

PACE UNIVERSITY SCHOOL OF LAW

CRIMINAL LAW
PROFESSOR HUMBACH
FINAL EXAMINATION

May 2, 2011
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 61 multiple choice questions. Answer the multiple-choice questions (if applicable) on the answer sheet provided.

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

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

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

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

1. Theodore picked a fight at school and ended up hitting one of his classmates on the head with a piece of wood. The prosecutor says that Theodore should be sentenced to jail time “in order to pay for the serious bodily harm that he’s done.” In so arguing, which of the traditional purposes of punishment does the prosecutor appear to have in mind?

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

2. While shopping at her local Target store, Kelsey picked up a pair of earrings and, thinking that no one was looking, stuffed them in the pocket of her raincoat. A short time later, she was apprehended as she tried to exit the store without paying. The prosecutor says that Kelsey should not be let off with probation because she needs to be taught a lesson, so she won’t shoplift again. Which of the traditional purposes of punishment does the prosecutor appear to have in mind?

- a. Retribution.
- b. Rectification.
- c. Restitution.
- d. Deterrence.
- e. Incapacitation.

3. Barry is the Vice Mayor of Lorrinville. In a wiretapped conversation, he was overheard promising a contractor a lucrative municipal road-work project if the contractor would “take care of” some needed repairs to Barry’s driveway at home. Stressing the need to fight bribery and corruption, the prosecutor argues that Barry should receive a substantial prison sentence as an example to others. Which of the traditional purposes of punishment does the prosecutor appear to have in mind?

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

4. Roscoe lost his balance and fell down drunk at the Morris Saloon. He was carried out to the sidewalk by the bartender and several other patrons. A few minutes later, Roscoe was arrested for “appearing on a public street while in an intoxicated condition.” Following his conviction, Roscoe appealed. Under the usually preferred construction of criminal statutes:

- a. Roscoe would have a strong argument on appeal that the statute presupposes a *voluntary* appearance.
- b. Roscoe would probably lose on appeal because, in fact, he did “appear” in public while intoxicated.

- c. Roscoe would probably win on appeal because the language of the statute does not mention mens rea.
- d. Roscoe would probably lose on appeal because voluntary intoxication is never a defense.

5. Dave hitched a ride with a stranger. As the car traveled along, Dave heard pounding and what sounded like moans or grunts coming from the trunk. The driver acted like he didn't hear these sounds and Dave decided not to ask any questions. He also did not call the police when he got home. It was discovered the next day that the driver had locked his son, a 4th-grader, in the car trunk as punishment for getting in a fight at school. Dave is being prosecuted for child abuse ("intentional or reckless conduct that causes a minor to incur harm or suffering"):

- a. Dave should be convicted because, due to his omission, a minor incurred harm or suffering.
- b. Dave should be convicted because he violated a clear moral duty to take minimal steps to aid someone who was obviously in desperate need.
- c. Dave should not be convicted because, on these facts, he did not have any legal duty to act.
- d. Dave should not be convicted because he did not have actual knowledge that there was a person in the trunk.

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

- a. She is Mary Kate's mother.
- b. She is being paid to be Mary Kate's babysitter during the picnic.
- c. Both of the above.
- d. Rhonda knew that no one else saw Mary Kate run into the woods.
- e. All of the above.

7. After a serious accident, Dr. Griffith's patient entered into a vegetative state from which he was virtually certain never to recover. The patient's family have consented to disconnecting the respirator, which is all that keeps the patient breathing. If the doctor disconnects the respirator and the patient's heart stops beating, the doctor would not be guilty of criminal homicide because:

- a. Doctors are legally permitted to terminate a patient's life when further treatment becomes futile.
- b. Doctors have no obligation to continue providing treatment to patients after it is no longer beneficial.
- c. Both of the above.
- d. It is not homicide for a doctor to remove a respirator from a patient because ending life support is always an omission and not an act.
- e. All of the above.

8. Pinckney broke into his neighbor's garage to steal some gasoline by siphoning it out of the car. When Pinckney lit a match to check the level of the gasoline, the fumes ignited and caused an explosion. The ensuing fire consumed the garage. Pinckney has been convicted under a statute that prescribes punishment for anyone who "intentionally or knowingly sets fire to a building." If there is an appeal, the conviction should be:

- a. Affirmed because Pinckney's wrongful intention to steal would be "transferred" to the act of setting the fire.
- b. Affirmed because Pinckney acted with criminal intent and a guilty mind, thus satisfying the requirement of mens rea.
- c. Reversed because Pinckney did not act with the mens rea specified in the statute.
- d. Reversed because conviction under this statute would require that Pinckney's reckless conduct caused the fire.

9. On a sunny Saturday at the golf course, Lanscomb clobbered a fellow player with a club during an argument over a putt. He was charged with aggravated assault pursuant to a statute that prohibits "intentionally causing serious bodily injury." The victim, who was struck in the jaw, lost several teeth and was forced to endure a protracted and painful period of recovery. If the prosecution proves that Lanscomb actually intended to swing the club forcefully at the victim's face:

- a. It can be left to the jury to infer that he intended to cause a "serious bodily injury" (as a natural and probable consequence of his conduct).

b. The law can constitutionally presume that his intention was to cause a "serious bodily injury" (since that is a natural and probable consequence of his conduct).

c. Both of the above.

d. None of the above. In order to obtain a conviction, the prosecution must provide direct evidence that Lanscomb actually intended his conduct to produce some specific "serious bodily injury."

