drugs. The police didn't find any drugs, but they did find that Defendant was carrying a push button knife. He was charged under a law that states: "No person shall carry or possess a push button knife." Defendant offers 3 defenses. Which, if proved, has legal merit (MPC)?

a. Defendant did not know that his knife was a push button knife.

b. Defendant did not know it was unlawful to carry a push button knife.

c. Defendant used the knife solely for legitimate purposes in connection with his job as a construction worker.

d. More than one of the above has legal merit.

e. None of the above.

22 When Defendant moved to his apartment. he installed built-in bookshelves to hold his collection of video games. He removed the shelves three years later when he moved out. He's now charged with larceny for taking the shelves. In his defense, Defendant says he didn't know that, according to the law of property, the built-in bookshelves became the property of the landlord and had to be left in place when he moved out. He thought the bookshelves were his. Does this defense have legal support?

a. Yes, because Defendant's mistake of law in this instance negates the specific intent to steal that is required to be guilty of larceny.

b. Yes, because the rule that "mistake of law is no excuse" no longer applies in most states.

c. Both of the above.

d. No, because ignorance of the law is almost never an excuse.

23 Defendant found a gun hidden in her car. She believes it belongs to one of her son's friends. She called the local prosecutor's office and told them she'd found a gun. She asked if it would be all right to bring it down to turn it in. "I don't have a license to have it," she said. The prosecutor responded it was all right, that you don't need a license to carry a gun in order to surrender it to the authorities. When she pulled out the gun to show it at the security check for the prosecutor's building, she was promptly arrested for possession of an unlicensed firearm. According to the MPC:

a. She has no defense. The prosecutor on the phone had no authority to change the law, and nobody is above the law.

b. She should be protected in relying on an official interpretation of the public officer (the prosecutor) charged with administration of the law.

c. It should not be possible to hold her guilty because it was not her gun.

d. There is no basis for treating mistake of law as an excuse just because the mistake is based on an "official statement" from the local prosecutor.

24 Ray was driving approximately 7 mph over the speed limit. When he came to an intersection, Paula's car suddenly turned in front of him. Paula had swerved to avoid Fred's car, which had made an illegal left turn. Ray's car crashed into Paula's. Ray's passenger was seriously injured. Whose conduct was a cause in fact of the passenger's injuries?

a. Fred's

b. Ray's

c. Paula's

d. All of the above.

25 V received a knife wound during a fight between rival gangs. As V lay bleeding on the ground, Defendant (acting independently) fired a pistol shot at someone while attempting a carjacking a block or so away. The shot missed, ricocheted off a lamppost and struck V. Before V could be taken to a hospital, he died of his injuries. As far as causation is concerned, can Defendant be properly convicted of homicide in V's death?

a. Yes, if V would not have died of the knife wound alone, but he died of the combined wounds.

b. Yes, if Defendant's shot caused V to die sooner than he would have from the knife wound alone.

c. Both of the above

d. No, because Defendant was acting independently and not in combination with the person who inflicted the knife wound.

26 Suppose in the preceding question that the knife wound alone would have been fatal within minutes and that the gun shot would also, by itself, have been fatal within minutes. Medical experts testify, however, that they cannot determine whether the gunshot accelerated V's death. Can Defendant be properly convicted of homicide in V's death?

a. Yes, as a but-for cause of V's death.

b. Yes, as a substantial factor in causing V's death

c. Yes, Defendant is both a but-for cause and a substantial factor in causing V's death.

d. No.

27 Now assume in the preceding question that V would *not* have died of the knife wound alone, but he would have died from the gunshot alone. If Defendant fired the shot with the intention to kill the carjacking victim, the facts would appear to support a conviction of Defendant for:

a. Involuntary manslaughter.

b. Felony murder.

c. Intentional murder.

d. All of the above (that is, the facts would appear to support a conviction of Defendant for any one of the above).

e. None of the above.

28 Defendant recklessly caused a skiing accident that injured another skier. The injured skier was placed on a rescue

toboggan to take him down the hill. Further on down the hill, however, the ski patrollers lost their grip on the toboggan, and it raced its way down the rest of the slope. It came to a stop when it crashed into a woodpile, killing the injured skier instantly. Defendant's conduct would be considered the proximate cause of the death even if:

a. The ski patrollers were negligent in causing the crash into the woodpile.

b. The ski patrollers were grossly negligent in causing the crash into the woodpile.

c. Both of the above.

d. None of the above. Defendant's recklessness did not cause the death, it only caused the initial injury.

