

PACE UNIVERSITY SCHOOL OF LAW

CRIMINAL LAW
PROFESSOR HUMBACH
FINAL EXAMINATION

May 2, 2014
TIME LIMIT: 4 HOURS

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

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

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

GENERAL INSTRUCTIONS:

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

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

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

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

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

1 A crowd of people, including Gary Elwood, stood on a dock watching a sailboat race. Suddenly, a hornet stung Elwood on the arm and buzzed up toward his neck. He swatted at the insect and backed away, knocking the guy next to him off the dock and into the water. If Elwood is prosecuted for assault, his lawyer could plausibly argue in defense that, even though Elwood knocked a guy off the dock:

- a. He committed no act.
- b. He committed no voluntary act.
- c. He was defending himself from a noxious insect, which makes this a case of self-defense.
- d. The guy knocked off the dock was at fault for standing too close to the edge.

2 Suppose in the preceding question there is a statute that provides: "Whoever fails to use ordinary care and thereby causes physical injury to another is guilty of assault in the fourth degree." The statute does not mention any requirement of a voluntary act as a pre-requisite to guilt.

- a. There is no general legal basis for a court read such a requirement into the statute.
- b. The statute would be unconstitutional unless it is read to include such a requirement.
- c. It would probably be considered proper to convict Elwood since his bodily movement caused injury, and that would generally be enough for guilt.

d. Under long accepted common law principles, the court should interpret the statute to include a requirement of a voluntary act.

3 Blanche Carter was arrested for screaming obscenities on the sidewalk after the bartender at McDuffy's Tavern ejected her from the bar. The police came and charged her under a statute that makes it a crime "to appear on a public street and behave in loud, boisterous or disorderly manner." On these facts:

- a. Carter has no good argument for acquittal since she did, in fact, "behave in a loud, boisterous and disorderly" manner while on a public street.
- b. Carter has a plausible argument for acquittal since her appearance on the public street was not voluntary.
- c. Carter is probably guilty because she did, after all, appear on a public street and behave badly, and nothing in the statute says the appearance had to be "voluntary."
- d. Carter has a plausible argument that she's not guilty because she would not have screamed obscenities on the sidewalk if she hadn't been ejected from the bar against her will.

4 While Jason and Peg were dating, Peg sent Jason some explicit photos that she'd taken of herself. A few weeks later, Peg began dating another guy and tweeted Jason that it was "over." Jason responded by posting some of Peg's explicit photos on Facebook, to Peg's great embarrassment. Although there's no statute that prohibits what Jason did, in most states today a court could properly convict him of a common law crime if the court is persuaded that:

- a. Jason's conduct directly injured or tended to injure the public.
- b. Jason's conduct directly injured or tended to injure one or more persons.
- c. Both a. and b. above.
- d. None of the above.

5 In the preceding question, suppose the state has an Anti-Hacking Act aimed at online intruders. The Act makes it a crime "to obtain access to any computer without the owner's authorization." Jason posted some of Peg's photos Whahoo, a public picture-sharing site and, in doing so, he violated Whahoo's "terms of service," which prohibit posting "any image of a person without the person's consent." The prosecutor argues for a novel interpretation of the Act under which Jason's violation of the "terms of service" constituted unauthorized use of the site, thus violating the Anti-Hacking Act. Should the court dismiss the indictment?

- a. Yes, because novel interpretations of criminal statutes violate the rule of lenity.
- b. No. This should be a viable theory for prosecuting Jason and there is really no plausible legal objection to it.
- c. Yes, if the court deems the prosecutor's novel theory to be an "unforeseeable judicial enlargement" of the statute.
- d. No, because the legislative purpose in enacting a statute is not relevant to the interpretation and reach of the statute's actual words.

6 In deciding whether the Anti-Hacking Act applies to Jason's conduct in the preceding question, the court should (under ordinary principles of statutory interpretation):

- a. Consider only the plain meaning of the statute's words.
- b. Consider the plain meaning of the statute's wording as well as the legislative intent.
- c. Read the statute in whatever way the court deems advisable in order to promote the policies and goals that the court thinks are important.
- d. Read the statute as narrowly as possible to avoid conviction unless the court is persuaded that the legislature actually had this kind of case in mind when enacting the statute.

7 When it was discovered that persons engaged in prostitution often carry condoms, a certain city adopted a new anti-vice measure that made a crime for anyone "to carry condoms in public except in the original packaging in which they were sold." It is probable that this local law can be successfully challenged on the ground that:

- a. It prohibits conduct that is not harmful in itself and that can be perfectly legitimate.
- b. It discourages the use of a product that actually tends to promote public health and welfare.
- c. Its does not give law enforcement personnel sufficiently definite guidance as to what is, and is not, prohibited.
- d. None of the above.