10. Assume that, although Lanscomb caused serious bodily injury, there's evidence that he did not intend to hit *anybody* with the club. In fact, he said: "Hey, I bet I can make you flinch," as he playfully swung the club near the faces of his fellow players. The jury is convinced that Lanscomb truly believed that his aim was good enough and that he could "just miss" actually hitting anybody. If it turned out he was wrong and the state uses the Model Penal Code's breakdown of mens rea, the most that Lanscomb should be guilty of would be:

- a. Recklessly causing serious bodily injury.
- b. Negligently causing serious bodily injury.
- c. Willfully causing serious bodily injury.
- d. Purposely causing serious bodily injury.

11. Wilma lived with Teddy, a small time drug hustler. One morning Wilma went down to the corner deli to pick up some eggs and happened to run into one of Teddy's friends. The friend asked her to take a small package back to the apartment and give it to Teddy. She took the package without asking what it contained. On her way back, she was stopped by the police. The package turned out to contain illegal

drugs. Wilma is charged under a law that prohibits “knowingly transporting” narcotics. If the jurisdiction applies the Model Penal Code rules on mens rea:

- a. There is no way that Wilma could properly be convicted under this law.
- b. It would be proper to convict Wilma because the law deems people to know what they have in their possession.
- c. It would be proper to convict Wilma only if she actually knew or was practically certain that the package contained illegal drugs.
- d. It would be proper to convict Wilma if she knew it was highly probable that the package contained illegal drugs unless she actually believed that it did not.

12. Sometimes a person who causes “criminal” harm is not guilty of a crime because the harmful conduct did not include a voluntary act. In which of the following situations would the person named probably *not* be considered guilty of a crime for that reason?

- a. Laura was driving down a street and, when a large bird flew in her car window, she swerved and hit a pedestrian.
- b. Evan was riding in a car with friends when the driver suddenly took a shortcut across the lawn of a corner house (and Evan is charged with trespass).
- c. Both of the above.

d. Boris, who has occasional epileptic seizures, got in his wife’s car to drive to a movie and collided with another car when he suddenly swerved during a seizure.

e. All of the above.

13. During an investigation of alleged fraudulent business practices, the police found a set of middle-school cheerleader photographs on Edgeware’s office computer. Edgeware is charged under a statute that prohibits “knowingly possessing any image of a minor that was made without the consent of such minor’s parent or guardian.” Would the prosecution have to prove that Edgeware knew that the photographs were made without parental consent?

- a. Yes, under the Model Penal Code approach to mens rea.
- b. Yes, under the approach that is practically always taken in construing federal criminal statutes.
- c. No, under the Model Penal Code approach to mens rea.
- d. No. Mens rea is seldom required with respect to attendant circumstances.

14. The Crandel Fertility Clinic performs *in vitro* fertilizations, a medical procedure that creates human embryos to be implanted in the mother’s womb. Normally, more fertilized eggs are produced than are eventually needed. The “extras” are routinely discarded once the mother becomes pregnant.

Henry Hardnose, the local prosecutor, faces a tough re-election fight and has decided to prosecute Dr. Crandel for murder. The state’s recently amended murder statute defines “human being” to include a fetus “from the moment of conception.” Hardnose argues that

“conception” traditionally meant fertilization though Crandel’s lawyer insists that the term today usually means implantation. Anyway, he says, the legislature could not have meant to ban a beneficial and now standard procedure like *in vitro* fertilization. The indictment should be dismissed if:

- a. Reading “conception” to mean fertilization is deemed to be an unforeseeable judicial enlargement of the statute’s definition of “human being.”
- b. There was no prior case holding that “conception” means mere fertilization without implantation.
- c. Dr. Crandel had reasonably (though erroneously) interpreted the statutory word “conception” to mean actual implantation.
- d. It was not completely clear prior to this case exactly what the statute meant by “conception.”
- e. Any of the above would legally justify dismissal.

15. Nicole B, a Minnesota high school student, age 17, is accused of stabbing her newborn daughter to death after secretly giving birth in her mother’s laundry room. She was charged with first-degree murder and faces a possible sentence of life in prison. A major issue in the case is whether the infant was stillborn and, therefore, already deceased at the time of stabbing. Under the MPC, even if Nicole’s infant was already deceased when she stabbed it:

- a. She would still be guilty of murder if she believed it was alive.

- b. She would be guilty of attempted murder if she believed it was alive.
- c. In most states, she would likely have a strong “impossibility” defense.
- d. None of the above.

16. Kessler has been indicted under a statute that makes it a crime to “import products made from any endangered species.” He was arrested at JFK Airport trying to enter the country with a pair of mittens which, unbeknownst to him, were made with polar bear fur. The statute does not make any mention of mens rea. In interpreting this statute:

- a. It would be considered an abuse of the judicial role for a court to read a mens rea requirement into the statute if the legislature did not expressly provide one.
- b. Courts may but are strongly disinclined to read mens rea requirements into statutes if none are expressly provided by the legislature.
- c. A court would typically be less likely to read a mens rea requirement into this statute if the prohibition is regarded as a social welfare regulation.
- d. It would be almost unthinkable to interpret this statute as not having a mens rea element if the penalty for violation includes an extended term in prison.