29 Defendant and a hitchhiker were driving from one town to another on a cold snowy night. The hitchhiker said something that annoyed Defendant. Defendant made the hitchhiker get out of the car out in the middle of nowhere. The hitchhiker walked about a mile in the freezing cold and came to a heated bus stop. No buses came, and the hitchhiker got impatient and started walking again. He was found frozen in the snow the next day. Charged with homicide, Defendant's best argument in defense would be:

a. The hitchhiker's death was caused by the cold and the snow, not by Defendant's conduct.

b. The apparent safety doctrine.

c. The rule that omissions are never treated as superseding causes.

d. The de minimis doctrine.

30 A primary way that the US prison system furthers the objective of crime prevention is:

a. By incapacitating offenders so that they cannot reoffend against members of the public generally during the term of their confinement.

b. By achieving low rates of recidivism among those who are released after serving their terms.

c. By operating and maintaining effective programs of reform and rehabilitation.

d. All of the above.

31 According to the utilitarian rationale for punishment:

a. Punishment is a good thing in itself because it gives wrongdoers what they deserve.

b. Punishment is justifiable because it rectifies an unequal advantage that criminals obtain by injuring their victims.

c. Punishment is an evil but is justifiable in order to prevent a greater evil.

d. Wrongdoers should be punished even if no useful purpose is served in doing so.

32 Compared with elsewhere in the industrial world, the rates of incarceration per capita in the United States are generally:

a. A little higher.

b. Much higher.

c. About the same.

d. Lower.

33 Following a football game, Defendant whacked a supporter of the rival team with a wooden stick, causing serious injury. He has been convicted of aggravated assault. The prosecutor argues that Defendant deserves to serve time in prison and that his sentence should be sufficiently severe to reflect the harm he caused. The rationale for punishment that the prosecutor appears to have in mind is:

a. Retribution.

b. Deterrence.

c. Incapacitation.

d. Rehabilitation.

34 Defendant was caught breaking into a auto repair shop to steal items that he could sell to support his drug habit. The prosecutor argues that Defendant should be sentenced to a substantial term of incarceration in order to set an example, protect the public and so he will have an incentive and opportunity to learn to live a law-abiding life. The rationale(s) for punishment that the prosecutor appears to have in mind is:

a. Deterrence.

b. Rehabilitation.

c. Incapacitation.

d. All of the above.

35 Defendant was convicted of child abuse. She had left her 10 month-old daughter in the bath while she was in the living room drinking wine and watching *Real Housewives*. The child nearly drowned. Defendant was extremely distraught from the whole episode and has required treatment for depression and stress. Her lawyer says she is highly remorseful and argues that she does not deserve to be punished further. The punishment objective that her lawyer appears to have in mind is:

a. Restitution.

b. Retribution.

c. General deterrence.

d. Incapacitation.

36 A patient was brought to a hospital after a serious accident. At the moment, the patient is still breathing and has a pulse, but these functions continue only because the patient is on a

respirator. Several other patients in the hospital urgently need organ transplants, and the transplant surgeons are growing impatient.

a. Under the modern view, it would not be proper to declare the patient "brain dead" as long as he is breathing and has a heartbeat.

b. Under the modern view, it would not be proper to declare the patient "brain dead" as long as his brain is literally alive.

c. In many states, cessation of heart and breathing function has taken the place of "brain death" as the primary criterion of death.

d. In a number of states, it would be legally permissible to take the patient's organs once brain function had permanently ceased.

e. Even if the patient has not been medically declared dead, it may sometimes be legally permissible to take the patient's organs if they are needed to save lives.

37 Defendant caught a snake in the woods. He put it in a cardboard box and, that evening, took it with him to a dance. The snake got out and, before anybody could catch it, a person got bitten. The person unfortunately died. Among the questions before the court is whether Defendant is guilty of murder or manslaughter. In the typical delineation of homicide offenses:

a. The grand criterion that distinguishes murder from manslaughter is whether the defendant caused death with malice aforethought.

b. The primary difference between murder and manslaughter is that murder means intentional homicide whereas manslaughter means an unintended killing.

c. Both of the above.

d. The term "malice aforethought" usually means premeditation.

e. Voluntary manslaughter is essentially a contradiction in terms and does not exist.

38 Assume in the preceding question that Defendant claims he didn't know the snake was poisonous. The jury believes him and that he really didn't foresee anyone would be hurt. The most serious crime that Defendant could properly be convicted of would be:

a. Criminally negligent homicide.

b. Depraved heart murder.

c. Involuntary manslaughter.

d. Intentional murder.