8 During a robbery, Russell “Rip” Grady shot and killed a convenience store clerk who was pregnant at the time. Grady is now charged with two counts of murder. The relevant statute makes murder punishable as a felony but does not define “murder.” Grady moves to dismiss one count of murder arguing that killing a fetus is not “murder” within the meaning of the statute.

- a. Typically, when a statute uses a term that has an established meaning at common law, courts assume that the legislature used the term with its common law meaning.
- b. Under the common law definition of “murder,” Grady could be guilty of two counts of murder for killing both the store clerk and the unborn fetus.
- c. Under the common law definition of “murder,” Grady would be guilty of two counts of murder only if the fetus was viable when the crime occurred.
- d. All of the above.

9 Cal Thurman, owner of a strawberry farm, has been convicted of violating the state’s Fair Labor Practices Law. He allegedly under-recorded his field workers’ hours, which caused them to be underpaid. The prosecutor argues that Thurman should receive some jail time (in addition to the usual fine) because otherwise he may see the fine as simply a cost of doing business and commit the same violations in the future. Which justification for punishment does the prosecutor appear to have in mind?

- a. Retribution.
- b. General deterrence.

- c. Special deterrence.
- d. Incapacitation.
- e. All of the above.

10 Marty Webber has just been convicted of theft and burglary. The prosecutor argues that Webber should receive substantial jail time because he is a habitual thief and keeping him in custody is necessary to protect the public. The justification for punishment that the prosecutor appears to have in mind is:

- a. Retribution.
- b. Deterrence.
- c. Both retribution and incapacitation.
- d. Incapacitation.
- e. All of the above.

11 Willamette Redbond had two small children who tragically drowned when she left them in the bath while she answered the phone and talked to her boyfriend. She’s now been convicted of involuntary manslaughter. Her lawyer argues that she’s already suffered greatly and will continue to do so for the rest of her life. The prosecutor says she deserves at least five years in prison because of the serious harm that she has caused.—namely, the deaths of two helpless children. The justification for punishment that the prosecutor appears to have in mind is:

- a. Special deterrence.

- b. Retribution.
- c. Rehabilitation.
- d. Incapacitation.
- e. All of the above.

12 According to the utilitarian rationales for punishment:

- a. Punishment should not be inflicted in cases where it will produce no social or other benefit.
- b. Punishment is justified as long as it serves some useful economic purpose, such as providing inexpensive labor for producing essential commodities.
- c. People should get what they deserve.
- d. Punishment is a useless anachronism.

13 While staying in a hotel, Justin Vesey heard loud shouts and banging from the room next door. Obviously, the people there were having a terrible fight. Justin put his pillow over his head and went to sleep. The next day, the police learned that one of the people in the next room had been severely beaten and the other had disappeared. Justin is charged with “causing serious bodily injury” because he did not report the beating or do anything to stop it. Can Justin be properly convicted of the offense charged?

- a. Yes. There is no reason why he should not be.

- b. No, because his conduct consisted only of an omission in a situation where he had no legal duty to act.
- c. Yes, because his conduct was an omission that violated a clear moral duty of basic human decency.
- d. No, because he did no act that contributed to the serious bodily injury that occurred.

14 One chilly night, Devon saw a toddler wandering down the street without shoes and wearing only pajamas. He did nothing. Later the toddler was found in an open ditch several blocks away, very dehydrated and hypothermic. Devon can properly be convicted under a statute that prohibits child abuse (“conduct causing serious physical injury to a person under 18 years of age”) if Devon:

- a. Is the father of one of the child’s regular playmates.
- b. Is a licensed physician.
- c. Is the child’s parent.
- d. Is any of the above.

15 Out carousing on a frigid winter night, Ken and Reilly got into a disagreement at McDuffy’s Tavern. They continued arguing as they walked back to their homes, about 10 blocks away. Crossing a busy street, Reilly said: “I just can’t take any more of your mouth!” and tottered drunkenly off. Ken shook his head and continued home. The next day, Reilly was found dead in pile of trash, not far from where he and Ken had parted. Ken is charged with criminally negligent homicide. For purposes of omissions liability, Ken would probably be deemed to have has a legal duty to Reilly:

- a. If they were longtime friends and had spent a lot of time together.
- b. Because the two of them had gone out carousing together.
- c. Because it should have been obvious to Ken that Reilly was in bad shape and might not make it home.
- d. None of the above: Although there's a clear basis here to find that Ken was under a legal duty to Reilly, it is not one of the bases above.
- e. None of the above: There appears to be no basis for finding that Ken was under a legal duty to Reilly.