17. A federal law makes it a crime to possess a fully automatic firearm that is not registered with the proper authorities. When Owen’s roommate moved out, he left a rifle that was is both fully automatic and unregistered. Owen did not, however, know the rifle was fully

automatic and he'd never even heard of the registration requirement. If Owen is prosecuted for possession of the rifle:

- a. He would have a good defense based on the fact that he has never even heard of the registration requirement.
- b. He would have a good defense based on the fact that he did not know the rifle was fully automatic.
- c. Both of the above.
- d. He would have a good defense based on the fact that he did not know the rifle was unregistered.
- e. All of the above.

18. A list of typically "strict liability" offenses would *not* include:

- a. Driving with blood alcohol in excess of .08.
- b. Exceeding the posted speed limit.
- c. Burglary and larceny.
- d. Possessing or selling hazardous devices or chemicals.
- e. All of the above are typically "strict liability" offenses

19. Ray and Tammy met through mutual friends. He was her date for her senior prom. On prom night, after the dance, they had sexual relations in Ray's car. Tammy had assured Ray that she was 18 years old, and she looked at least that old. However, she had skipped 3rd grade and was not even quite 17. Ray is being prosecuted for

"statutory" rape under a statute that makes it a crime to have sexual relations with a person under age 17.

- a. In some states, Ray would have a defense if he honestly and reasonably believed that Tammy was at least 17.
- b. Under the so-called moral wrong theory, Ray could be guilty if he knew that he was committing a moral wrong even if he did not know that, due to Tammy's age, his act was also a legal wrong.
- c. Both of the above.
- d. In the majority of states today, Ray could not be convicted unless he knew or should have been aware that he was having sexual relations with a person under age 17.

20. Jarvis was indicted for stealing used tires from behind a gas station near his home. The judge should instruct the jury to find him not guilty if the evidence shows:

- a. He believed honestly (even if unreasonably) that the tires were discarded and he was taking away trash.
- b. He honestly and reasonably believed that the tires were discarded and he was taking away trash.
- c. The tires were of little value and probably could not be sold anyway.
- d. None of the above. Jarvis is a thief and now he must pay the price.

21. The NY Penal Law § 260.20 makes it a crime when a person “gives . . . any alcoholic beverage . . . to a person less than twenty-one years old; except that this subdivision does not apply to the parent or guardian of such a person.” Gordon Grayson is the parent of a small child. He carefully read this statute and decided that, because he is “such a person,” the statute would permit him to give a can of beer to his next-door neighbor, who is age 20. He is now being prosecuted. If the court holds that Grayson’s reading of the statute is erroneous, he should nonetheless be found not guilty if the evidence shows that:

- a. He believed honestly (even if unreasonably) that, as the parent of “such a person,” he was permitted by the statute to serve alcohol to minors.
- b. He honestly and reasonably believed that, as the parent of “such a person,” he was permitted by the statute to serve alcohol to minors.
- c. He sought and obtained a legal opinion from a private attorney to the effect that, as the parent of “such a person,” he was permitted by the statute to serve alcohol to minors.
- d. None of the above.

22. Later that same year, Grayson took a deduction for commuter expenses on his federal income return. He honestly (but erroneously) believed that the tax law allows such a deduction. He now fears he’ll be indicted under a law that makes it a federal crime to “willfully file a false tax return or underpay the tax due.” An indictment of Grayson under this statute would:

- a. Probably be dismissed under a widely used general principle that honest misunderstandings of law prevent violations from being considered “willful.”

- b. Probably be dismissed under a rule, practically unique to federal tax law, that an act is not considered a “willful” violation of law unless the defendant does the act with knowledge that the law does not allow it.

- c. Probably not be dismissed because, even though Grayson misunderstood the law, he did take the deduction “willfully.”

- d. Probably not be dismissed because ignorance of the law is never an excuse.

23. Freddy decided it was finally time to do in a rival gang leader, Tolbo, who had been making aggressive moves for months. Freddy devised a plan to lure Tolbo to a secluded location where the homicide could be committed without attracting attention. Tolbo was on his way to the location when he lost control of his car, went over a cliff and died in a fiery crash. Later, the police became aware of Freddy’s plan and arrested him for “murdering” Tolbo. Freddy has a plausible defense based on the doctrine of:

- a. But-for causation
- b. Proximate causation.
- c. Both of the above.
- d. None of the above.

24. During a party, Morgan accidentally knocked a glass plate from a 16th floor balcony. It shattered on the concrete walkway below. Fortunately no one was hit, but the next day a boy playing Frisbee in his bare feet cut his foot on one of the glass shards. Morgan is prosecuted for reckless assault. Her lawyer argues that Morgan’s act

was not the proximate cause of the boy's injury. Which of the following points would *not* (even if supported by the evidence) be relevant to this argument?