39 Defendant and a friend were horsing around with guns in a wooded park near their home. The fun ended when a bullet

from Defendant's gun struck his friend in the side causing his death. Defendant could properly be found guilty of murder:

a. Even if Defendant didn't intend to kill his friend.

b. If the jury finds that Defendant acted with a malignant or abandoned heart.

c. If Defendant fired the shot knowing it was practically certain to cause grievous bodily injury.

d. All of the above.

e. Only if Defendant fired the fatal shot with a specific intent to kill.

40 Defendant shot and killed a store clerk while robbing a convenience store. The shooting occurred when Defendant fired suddenly and impulsively as he saw the clerk reach under the counter. The statute defines first-degree murder as "willful, deliberate and premeditated" killing, and second-degree murder as "all other kinds of murder." The prosecutor is seeking to convict defendant of first-degree murder.

a. Almost everywhere "premeditated" the prosecutor has to prove that Defendant planned and thought out the killing for a substantial time beforehand.

b. In some states it would be enough to prove "premeditated" if the prosecutor can prove that Defendant shot with specific intent to kill.

c. In some states "premeditated" means the prosecutor must prove more than just specific intent to kill, such as that Defendant reflected on his action in advance.

d. Both b. and c. the above.

41 In the 1880s, Bart Delinger came upon a man who had just been in a horrific trolley accident. Though severed at the waist, the man was still conscious and obviously suffering terribly. After carefully considering the situation and correctly assessing that the man had only minutes to live, Delinger took out his pistol and shot him. Under today's standards, Delinger's act generally would be viewed as:

a. A less serious offense than the unprovoked killings that occur when persons let themselves act on impulse and take a life without giving it a moment's thought.

b. A more serious offense than other kinds of murder.

c. A very serious offense but one that is neither more serious or less serious than other kinds of murder.

d. No crime at all but a bold and courageous act of mercy.

42 Defendant and V were playing poker for high stakes. When V got six winning hands in a row, Defendant became angry and accused him of cheating. V said Defendant was just stupid and didn't know how to play his cards. Other insulting comments followed. Worked up into a blind rage, Defendant grabbed a piece of pipe and bludgeoned V to death. Defendant has been charged with murder. Under the traditional common law rules,

do these facts appear to present a sufficient basis for the provocation defense to apply?

a. Yes, but only if it can be proved that V was actually cheating.

b. Yes, whether or not V was actually cheating as long as Defendant reasonably believed he was.

c. Yes, whether or not V was actually cheating as long as Defendant honestly believed that he was.

d. No.

43 In the preceding question, which of the following added facts, if proved, would make the provocation defense applicable under the traditional common law rules?

a. The cheating accusations led to a physical altercation between Defendant and V, and Defendant killed V in the course of the mutual combat.

b. Along with the insults, V threw a shot glass at Defendant, bouncing it painfully off the side of his head.

c. Either of the above added facts would suffice to make the provocation defense applicable under the traditional common law rules.

d. None of the above. There's nothing additional that is necessary to make the provocation defense applicable in this situation.

44 V was a bully who enjoyed taunting and teasing Defendant and others in his middle school class. One day in metal shop, the taunting and demeaning became particularly intense. V punched Defendant painfully several times on the arm. After the third or fourth punch, Defendant grabbed a ball peen hammer and smashed it into V's grinning face. Defendant has been indicted for attempted murder. Which of the following, if any, are among the reasons that have been given for allowing the provocation defense in a case such as this?

a. It is allowed as a concession to human frailty for extreme situations where the passions are so inflamed that even a reasonable person may lose self-control.

b. A person killed after provoking and inflaming the emotions of another is at least partially responsible for bringing about his own death.

c. A person who kills under extreme circumstances of provocation isn't really himself when he acts and, thus, doesn't so clearly demonstrate a dangerous disposition.

d. All of the above.

e. None of the above.

45 Near Defendant's home there's a busy highway with two parallel single-lane tunnels, one in each direction. During an evening of drinking, Defendant's friend dared Defendant to drive in the wrong direction (against the traffic) through one of the tunnels. Totally indifferent to the likely consequences, Defendant gave it a try and caused a head-on collision. A

passenger in the other car was killed. What is the most serious of the following offenses that these facts could support a conviction for?

a. Voluntary manslaughter.

b. Involuntary manslaughter.

c. Criminally negligent homicide.

d. Murder.