16 A patient in a vegetative state was existing on life support at Wellesley Hospital. After several days, the doctor in charge determined that recovery was highly improbable and removed the life support. A short time later, the patient died. The doctor would not be considered guilty of murder on the theory that:

- a. Removing life support is treated as an omission rather than an act and, therefore, it can never be punished as a criminal *act*.
- b. Removing life support is treated as an omission to continue treatment, and doctors have no duty to continue treatment that has no reasonable prospect of benefiting the patient.
- c. Attaching and removing life support is a medical decision, not a legal one, and the law declines to interfere with the medical profession on such questions.

- d. None of the above. The doctor is probably guilty of murder on these facts (though such cases are rarely brought to light or prosecuted).

17 Same facts as in the previous question except that the life support was removed by the patient's best friend, who could no longer bear to see the patient in such a degraded and painful looking state. The friend has a good argument that he is not guilty of murder because:

- a. Removing life support is considered an omission rather than an act and, therefore, it can never be punished as a criminal *act*.
- b. Removing life support is considered an omission to continue treatment, and the friend had no duty to provide medical treatment to his father.
- c. The doctors were almost certainly going to remove the life support anyway since doctors stop treating patients after treatment has become futile.
- d. None of the above.

18 Under the mens rea doctrine, as generally understood:

- a. A person can be convicted of a crime only if the person did it on purpose.
- b. If a statute defining a crime does not specify a mental state as an element of the crime, then the crime is presumptively a strict liability offense.

- c. If a statute defining a serious crime does not specify a mental state as an element of the crime, then the crime presumptively includes a mental element (requiring proof that the defendant acted with mental culpability).
- d. All of the above.

Facts for Larson-Wayne questions. During a fight at a construction site, Larson threw a fist-sized rock at Wayne. However, Wayne ducked, and the rock broke a window of a car that happened to be passing behind him at just that moment. A statute makes it a crime “to unlawfully and *maliciously* destroy property belonging to another” (emphasis added).

19 Following the reasoning of *Regina v. Cunningham* (the gas-meter theft case), the court should interpret the statute’s word “maliciously” to allow conviction:

- a. As long as there’s proof that Larson acted with a generally wicked mental state (*e.g.*, intending to hit Wayne with a rock).
- b. Only if it’s proved that Larson acted with a wicked mental state respecting the window (*e.g.*, with an intention to break it).
- c. As long as breaking the window could be considered malicious, as the word is commonly understood.
- d. Only if Larson had feelings of malice directed specifically toward the car owner.

20 Suppose that the jury is persuaded that Larson did not mean to hit the car window. It would still be proper to convict Larson of violating the statute:

- a. If he foresaw the substantial risk that the rock would cause other damage if it missed hitting Wayne.
- b. If he *should have* foreseen the substantial risk that the rock would cause other damage if it missed hitting Wayne.
- c. As long as he actually foresaw the substantial risk that serious harm could occur *to Wayne*.
- d. All of the above.

21 Suppose that, after missing the first time, Larson threw another rock at Wayne and this one hit the Wayne in the head, causing serious injury. Larson is indicted under a statute that makes it a crime “to knowingly or intentionally cause serious bodily injury to another.” It would be proper to convict Larson:

- a. Without proof of his mental state because courts realize that a person’s internal mental workings or thoughts can never really be known.
- b. Under a legal presumption in the statute stating that people are deemed to intend the ordinary consequences of their actions.
- c. If the jury infers his intention from the circumstances by reasoning, for example, that people usually intend the ordinary consequences of their actions.
- d. All of the above.

22 Suppose that Wayne, trying to escape from Larson, ran to his car and sped off. Larson took out a gun and squeezed off a single shot at the back window of the car, aiming to kill Wayne, if possible. The bullet hit Wayne and, as a result, his car veered onto the sidewalk, where it hit and killed Rory Ploat, a passing pedestrian. Wayne also later died of the gunshot wound.

- a. Under proper application of the “transferred intent” doctrine, Larson is guilty of one count of intentional homicide (and, probably, one count of reckless homicide).
- b. Under proper application of the “transferred intent” doctrine, Larson is guilty of two counts of intentional homicide.
- c. Under proper application of the “transferred intent” doctrine, Larson is guilty of only one count of *any* kind of homicide.
- d. On these facts alone, Larson could be properly convicted of manslaughter but not murder.

23 Corey Genser was indicted under a statute that makes it a crime to “break and enter into premises with intent to commit a felony.” The crime defined in the statute would normally be said to be one that:

- a. Does not require a mens rea..
- b. Does not require an actus reus.
- c. Requires specific intent.

- d. Requires only general intent.

24 Philip, a karate student wanted to show his friends how he’d learned to control his kicks. He said he was able to stop a kick within a fraction of an inch. He decided to demonstrate on a nearby store window, which he unintentionally struck and shattered. Philip’s lawyer persuaded the jury that Philip honestly believed he could control his kick so it would not cause damage—with corroborating evidence from his karate teacher. If Philip is guilty of any crime at all, it would be one that makes it illegal to (MPC mens rea):

- a. Purposefully destroy property.
- b. Willfully destroy property.
- c. Recklessly destroy property.
- d. Negligently destroy property.