- a. The boy's choice to go barefoot was a voluntary human intervention.
- b. The act of stepping on the shard was not done in response to Morgan's reckless act.
- c. Morgan at no point failed to use the care that a reasonable person would have used in her situation.
- d. The choice to forego the apparent safety shoes superseded Morgan's causal contribution.

Facts for the "Gus" questions below.

Gus is a 13-year-old refugee from Chazmodia. Chazmodians are a fiercely proud and explosively emotional people, and they really hate being called "chads." Gus is no exception. Coming home from school recently, Gus was set upon by a bunch of teenage boys. They followed him down the street and repeatedly called him a "dirty chad." Shaking with anger and fear, Gus picked up a piece of wood with a nail in it and, when one of the taunting boys got too close, Gus blindly lashed out. He hit the boy's head with the piece of wood and the protruding nail caused an extremely serious wound.

25. If the boy's wound turns out to be fatal:

- a. These facts would present a strong case for applying the traditional common-law version of the provocation doctrine.
- b. Under the traditional common-law approach, Gus would more likely be deemed guilty of manslaughter than murder.

c. Both of the above.

d. The boys' mere words, no matter how ugly and inflammatory, would not support applying the traditional common-law version of the provocation doctrine.

e. Gus would have a good chance of being exonerated on the ground that his conduct was not a voluntary act.

26. Assume again that the boy's wound turns out to be fatal. Under the provocation doctrine as it has evolved in some of the more recent cases, a court might properly tell the jury to take Gus's ethnicity into account:

a. In assessing the gravity of the allegedly provoking words.

b. In deciding the level or standard self-control to apply in assessing whether Gus acted as an ordinary, reasonable person would have in the same situation.

c. Both of the above.

d. None of the above. A court would probably not let the jury take Gus's ethnicity into account for any purpose whatsoever in a case like this one.

27. Suppose the boy's wound turns out to be fatal and Gus succeeds in getting the court and jury to apply the provocation doctrine to his case. The effect would be:

a. To negate malice.

b. To reduce the homicide from murder to manslaughter.

- c. Both of the above.
- d. To negate malice and exonerate Gus from any charge of criminal homicide.

28. Suppose that, when Gus lashed blindly out with the piece of wood, he did not hit one of the boys but, instead, fatally struck an innocent bystander who just happened to be walking down the street. If Gus is prosecuted in the death of the bystander, the provocation doctrine would logically apply only if:

- a. The court treats provocation as a “partial justification.”
- b. The court treats provocation as a “partial excuse.”
- c. The court treats the matter of provocation as an element of the offense rather than as a defense.
- d. None of the above. By definition, the provocation doctrine cannot logically apply when the defendant had no malice toward the victim of his act.

29. When Seth got home from work, he found his wife highly agitated. She told him that the next-door neighbor had molested their 5-year-old daughter. The accusation was a false one but, nonetheless, Seth flew into a rage and stormed to the house next door. Finding the neighbor in his garage working on a lawnmower, Seth grabbed a large mallet and pounded him on the head. The blows turned out to be fatal. Under the MPC, it would be proper for the jury to consider “extreme emotional disturbance”:

- a. If Seth’s rage resulted from an honest belief that the neighbor had molested his daughter.

- b. If Seth’s rage resulted from an honest *and reasonable* belief that neighbor had molested his daughter.
- c. Only if the neighbor had actually molested his daughter.
- d. None of the above. The “extreme emotional disturbance” defense is just another name for common-law provocation, and it is not substantially different from the common-law doctrine.

30. On a flight from San Francisco to New York, Melinda Botts heard an intercom announcement that no peanuts would be served because one of the passengers had a powerful peanut allergy. The announcement added that there was a risk of serious complications and even death if peanut dust got into the confined air of the aircraft. For privacy reasons, the passenger in question was not identified. About 3 ½ hours into the flight, Melinda became very hungry and opened the bag of homemade trail mix that she’d brought with her. It contained peanuts. A passenger sitting one row up from Melinda went into anaphylactic shock. If the passenger dies:

- a. Melinda could not properly be convicted of murder unless the state can prove that she intended to cause her fellow passenger’s death.
- b. Melinda *could* properly be convicted of murder even if the state cannot prove that she acted with legal “malice.”
- c. Melinda could be convicted of manslaughter if the jury finds that her conduct was reckless.
- d. Melinda should not be considered legally reckless even if she admitted that she “decided to chance it” and satisfy her hunger pangs

31. Warren and Dexter were playing Russian Roulette using a revolver that was loaded with a single bullet. With each spin of the cylinder and pull of the trigger there was a one-in-six chance that the gun would fire. On the other side of town, Dr. Raymond Keller was performing a dangerous but medically needed operation in which there was a one-in-five chance that the patient would not survive. Tragically, neither Dr. Keller's patient nor Dexter's friend survived. Under the Model Penal Code:

- a. Dr. Keller could not be considered reckless because the risk he took could not be considered "substantial."
- b. Dexter could not be considered reckless because the risk he took was not "unjustifiable."
- c. Both Dr. Keller and Dexter should be considered reckless if both were aware of and consciously disregarded the respective risks that they were taking.
- d. It would be possible to convict Dexter of murder (as opposed to manslaughter) on these facts.