46 Defendant committed arson, an inherently dangerous felony, by setting fire to a building he owned (he wanted the insurance money). Embers from Defendant's building blew over to a nearby house and set it on fire. A person sleeping in the house died in the flames. The local Criminal Code uses the common law definition of murder,

a. Defendant could not properly be considered guilty of murder because he did not kill with premeditation.

b. Defendant could not be properly found guilty of murder unless the prosecution proves he intended to kill somebody.

c. Defendant *could* be properly convicted of murder without intent to kill but only if it's found that he acted with depraved indifference to the value of human life.

d. Defendant could be considered guilty of murder because he acted with a kind of malice aforethought recognized at common law.

47 Suppose in the preceding question that Defendant's conduct occurred in a state that defines first-degree murder to include murder in the perpetration of certain listed felonies, but arson is not on the list. However, the state's statutes define second-degree murder as "all other kinds of murder" other than first-degree murder.

a. Defendant could not properly be convicted of felony murder because arson was not on the list of predicate felonies for first-degree murder.

b. Defendant could not be properly convicted of murder but only of manslaughter because Defendant had no intention to kill.

c. It appears that Defendant could be properly convicted of second-degree felony murder.

d. It appears that Defendant could be properly convicted only of arson.

48 Defendant and Figby obtained a gun and used it to rob a gas station. The attempted robbery came to an end when the station owner shot and killed Figby from behind the counter. Defendant is charged with felony murder in Figby's death. Armed robbery is considered an inherently dangerous felony.

a. According to the so-called "agency" theory, Defendant should *not* be held guilty of felony murder in Figby's death.

b. Under the so-called "proximate cause" theory, Defendant should *not* be held guilty of felony murder in Figby's death.

c. Both of the above.

d. According to the rule applied in most states, Defendant would be guilty as charged.

49 Defendant has been indicted for murdering a person during a brawl. Murder is defined as "unlawful killing with malice aforethought." The courts apply the common law concept of malice aforethought, including that the defendant killed without provocation. The judge proposes to charge the jury that it should find Defendant guilty unless Defendant proves there was "adequate provocation."

a. There is nothing about the proposed charge that looks questionable or erroneous.

b. In criminal cases, the burden of proof is ordinarily on the defendant to prove affirmative defenses in most states.

c. Both of the above.

d. The proposed charge would be improper under the Constitution.

50 Defendant is charged with murder for killing a coworker. Murder is defined has "intentionally causing the death of another." Defendant says he killed under extreme emotional disturbance, which the murder statute designates as an "affirmative defense." The judge charged the jury that the burden was on Defendant to prove the alleged defense by a preponderance of the evidence.

a. The charge was constitutionally invalid because the Constitution requires the state to carry the burden of proof on alleged "affirmative defenses."

b. The charge was constitutionally invalid because it shifted the burden of proof to the defendant on a key fact that distinguishes guilty from innocent conduct.

c. Both of the above.

d. The charge appears to satisfy constitutional requirements concerning burden of proof.

51 Defendant is being tried by a judge for murder. He claims he used deadly force in self-defense. The judge should reject the plea of self-defense if:

a. Defendant was the initial aggressor.

b. The victim was the initial aggressor but had turned away and was obviously trying to flee when Defendant killed him.

c. Both of the above.

d. Defendant was trespassing on the victim's farm at the time the victim attacked him with a hatchet.

e. All of the above.

52 Defendant tauntingly threatened to disclose embarrassing information about Victim's family. Victim lunged at Defendant with a knife, and Defendant shot him. Defendant, charged with murder, claims he killed in self-defense. The judge thinks Defendant's alleged need to kill was "a self-generated necessity" and, so, the loss of human life was unnecessary.

a. Because Defendant triggered Victim to attack with provocative words, the knife attack should be deemed a *lawful* use of force against Defendant.

b. Some say that one claiming self-defense must be "free from fault," meaning Defendant had no right to use deadly force to fend off the unlawful deadly attack.

c. Self-defense law lets people use deadly force to repel non-deadly force if a non-deadly response would not suffice to fend off the attack.

d. Both b. and c. above.

53 Arriving from out of town, Victim knocked on Defendant's front door at 11:00 at night. He had gotten the wrong house by mistake, but Defendant was very alarmed. He shot Victim through the door, causing his death. The prosecutor maintains that deadly force was unnecessary because Victim would have gone away peacefully if he'd simply been told he was at the wrong house. To properly acquit Defendant based on self-defense, most courts would say the jury must find (among other things) that:

a. Defendant believed the use of deadly force was necessary to prevent his own imminent death or grievous bodily injury.

b. A reasonable person in Defendant's situation would have believed deadly force was necessary to prevent his own imminent death or grievous bodily injury.

c. Both of the above.

d. Defendant had an actual, objective need to use deadly force to prevent his own imminent death or grievous bodily injury.

e. All of the above.