25 Linda’s boyfriend asked her to take a package to an address across town. She was well aware that her boyfriend sometimes helped friends to distribute illegal narcotics. Linda was apprehended and cocaine was found in the package. She was prosecuted for “knowing possession of a controlled substance.” If Linda truly did not know what the package contained, she can properly be convicted (*best* answer under MPC):

- a. If she knew there was a high probability that the package contained cocaine.
- b. If she knew there was a high probability that the package contained cocaine (unless she actually believed the package did not contain a controlled substance).

- c. Because Linda had a legal duty to determine the contents of the package in her possession.
- d. None of the above. Linda cannot properly be convicted under these facts as long as she truly did not know what the package contained.

26 A statute makes it a crime “to knowingly use a means of identification belonging to another person in buying alcoholic beverages.” Freddie borrowed a phony driver’s license from a college classmate. He believed it to be a totally bogus fake that his classmate had fabricated. In fact, the license was a real one, which had been stolen. Freddie used the license to buy beer and was charged under the statute:

- a. Freddie could not properly be found guilty as long as he did not know the license actually belonged to another person (MPC).
- b. Freddie could possibly be guilty under the Federal approach even if he did not know the license belonged to another person.
- c. Both of the above.
- d. Under both the Model Penal Code and the Federal approach, Freddie should not be found guilty as long as he did not know the license belonged to another person.

27 Wade Gorman has a client charged under a public welfare statute that prohibits certain conduct but does not specify any particular mental state as an element of the crime

- a. The court must interpret the statute to require proof that the defendant acted intentionally, knowingly, recklessly or, at least, negligently.
- b. The court must interpret the statute to require proof prove that the defendant acted with, at least, a wicked disposition or blameworthy state of mind.
- c. A statute that imposes criminal punishment without fault or mental culpability is not constitutional.
- d. None of the above. The court may interpret the statute to permit conviction even if the evidence all shows that the defendant was trying his best to obey the law.

28 It is said that statutes permitting conviction without proof of mens rea typically include those that are enacted:

- a. For the purpose of social betterment rather than punishment.
- b. For the purpose of punishing wrongdoers rather than social betterment.
- c. To forbid *malum in se* rather than *mala prohibita*.
- d. All of the above.

29 Wade Gorman has another client, this one charged under a statute that makes it a crime to “knowingly interfere with a police officer in the performance of his duty.” The client was arrested after coming to the aid of a woman he saw being wrestled to the ground by a person in a brown leather jacket in an alley off Main Street. The person turned out to be an undercover police officer effectuating a

lawful arrest. The charges against Wade's client should be dismissed if he can prove that (MPC):

- a. His client didn't know that the person in the leather jacket was a police officer.
- b. His client didn't know that interfering with a police officer was a crime.
- c. Either one of the above.
- d. None of the above. It is presumed that the word "intentionally" applies only to the word "interfering" and Wade's client clearly knew that he was interfering.

30 While at a street fair, Albert Landscombe walked past a table displaying cups of appetizing ice cream. Thinking they were free samples, Albert took one and walked off. In fact, the ice cream was intended for sale. Albert was charged with petty larceny. He should be acquitted:

- a. Only if he honestly and reasonably believed that they were free samples.
- b. As long as he honestly believed that they were free samples.
- c. As long as it was reasonable to believe that they were free samples, no matter what Albert's private subjective beliefs may have been.
- d. None of the above. A thief cannot escape punishment just because he did not "know" he was stealing.

31 Federal law makes it a crime for any person "to possess a firearm which is not registered to him" as prescribed by law. "Firearm" means a weapon that can shoot multiple shots with one pull of the trigger. The statute does not specify any mental-state element. Sammy Dorn was charged under this statute after he was found to have an unregistered firearm. As this statute has been interpreted:

- a. Dorn cannot properly be convicted if he did not know that his weapon had automatic (multiple shot) shooting capability.
- b. Even if Dorn knew his weapon had automatic (multiple shot) shooting capability, he cannot properly be convicted if he did not know it hadn't been registered.
- c. Both of the above.
- d. It doesn't matter what Dorn knew or didn't know, he can be properly convicted because the statute doesn't specify any mental-state element for this offense.

32 Ellen Burrows, a high school math teacher, is charged under a statute that prohibits "sexual relations with any person under 16 years of age." Ellen honestly (but erroneously) believed that the student she'd had an "affair" with was 18. Under the majority (and traditional) rule for such a case:

- a. Ellen's honest mistake as to her student's age should normally be a defense.
- b. Ellen's honest mistake as to her student's age would be a defense only if her belief was a reasonable one.