32. Despite a double-yellow line, Dave Hornblower passed a slow-moving haytruck. He crashed into an oncoming car and his passenger died as a result. Hornblower insists that he was "sure" nobody was coming from the other direction. Long before he arrived at the "blind spot," he says, he'd had a clear view of the road ahead, and he was "absolutely certain" that there was no approaching traffic. In fact, the car he collided with had turned onto the road just a few seconds earlier from a small driveway that Hornblower didn't know about. Under the Model Penal Code:

- a. Hornblower cannot be convicted of criminally negligent homicide because he did not know there was oncoming traffic.

- b. Hornblower *can* be convicted of criminally negligent homicide even if he was not consciously aware of the risk.
- c. Hornblower cannot be convicted of criminally negligent homicide because the car that turned from the small driveway was the proximate cause of the collision.
- d. Hornblower *can* be convicted of criminally negligent homicide if he failed to use the care that an ordinarily prudent person would use under the circumstances.

33. Wayne was arrested in the Gallery Mall. He'd gone there to meet a person that he thought would be a 15-year-old girl that he'd chatted with online. In fact, Wayne's internet chats had been with a police officer who was merely pretending to be a teenager. Wayne's defense attorney argued that the sentence should be lenient because no actual harm was done. The prosecutor replied that Wayne should receive a long prison term because he poses a serious risk to society. In so arguing, which of the traditional purposes of punishment does the prosecutor appear to have in mind?

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

34. Which of the following is *not* one of the traditionally asserted purposes of punishment?

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

35. Some of the asserted purposes of punishment are primarily backward-looking, to rectify past harms and wrongdoing. Others are primarily forward-looking, to prevent harms and wrongdoing in the future. Which of the following is *not* primarily forward-looking?

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

36. Harold Pew has lived his entire life in Hawaii. Last winter, during his first visit to a cold weather climate, he rented a van. The morning after his arrival, Pew drove the van onto the Interstate not realizing that a dangerous layer of snow and ice had accumulated on the van roof overnight. As the van warmed up and the roof ice started to melt, a large chunk blew off and hit the car behind. The driver of the other car lost control and fatally injured a pedestrian. In considering whether Pew was criminally negligent [MPC]:

- a. The jury should decide whether the risk that Pew failed to perceive was one that a reasonable person would have perceived considering the circumstances known to Pew.
- b. The jury should determine which of the circumstances Pew should have known if he had been acting as a reasonable person.
- c. Both of the above.
- d. None of the above. What Pew knew or didn't know is beside the point since he is not charged with a crime that has a mens rea of "knowingly."

37. Hillman is accused of murder after he killed a man in a bar fight. He claims that he acted under provocation and has introduced evidence in support of that claim.

- a. In some jurisdictions, the state would have the burden of proving the absence of provocation even if the applicable statute treats "provocation" as an affirmative defense.
- b. To get a murder conviction, the state would be constitutionally required to prove an absence of provocation beyond a reasonable doubt if the applicable statute makes "causing death without provocation" an element of murder.
- c. Both of the above.
- d. The state could not constitutionally place the burden of proof on the defendant with respect to the issue of provocation.
- e. All of the above,

38. Jackson had a flock of plastic garden flamingos in his front yard. Last night at about 1:35 a.m., Jackson saw a man enter his yard with a large wrench and start twisting the head off one of the flamingos. Jackson grabbed a kitchen knife “just in case,” and went outside yelling “Get out of here!” As the man turned to leave, Jackson continued toward him, waving the knife. The man stopped, held his ground and then raised the wrench over his head, saying: “What do you think you’re going to do with that knife?” Once Jackson was close enough, he slashed at the intruder and now he’s accused of attempted murder.

- a. If Jackson claims self-defense, there would be sufficient evidence for the jury to find that Jackson was the initial aggressor.
- b. Since Jackson was defending his property, he does not need to try to prove self-defense because his acts would be considered legally justified anyway.
- c. There is no way that Jackson could be treated as the initial aggressor since the intruder “started it” by entering and vandalizing his property.
- d. None of the above. In most states today, force may not be used to defend property.

39. Assume in the preceding question that the jury decides (after also considering some additional facts) that Jackson was not the initial aggressor. If the intruder had moved menacingly toward Jackson with the wrench raised over his head:

- a. Jackson would in most states have a duty to retreat if he could safely do so.

- b. Jackson would in most states have a duty to retreat even if he were on a public street, some distance from his home.

- c. Jackson would in most states *not* have a duty to retreat if his front yard was deemed to be his “home” for purposes of self-defense.

- d. Under the Model Penal Code Jackson would not have had a duty to retreat even if the knifing had occurred on a public street, some distance from his home.

40. Walking to her apartment from the subway one night, Imogene was approached by four young toughs who stood in her path and demanded a “loan” of \$20. None of the four displayed a weapon, but they were all taller than Imogene and obviously much stronger. Imogene responded, “Sure, guys. Let me get my wallet.” She pulled out a small gun and quickly shot three of the four, killing one of them. Imogene was indicted for murder. In support of her self-defense claim, she presented evidence showing that she honestly believed her use of the gun was necessary to protect her from death or serious bodily injury.