54 In the preceding question, Defendant could be properly acquitted based on the defense-of-habitation defense only if:

a. Defendant had waited until Victim crossed the threshold and was inside the house before shooting.

b. Victim had entered the premises by invitation and then became violent or threatening.

c. Defendant had an honest and reasonable belief that Victim was forcibly entering the premises to commit a violent or atrocious felony inside.

d. None of the above.

55 Defendant and his family became lost while hiking in a forest. The weather started to turn cold and frosty. They did not

have overnight gear and began to fear they might freeze to death. Then, just as it was getting dark, they came upon a small cabin. With no one to help and no other alternatives, Defendant broke into the cabin where he and his family stayed the night, eating some of the food they found inside. Defendant has been charged with burglary and larceny. Which of the following defenses seems most likely to apply?

a. Defense of others.

b. Self-defense.

c. Necessity.

d. Duress.

56 A guy Defendant knew from work came to Defendant's home and handed him package. He told Defendant to deliver it to a certain address by 3:00 o'clock the next day. The guy displayed a gun and said he'd "kill" Defendant if he didn't deliver the package or notified the police. Defendant delivered the package and is now indicted for distribution of a controlled substance. To establish the defense of duress, Defendant would have to prove (among other things) that:

a. He had a well-grounded fear the threat would be carried out.

b. The harm avoided by delivering the package was greater than the harm done by Defendant's conduct.

c. Defendant acted for the general welfare and not for private benefit.

d. All of the above.

57 Defendant has been indicted for murder. He claims the insanity defense. To find the Defendant not guilty by reason of insanity under the traditional M'Naghton rule:

a. It should be enough if there is adequate proof that Defendant had a serious mental illness or defect at the time the crime occurred.

b. There must be proof that Defendant didn't know the nature and quality of his acts or that what he was doing was wrong.

c. There must be proof that Defendant lacked volitional capacity to conform his conduct to the requirements of the law.

d. There must be proof that the Defendant had a long and documented history of mental disease.

58 Defendant decided to steal some merchandise from a hardware store where he worked part time. He gathered the items he wanted to steal, put them in a bag and hid it under a counter. He used a pencil to keep the back door from closing firmly, so he'd be able to get in after the store closed. That night, when he was ready to do the job, Defendant got in his car and drove toward the store. About a mile from the store, however, he turned around and went back home. Under the traditional American "dangerous proximity" approach, Defendant would not be guilty of attempted larceny on these facts:

a. Because he has not yet done all that would be necessary to set in motion the events that would lead to completion of his intended crime.

b. Because at no time when he was present at the intended place of the crime did he have a present intention to commit it.

c. Because at no time when he had a present intention to commit the crime was he present at the place where it was to be committed.

d. Because both b. and c. above are true.

e. All of the above.

59 Police received a tip that Defendant, a high school student, was becoming increasingly unstable. It was rumored (without direct evidence) that he might be planning a mass shooting. After monitoring Defendant's social media accounts, police got a warrant to search his home. They found a rifle, three pistols and ammunition along with camouflage clothes. Under which of the following approaches would this evidence be more likely to support a conviction for attempted murder?

a. Under the objectivist approach to the law of attempt.

b. Under the subjectivist approach to the law of attempt.

c. Under the traditional common law approach to the law of attempt (as opposed to under the MPC).

d. Under the so-called "last act" rule.

60 Ever since Neighbor insulted Defendant's intelligence at a block party, Defendant has had well-known animosity toward him. One day Defendant invited Neighbor to ride along to a Tractor Supply store in the next town. Defendant placed his new pistol under his driver's seat before he picked Neighbor up. On the way, as they passed through open countryside, Defendant said: "I want to show you something." He turned off the main highway to a dirt road that led into a woods. Defendant stopped in the woods and pulled out the gun. Neighbor fled from the car, ran back to the highway and flagged down a passing police cruiser. Defendant later told police: "I just wanted to show him my new gun."

a. Defendant's conduct would probably be enough to go to the jury on the actus reus component of attempted murder under the "substantial step" approach.

b. Defendant's conduct would probably be even more likely to satisfy the actus reus component of attempted murder under the common law than under the MPC.

c. Both of the above.

d. Defendant cannot be properly convicted of attempted murder under any recognized approach to actus reus since he hasn't yet taken a shot or otherwise tried to kill anybody.

<end of examination>