- c. A mistake as to the age of the student, no matter how genuine or reasonable, would not be accepted as a defense in most states.
- d. Ellen's honest mistake as to the age of the student could be a defense as long as the student had freely consented to the sexual encounter.
- e. Ellen's honest mistake as to the age of the student could be a defense as long as the student had initiated the sexual encounter.

33 Suppose in the preceding question that, despite Ellen's honest mistake as to the student's age, the prosecutor argues that she can properly be held guilty under the "moral wrong" doctrine. Which of the following ideas is the prosecutor referring to?

- a. A person who intentionally commits an immoral act, such as sex outside of marriage, assumes the risk that the conduct is also illegal.
- b. The intentional commission of an immoral act can serve as the requisite blameworthiness to justify conviction.
- c. Both of the above.
- d. People who commit immoral acts should be held accountable even when there is no law that specifically prohibits their conduct.
- e. All of the above.

34 D placed poison in M's coffee. The poison made M very sick and, without medical attention, death would follow in 12-15 hours.

However, a short time after M consumed the poison, H came home and found M, put M in his car and rushed toward the hospital. On the way H recklessly ran a red light and crashed into another car. If M was killed instantly in the crash, whose conduct could be legally considered to be the actual ("but for") cause of M's death?

- a. D only.
- b. Both D and H.
- c. H only.
- d. None of the above. M's act of drinking from the coffeepot was a superseding intervening cause.

35 During a robbery, R stabbed V causing serious bleeding, though not serious enough to be fatal in itself. R left V lying on the sidewalk. When V regained consciousness, he stumbled out into the street where he was struck by a D, a drunk driver. This second event resulted in additional bleeding. The amount of additional bleeding would not normally have been fatal but, because V had already lost a lot of blood, he died in the ambulance on the way to the hospital. Who could be legally considered to be the actual ("but for") cause of V's death?

- a. R only.
- b. Both R and D.
- c. Only D.
- d. None of the above because neither R nor D caused any injury that was fatal in itself.

36 Suppose in the preceding question, the evidence shows that V would have died from the stab injuries within an hour or so after they occurred. However, the prosecutor also presented expert medical evidence that V's death "*could* have been accelerated by the injuries sustained when V was hit by D." Still, there was no evidence that the injury caused by D was fatal in itself. Based on this evidence (and without any additional evidence as to cause):

- a. Only R can be legally considered to have caused V's death.
- b. Both R and the D could be legally considered to have caused V's death.
- c. Only the D could be legally considered to have caused V's death.
- d. Since the stab injuries were enough to cause V's death, what happened afterwards is not relevant to the issue of "but for" causation.

37 Davies is accused of killing his neighbor, Grassley, while the two were out hunting squirrels. Under the traditional common-law breakdown of the homicide offenses, in order the convict Davies of murder the prosecutor would have to prove that:

- a. Davies caused death with malice aforethought.
- b. Davies intended to kill Grassley.
- c. There was provocation.
- d. The killing was premeditated.

38 In the preceding question, the prosecutor believes she can prove that the killing was "premeditated" murder. As that term is understood today, proof of premeditation means:

- a. The state has to persuade the jury that there was some sufficient time interval in which Davies could have reflected on and given prior consideration to the homicidal act.
- b. There's evidence that Davies had a specific intention to kill at the moment he committed the homicidal act.
- c. Neither of the above is solely correct because some courts insist on an interval of time for pre-reflection and consideration, while others do not.
- d. There's evidence that Davies had decided to kill Grassley before they went out together to go hunting.

39 Premeditation is relevant in modern law because premeditated homicides:

- a. Are generally considered to deserve greater punishment than those committed without premeditation.
- b. Are singled out everywhere for harsher penalties than those committed without premeditation.
- c. Are singled out by the MPC for harsher penalties than those committed without premeditation.
- d. Are generally considered less culpable than impulsive murders that are committed without a second thought for human life.

40 Nibby shot a man in a robbery. The victim was taken to a hospital and placed on life support. Two days later, the attending doctor declared that the victim was “brain dead.” Because he was on life-support machinery, however, his heartbeat and breathing continued. On the doctor’s orders, the life support was removed. A surgical team removed the victim’s vital organs for transplant. Now being prosecuted for felony murder, Nibby argues that he didn’t cause the victim’s death, the doctors did.

- a. If the court sticks to the law’s traditional common-law definition of death, Nibby’s argument would have no merit since the victim was brain dead.
- b. Nowadays the law no longer defines death as the stopping of the heart but has replaced that former criterion with a new one, namely, cessation of all brain activity.
- c. Under the traditional common-law definition of death, Nibby’s argument would make sense.
- d. Under the traditional common-law definition of death, cessation of brain activity was usually the event that defined the end of life for legal purposes.