- a. This evidence of *honest belief*, if accepted by the jury, would ordinarily be enough to establish the defense of self-defense.
- b. To establish the defense of self-defense, Imogene must persuade the fact-finder that she honestly and *reasonably* believed using the gun was necessary for self-protection.
- c. To establish the defense of self-defense, Imogene would have to show that her use of the gun was *actually* necessary for self-protection.

d. The defense of self-defense would not be available because a person cannot use lethal force in self-defense unless the other person also is using lethal force.

41. Assume in the preceding question that Imogene had just arrived in the city from a small farm town and that, after years of hearing news reports and watching reality crime shows on TV, she was unusually apprehensive about being mugged. Imogene would like to introduce evidence of these facts so the jury can consider them during its deliberations concerning her belief as to the necessity of her actions.

- a. Because the standard to be applied is a purely objective one, evidence of these facts should not be presented to or considered by the jury.
- b. Because the standard to be applied is a purely subjective one, evidence of these facts should not be presented to or considered by the jury.
- c. The standard to be applied is neither purely subjective nor purely objective, and particular features of Imogene's situation (including her knowledge and background) should be relevant.
- d. The standard to be applied is neither purely subjective nor purely objective, and evidence concerning Imogene's own knowledge and situation are *not* relevant.

42. During lunch with a business colleague, Burton spotted the man who married his ex-wife sitting at another table. Later, as Burton was leaving the restaurant, he deliberately bumped the man's chair just as he was taking a sip from his Bloody Mary. Seeing the red liquid splashed all over his front, the man got up and threw a punch at Burton, flooring him. When he bent over to pound Burton another time with his fist, Burton managed to get his hand on a steak knife that had fallen in

the scuffle. The man nearly died from a wound to his thigh, which hit an artery. Accused of attempted murder in a MPC state, Burton wants to claim self-defense as a full defense:

- a. Self-defense would not apply because Burton was the initial aggressor.
- b. Self-defense would not apply because Burton was at fault in bringing about the affray.
- c. Burton's act would be justified as self-defense as long as he honestly believed that the man might actually kill him.
- d. Burton would be permitted to claim self-defense as long as his initial hostile act was not done with the purpose of causing death or serious bodily injury.

43. Suppose in the preceding question that the man, known as Phil, did not slug Burton but, instead, merely pushed back from the table and, reflecting on his now-reddened shirt and tie, shouted: "Damn you, Burton! You better watch it because I'm going to *kill* you." Burton has since been informed that Phil reputedly has organized crime connections and carries a gun. This scares Burton a lot—particularly after somebody fired shots at his car last night. Today Burton obtained a gun and, this evening after dark, he plans to hide in the bushes outside Phil's house and shoot him when comes home [MPC].

- a. This is a good plan. It avoids unnecessary personal risk and Burton will be able to claim self-defense.
- b. This is good plan except that, in order to claim self-defense, Burton should openly confront Phil and get him to pull a gun first.

- c. This is not a good plan. In order to claim self-defense, Burton must openly confront Phil and get him to *shoot* first.
- d. This is not a good plan. Even if Burton strongly believes in the necessity of his actions, his belief would not justify the use of lethal force in this way.

44. While shopping at a supermarket, Marcia received a call from her daughter's school. The caller said that the girl had been seriously injured in a playground accident and was on the way to the hospital in an ambulance. Marcia ran from the store and got in her car but, for some reason, it wouldn't start. As she headed back to the store to get help, she noticed an unoccupied car with the motor running. Marcia jumped in the unoccupied car and drove straight to the hospital. Prosecuted for unauthorized use of a motor vehicle, Marcia wants to claim the defense of necessity.

- a. Even assuming that Marcia's actions constituted the lesser evil, other requirements of the necessity defense would probably pose insurmountable obstacles.
- b. There would be sufficient evidence to charge the jury on the defense of necessity as long as a person in Marcia's situation might have acted as she did.
- c. In general, the defense of necessity would be available as long as Marcia honestly believed that she was choosing the lesser evil, even if the court later decides otherwise.
- d. It would generally be more appropriate, in circumstances such as these, to apply the defense of duress rather than necessity.

45. The Larimore Hospital had just run short of respirators when a brilliant young scientist, the father of three small children, was brought in from a serious traffic accident. It looked like "curtains" for the scientist. However, the hospital administrator personally went into the ICU and unhooked a respirator from a junkie who was there on a drug overdose. After the junkie stopped breathing, the administrator notified the medical staff that the machine was available and, happily, the scientist was saved. On the theory that the junkie would have otherwise survived, the administrator is being prosecuted for murder:

- a. As a matter of traditional common law, there is no reason why the necessity defense would be unavailable if the scientist's condition was truly dire and there were no other alternatives to save him.
- b. As a matter of traditional common law, the courts would generally weigh whose life was more valuable, the scientist's or the junkie's, and rule accordingly.
- c. Under the Model Penal Code, the necessity defense would not be available for the simple reason that necessity is specifically excluded as a defense to homicide.
- d. None of the above.

46. While on a business trip, Kevin met a woman in the hotel bar. They struck up a conversation. A while later a gentleman friend of the woman suddenly appeared and joined them. The three chatted about their lives and families. The next day Kevin received a package at his hotel, along with an envelope. The envelope contained a letter and a photo of Kevin's 4-year son. The letter instructed Kevin not to open the package but to take it with him on his flight home. It said he'd be "met on arrival," and added that "Bad things could happen" if he didn't do as he was told or called the police. The next morning, when he was going

through airport security for his flight home, Kevin was arrested on a charge of possessing of cocaine with intent to distribute. Under the usual (non-MPC) approach:

- a. The duress defense would not apply because the letter did not threaten harm to Kevin personally but rather to another person.
- b. A serious (though perhaps not insurmountable) stumbling block to using duress as a defense is that the letter does not explicitly threaten *immediate* consequences if Kevin refuses to comply.
- c. Both of the above
- d. Kevin would have a strong case for using the defense of necessity.

47. Annoyed by repeated encroachments on his territory, Raoul Grisseau, a minor drug lord, had his men kidnap the daughter of his competitor's girlfriend. Grisseau then called the little girl's mother and demanded that she persuade her boyfriend to go to a certain secluded spot "for a meeting." Suppose she complies and her boyfriend is killed (as she knows he would be). Under the MPC:

- a. As far as imminence is concerned, the threatened harm would be sufficient to provide a defense of duress if a person of reasonable firmness in the same situation would have been unable to resist.
- b. The mother would need to show that her fear was "well-grounded."
- c. Both of the above.

d. The defense of duress would not apply because the threatened harm is not sufficiently "proximate."

e. All of the above

48. When the police came to break up the illegal beach party, Vincent was very drunk. He ended up punching one of the officers. Now he's charged with both simple assault and with "assaulting a police officer with intent to impede the officer in the discharge of his duties." In general:

- a. Vincent's intoxication could not be a basis for a defense to either of these charges.
- b. If Vincent can prove he was too drunk to form a specific intent, his intoxication might succeed as a defense to the first charge but not the charge of "assault with intent to impede."
- c. If Vincent can prove he was too drunk to form a specific intent, his intoxication might succeed as a defense to the charge of "assault with intent to impede" but not to the simple assault charge.
- d. If Vincent can prove he was too drunk to form a specific intent, his intoxication might well succeed as a defense to both of the charges.

49. Around 30 years ago many jurisdictions changed their laws on the insanity defense and returned to the *M'Naghten* rule or to some even more restrictive version of it. As a result of these changes:

- a. Many more criminal defendants are adjudged to be insane which, in turn, has caused the number of mentally ill persons in prison to rise sharply.
- b. The main question in insanity cases has become whether the criminal act was a “product” of a mental disease or defect.
- c. There is much greater latitude for psychiatrists and other mental health professionals to testify in cases of alleged insanity.
- d. Fewer states regard volitional impairments (as distinguished from cognitive impairments) as a basis for acquittal by reason of insanity.

50. Lenny was diagnosed as suffering from schizophrenia while still in college. Now, several years later, he has been charged with murder in the death of a neighbor after he inexplicably attacked the neighbor with a rake. Lenny is pleading insanity. Under the traditional (*M’Naghten*) test he should be acquitted if, due to his disease:

- a. He did not know the nature and quality of his acts.
- b. He did not understand that what he was doing was wrong.
- c. Either of the above would support an acquittal.
- d. He acted under an irresistible impulse that he could not control.
- e. All of the above.

51. If the Model Penal Code applied in the preceding question, the insanity defense should be available:

- a. Even if Lenny knew his acts were wrong (or criminal), provided that he lacked substantial capacity to appreciate their wrongfulness (or criminality).
- b. Even if he had some self-control, provided he lacked substantial capacity to conform his conduct to requirements of law.
- c. Both of the above.
- d. None of the above. The Model Penal Code disallows the insanity defense for cases in which the defendant knows his acts are wrong or claims merely to have lost his self-control.

52. The town of Gentryville recently adopted a local law that makes it a crime to be addicted to methamphetamines. Orville, a meth addict who lives in a neighboring county, visited Gentryville. Even though he never used methamphetamines while in Gentryville, he was charged under the new law. There is a good authority for the argument that the new law is unconstitutional because:

- a. It creates a status offense.
- b. No mens rea is specified.
- c. It violates fundamental rights of privacy.
- d. None of the above. There is no reason why the new law would not be considered constitutional.

53. During a party where everyone was drinking heavily, Ron and Larry decided to dangle Allen over the porch balcony in order to get him to cough up some racy gossip about a mutual acquaintance named

Karen. As they held Allen's feet and Allen squirmed below, a passing police officer spotted them. Ron and Larry were charged with attempted murder.

- a. They should have a good defense if they were so drunk they didn't know what they were doing.
- b. It should be a good defense if they can prove that they did not intend to cause Allen's death but only to scare him.
- c. They should be held guilty simply because dangling a person over a balcony is a substantial step toward causing the person's death.
- d. They should be held guilty, irrespective of their actual intent, if their conduct could have resulted in Allen's death.

54. Slim, Jim and Rick have all committed felonies that resulted in the accidental death of a bystander. Which of the felonies below could result in a conviction for felony murder?