Facts for Borden questions. Borden went to a bar with a friend. Some rough guys at the bar started taunting Borden, calling him names and making fun of his ears. When Borden tried to answer back, one of the guys poured a glass of beer over his head, to the general amusement of everybody except Borden.

41 Extremely worked up, Borden grabbed a nearby table knife and stabbed at his tormenters, cutting one of them badly. Assume that the victim died and Borden, charged with murder, contends that he should only be convicted of manslaughter on a “heat of passion” theory. Under the traditional view:

- a. If the taunting words were extremely offensive and insulting, then the words alone could be enough to support a provocation defense.
- b. The words alone would not sustain a provocation defense, but the words combined with the beer on the head (if deemed an extreme assault) could be treated as adequately provoking conduct.
- c. The court should rule that the provocation defense is not available on these facts since Borden could have easily just turned around and left the bar.
- d. The court should rule that the provocation defense is not available on these facts since Borden was the first to use deadly force.

42 In the preceding question, the jury should not in any event find Borden guilty of the reduced charge of manslaughter (rather than murder) unless it concludes that:

- a. A reasonable man under similar circumstances would have been likely to kill.
- b. A person of fair average disposition would be likely to lose self-control under similar circumstances.

- c. A person having Borden's temper and personality would be likely to lose self-control under similar circumstances.
- d. An ordinary person would have felt a need to defend his honor under similar circumstances.

43 Suppose that Borden became extremely upset but he didn't attack anybody at the bar. However, he simmered over the whole episode for several days, getting madder and madder. Then Borden happened to see one his tormenters on the street, and a sudden surge of memories from that night at the bar caused him to boil over. He grabbed an iron rod lying on the ground and smashed the guy right there on the spot. Under the traditional approach:

- a. The provocation defense should be available to Borden (if he can prove these facts).
- b. The provocation defense would probably no longer be available to Borden (assuming it ever was) because too much time has elapsed since the provoking incident.
- c. If the victim's original behavior was sufficiently outrageous, the provocation offense would still be available.
- d. The provocation defense would probably no longer be available to Borden (assuming it ever was) because, on these facts, his act would amount to an intentional homicide.

44 Wilson and Thor enjoy teasing their coworker, Gimlet. One day, they called Gimlet "a pathetic loser who'd put any mother to shame." Gimlet picked a brass paperweight and threw it at Wilson, bonking him in the head. Now Gimlet is charged with attempted murder. He raises provocation as a defense. He wants to introduce evidence that

his mother had recently passed away and he was still very sensitive and irritable on that subject.

- a. Under the MPC, the provocation defense would not be available because the provocation consisted of mere words.
- b. Under some authority, the evidence should be allowed in order to show the gravity of the taunts but not on the issue of how much self-control is expected of the defendant.
- c. Under some authority, the evidence should be allowed on the issue of how much self-control is to be expected of the defendant but not on the issue of the gravity of the taunts.
- d. The provocation defense would be unavailable since throwing the paperweight was an intentional act.

45 There was great excitement when Kevin showed up at school with a car that his dad just bought him. A bunch of the kids surrounded the car and some of them got it into their heads to climb up on it. Kevin told them to get off and, when they didn't, he put the car in gear and sped away, making a fast turn out of the parking lot. All the kids on the car were thrown off in the process, and one of them was seriously injured as he fell. If he dies of his injuries:

- a. Kevin would be guilty of, at most, manslaughter if the jury is persuaded that he did not actually intend to cause anyone's death.
- b. Kevin could properly be convicted of murder on these facts, even without proof of malice aforethought.

- c. If the jury concludes that Kevin was reckless, he could be properly convicted of manslaughter but not murder.
- d. Kevin could properly be convicted of murder on these facts, even without proof of intention to kill.

46 Assume that, out on bail, Kevin went joyriding with friends in his new car. For thrills, he purposely drove down the wrong side of a divided highway, merrily dodging the oncoming traffic and laughing uproariously with his friends as the oncoming drivers, terrified, swerved off the road into the ditch. Unfortunately, he side-swiped a car and its driver lost control and was killed. Bail was revoked and the prosecutor charged Kevin with manslaughter. Kevin's lawyer argues forcefully that Kevin wasn't actually aware that his conduct created a risk of death (reasoning that, after all, Kevin did not want to get hurt himself).

- a. Under the traditional view, a jury could properly be instructed to convict despite Kevin's actual unawareness of the risk as long as the risk was so great and so obvious that Kevin should have been aware of it.
- b. Under the MPC, a conviction for manslaughter would require proof that Kevin consciously disregarded the risk—meaning the jury must believe he was actually aware of it.
- c. Both of the above.
- d. None of the above. A conviction for manslaughter can only be based on provocation..

47 Dorothy Cooper was texting as she drove to a dentist appointment. A parked car pulled out in front of her but Dorothy didn't notice it at first. Startled when she finally caught sight of it,

she swerved wide out of her lane and hit another car, causing a fatal crash.

- a. In many states, Dorothy can be convicted of criminally negligent homicide only if her fault is deemed to constitute gross negligence.
- b. In most states, Dorothy can be convicted of criminally negligent homicide even if her fault was only ordinary negligence (a failure to use ordinary care).
- c. Under the MPC, Dorothy could be convicted of criminally negligent homicide if her fault was only ordinary negligence (a failure to use ordinary care).
- d. All of the above.

48 While escaping on a motorcycle from a liquor store heist, Lem accidentally hit a pedestrian who later died from the resulting injuries. Lem has been charged with murder. He claims in defense that he absolutely did not intend to harm to anyone. According to the "felony-murder" rule:

- a. Murder is always considered a felony.
- b. Lem can be guilty of murder even if he had no intention to cause death or bodily harm.
- c. Both of the above.
- d. Robbery (though a felony) cannot be considered the predicate felony in a situation like this because the death occurred *after* the robbery was completed.

49 In a state that has the “inherently dangerous felony” requirement, which of the following felonies would arguably *not* support a felony murder charge in the preceding question?

- a. “avoiding arrest by driving in a manner that poses a high risk of death or serious bodily injury.”
- b. avoiding arrest by driving in a manner that poses a high risk of injury to persons or property.”
- c. Robbery “using a gun or other deadly force.”
- d. All of the above could be considered predicate felonies to support a murder charge against Lem in the preceding question.

50 In general, a person is permitted to use deadly force in self-defense if the person reasonably believes such force is necessary to prevent:

- a. Bodily injury as a result of unlawful conduct.
- b. Serious bodily injury as a result of unlawful conduct..
- c. Both of the above.
- d. None of the above. Deadly force in self-defense can be only be used if believed necessary to save one’s own life.

51 One night in Findley’s Bar and Grill, Howland thought he saw Sims eying his girlfriend. He approached Sims, grabbed him by the collar, and shouted “Whaddya think you’re looking at?” Sims pulled out a knife, poked it toward Howland, and said: “Maybe you should look at this.” Howland peered at the knife and, as Sims took a step

forward, Howland pulled a gun and shot Sims, fatally. Howland would be able, under the general common-law rules, to claim self-defense:

- a. As long as he honestly believed that the use of deadly force was necessary to protect himself from death or serious bodily injury.
- b. As long as he honestly *and reasonably* believed that the use of deadly force was necessary to protect himself from death or serious bodily injury.
- c. As long as Sims was the first to use deadly force.
- d. None of the above because Howland started it by going up to Sims and grabbing his collar.

52 In the preceding question, suppose that when Howland grabbed Sims and asked him what he was looking at, Sims said “nothing,” and Howland immediately went back to his table and sat down. Later on, Sims approached Howland with a knife and Howland looked up at him said: “Hey, buddy, I don’t want no trouble.” Sims, visibly drunk and angry, poked the knife in Howland and slurred out: “Nobody talks that way to me!” With that, Sims then lost his balance for a critical moment giving Howland a chance to pull out a gun and fire, fatally wounding Sims. Howland would be able, under the general common-law rules, to claim self-defense:

- a. Only if he was unable to retreat with complete safety (majority rule).
- b. As long as he honestly believed that the use of deadly force was necessary to protect himself from death or serious bodily injury.

- c. As long as he honestly *and reasonably* believed that the use of deadly force was necessary to protect himself from death or serious bodily injury.
- d. None of the above. Self-defense cannot be claimed if a person uses a gun to defend himself against a mere knife.

Facts for Hancock-Pruyne questions. Hancock and Pruyn were competing meth producers in a rural part of the state. They were on very bad terms. A few weeks ago, one of Hancock's production setups mysteriously caught fire. Hancock told people that he suspected Pruyn, though he had no direct proof. Hancock also started going around publicly saying that "someday" he was going to kill Pruyn. At least twice after that, shots were fired into Pruyn's truck as he drove near Hancock's farm. Then, last night, somebody shot at Pruyn's truck from a passing car. Pruyn feared he'd be killed by Hancock and (obviously) felt unable to go to the police.

53 Suppose Pruyn ambushed Hancock and killed him the next day as the latter was driving into town. Under the common-law approach to self-defense, Pruyn's claim that he reasonably believed he had to kill Hancock to protect himself:

- a. Will probably succeed.
- b. Will probably fail because Hancock made his threats publicly instead of to Pruyn directly.
- c. Will probably fail because Pruyn didn't kill Hancock in a fair fight.
- d. Will probably fail because Pruyn was not protecting himself from an imminent use of deadly force.