- a. Slim, who has no medical training, violated a law that makes it a felony to "practice medicine without a license under conditions creating a risk of grave physical or mental harm."
- b. Jim violated a law making it a felony to "intentionally set fire to an occupied building or vehicle."
- c. Rick violated a law making it a felony to "deposit more than \$10,000 in an account at an overseas bank without filing a report" with the government.
- d. All of the above.

55. In the course of committing a robbery, Jencks fired a shot that hit Lorenzo (an innocent bystander) in the abdomen. Jencks maintains that the shot was accidental, resulting when he stumbled over a loose board in the floor. Assume that the jury believes Jencks' story:

- a. In most states Jencks could nonetheless be convicted of felony murder if Lorenzo dies of the wound.
- b. In most states Jencks could nonetheless be convicted of attempted felony murder if Lorenzo does not die of the wound.
- c. Under the Model Penal Code Jencks could nonetheless be convicted of felony murder if Lorenzo dies of the wound.
- d. All of the above.

56. After one of the Websley Street Boys was humiliated by Eddie Reddie, a member of a rival gang, seven Websley members headed into the other gang's territory looking for Reddie and seeking revenge. As weapons they brought metal baseball bats, which they openly carried up and down the streets as they tried to find Reddie. Before they had even the remotest idea of where Reddie was, however, they were stopped by police. Would the police have a sound legal basis to intervene and charge the seven with attempted assault?

- a. Yes under the traditional common law "dangerous proximity" approach to deciding cases of attempt.
- b. Yes, under the Model Penal Code's approach to the law of attempt.
- c. Both of the above.

d. No, the police would have no basis under either of the above approaches because, so far, the seven have done nothing that unequivocally indicates criminal intent.

57. In the preceding question, if the court analyzes the issue in terms of the traditional considerations or tests for determining when preparation becomes an illegal attempt, it will relevant for it to consider:

a. The seven Websley members' physical proximity (or lack thereof) to their intended victim or location where the crime was planned to occur.

b. Whether the seven Websley members had engaged in actions that unequivocally showed an intention to commit a crime.

c. Both of the above.

d. The probable indispensability of the criminal plan in the ordinary and natural course of events.

e. All of the above.

58. Reggie Dawkins buys artifacts from backcountry folks who dig illegally in archeological sites. The Native Artifacts Protection Act makes it a crime to sell or otherwise deal in such items without proper permits, which Reggie does not have. Last week Backcountry Bill sold Reggie some pottery with native designs and Reggie later offered it as "the genuine article" to an undercover agent. Even though it turns out that the pottery is a recent imitation made in the Far East, Reggie is accused of attempt to violate the Act. Under the approach followed by most courts today:

a. Reggie should have a good chance of avoiding conviction on the ground that it was, under the circumstances, a factual impossibility for him to violate the Act.

b. Reggie should have a good chance of avoiding conviction on the ground that it was, under the circumstances, a legal impossibility for him to violate the Act.

c. Both of the above.

d. None of the above. Neither factual impossibility nor ordinary legal impossibility would be likely to provide Reggie with a defense.

59. An Internet service known as Gregslist allows people to advertise various household and other consumer services, such as landscaping, plumbing repair, domestic help, handyman work, etc. Lately, also, a considerable number of persons offering sexual services for money have also begun using the site. Though styled as "escort" services, the ads usually leave no doubt about the true nature of what is being offered or the payment that is expected in return. If Gregslist is indicted for aiding and abetting prostitution, which of the following would tend to show complicity?

a. Gregslist charges inflated prices to people who place the "escort" ads, giving Gregslist a stake in their illegal activities.

b. Gregslist employees advise those who advertise "escort" services on ways to make their ads more appealing to potential customers.

c. Both of the above.

d. Gregslist employees had reasonable suspicion that many of the “escorts” were offering prostitution services.

e. All of the above.

60. In the preceding question, a recognized argument against holding Gregslist criminally liable for complicity in its customers’ prostitution activities would be:

a. It simply can’t be a crime for legitimate businesses merely to sell ordinary goods and services to buyers who happen to use them in illegal activities.

b. Prostitution is probably not ranked as a “serious” crime for this purpose.

c. Even if Gregslist has knowledge of its customers’ illegal activities, any “assistance” it provides is solely for the purpose of making money itself.

d. The Constitution does not permit government to force private citizens and businesses into becoming an unpaid branch of law enforcement by punishing them if they don’t spy and report on other people’s suspicious conduct.

61. Patrick was driving in a car with a couple of his friends. One of his friends suddenly stuck a gun out the window and shot at a nearby car, basically just for the thrill of it. Patrick has been indicted as an accomplice.

a. Patrick’s mere presence when his friend did the shooting would generally be legally enough to make him an accomplice in the crime.

b. If Patrick decided to help his friend evade capture (such as by making a hasty getaway, if needed), that would generally be enough to make him an accomplice, even if Patrick didn’t express the intent at the time.

c. If Patrick actually and intentionally assisted in the friend’s conduct, Patrick could be guilty of the same offense or (depending on his mental state) of a greater or lesser offense than his friend.

d. All of the above.

<End of examination.>