54 Suppose that Pruyn was home alone at night when he saw Hancock pull up and get out of his truck with a rifle. Believing that Hancock had come to kill him, Pruyn shot Hancock through a window as he approached the house. Now accused of attempted murder, his defense is "defense of habitation." Pick the best statement:

- a. The defense *would* apply if Pruyn reasonably believed that Hancock was going to break into the house to commit a felony.
- b. The defense would *not* apply because Pruyn shot Hancock while he was still outside (before he'd crossed the threshold).
- c. The defense *would* apply if Pruyn reasonably believed that Hancock was going to break into the house to commit a forcible, violent or atrocious felony.
- d. The defense would *not* apply unless it is determined that Pruyn faced an imminent risk of death or serious bodily injury.

55 George's friend suddenly fell unconscious at a party. George got her to his car and drove to the hospital. On the way, in order to avoid traffic gridlock, he drove for a distance down the sidewalk and, then, the wrong way down a one-way street. Charged with various traffic violations and reckless driving, George can prevail using necessity as a defense if (pick the *untrue* statement):

- a. He reasonably believed that his violations of law were the lesser evil.

- b. He acted in the reasonable belief that there was no adequate alternative.
- c. He acted to prevent a significant evil and he reasonably believed that his actions were necessary to avoid the “evil” he was aiming to prevent.
- d. He acted in the reasonable belief that an emergency existed.

56 When Martin Farney was arrested for disorderly conduct, he drunkenly pushed at the arresting officers, causing one of them to fall. They then charged Farney with (a) “assaulting a police officer while he is performing a public duty,” and (b) “failing to obey a lawful police order with specific intention to hinder the police in carrying out their duties.” Farney’s lawyer wants to introduce evidence that Farney was so intoxicated that he cannot properly be convicted of one or more of the crimes charged. The intoxication evidence should be admissible with respect to:

- a. Crime (a).
- b. Crime (b).
- c. Both crime (a) and crime (b).
- d. Neither crime (a) nor crime (b).

57 While Gabe Ronett was escaping from a robbery in a high speed car chase, he drove extremely fast and ran numerous red lights and stop signs. When he suddenly saw a car driven by Eddie Potter, he tried to avoid it but failed, resulting in a crash that was nearly fatal to Eddie. The prosecutor wants to charge Ronett with attempted

murder or, at least, attempted manslaughter. Under which of the following theories could such a charge be upheld?

- a. Attempted felony-murder.
- b. Attempted “depraved heart” murder.
- c. Attempted manslaughter based on recklessness.
- d. None of the above.

58 Carver needed some cash and decided to rob the local branch of the Gulf National Bank. He got an old gun that had belonged to his uncle and wrote out a note that said “Put it all in this bag.” He drove to the bank with the gun, the note and a bag, and he sat in the parking lot waiting till it “felt right” to go in. Another man crossing through the parking lot saw the gun on the car seat and informed bank employees. A short time later the police arrived and arrested Carver.

- a. Carver is probably not guilty of attempted robbery because he never did the “last act” necessary to carry out the crime.
- b. Carver is probably not guilty of attempted robbery because he never got out of his car and actually *attempted* to rob the bank.
- c. Under the MPC, there’s probably enough to convict Carver of attempted robbery based on his mens rea (intent to rob) alone.
- d. Under the MPC, Carver probably did enough to justify a conviction because his conduct amounted to a substantial step in carrying out the robbery.

59 In the preceding question, when determining whether conduct such as Carver's can be deemed an attempt, the courts:

- a. Generally apply a fairly rigid test that draws a fixed bright line between mere preparation as opposed to actual steps toward committing the completed offense.
- b. Generally consider whether the actual completed offense was factually impossible to commit and refuse to convict the defendant of "attempt" if it was.
- c. Always must consider whether the actual completed offense was factually possible to commit and dismiss the "attempt" charge if it was not (MPC).
- d. Typically consider whether the defendant came very near or dangerously near to committing the completed offense and consider it proper to convict the defendant of "attempt" if he did.

60 Wally Alford entered a convenience store with a group of friends. While two of the group occupied the front clerk's attention, two others went back to the beverage coolers and commenced to hide cans of beer under their coats. Wally stood near the door said nothing, either to his friends or to alert the store clerk. He left the store with everybody else. He would be an accomplice in the theft:

- a. Because he was present, knew what his friends were doing, and did nothing to stop it or dissociate himself from it.

b. If he privately decided to give his friends a warning in case a store employee appeared who might catch them red-handed—but as it turned out he didn't need to.

c. If he'd agreed with his friends in advance to give them a warning in case a store employee appeared who might catch them red-handed—but as it turned out he didn't need to.

d. All of the above.

e. None of the above.

<End of examination.>