PACE UNIVERSITY SCHOOL OF LAW

CRIMINAL LAW
PROFESSOR HUMBACH — December 9, 2016
FINAL EXAMINATION — TIME LIMIT: 4 HOURS

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

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

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

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

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

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

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

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

1 Alden Duffer went to a public golf course and gathered golf balls that had been lost during play. He has now been charged under a statute that prohibits "stealing golf balls found on public golf courses in the City of Palomar." Alden claims he had no intent to steal because he honestly believed the balls were abandoned property, but the prosecutor says that's irrelevant because the statute does not expressly require proof of mens rea.

a. When a statutory word like "steal" has an established common-law meaning the court should normally assume that the legislature intended that common-law meaning.

b. The word "steal" traditionally implies a felonious intent to deprive another of property, and a statute like this one should normally be read to require proof of such intent.

c. Both of the above.

d. The prosecutor is correct, and it is probably irrelevant that Alden honestly believed the balls were abandoned.

2 The city of Collier adopted a law making it an offense "to place any sign or other object that impedes the flow of pedestrian traffic on a public sidewalk." It imposed a $100 fine for violations. Local merchants, who attract customers with various "sandwich board" signs on the sidewalks outside their stores, complain that the new law is vague.

a. The merchants should address their complaint to the local legislative body since vagueness does not make a law any less valid or effective.

b. The law could be held void for vagueness if the court finds that a person with ordinary intelligence cannot tell where it does and does not permit signs to be placed.

c. The law could be held void for vagueness if the court finds that it leaves too much discretion to the persons charged with enforcing it.

d. Both b. and c. above.

3 In the preceding question if the court decides that the law as written is unintelligibly vague,

a. The court must take the law as it finds it and cannot revise or modify what the legislature has enacted.

b. The court would probably try to put a narrowing interpretation on the law to make it more definite, if possible.

c. The court normally would have no choice but to strike down the law in its entirety.

d. The best response would be to uphold the law in its entirety and rely on prosecutors not to bring unwarranted prosecutions.

4 The police arrested Owen Springer, age 44, during a late night traffic stop. At the time, he was traveling with a runaway teenage girl who described him as her "lover." The prosecutor withdrew the initial charge of statutory rape when the girl turned out to be a few days over 16, the age of consent. Instead he charged Springer with what he called the "common law crime of debauchery." The state has

no statute or judicial precedent recognizing "debauchery" as a crime. In general today:

a. The court would be free to recognize debauchery as a new common law offense since the situation involves clearly immoral behavior not covered by any statute.

b. The court should dismiss the debauchery charge under the principle of "no punishment without a law" since there is no statute on which to base the charge.

c. The charge should be sustained on a "moral wrong" theory if the defendant knew or should have known that his conduct seriously violated standards of public morality.

d. It should left to the jury to decide whether, under the circumstances, the defendant deserves to be punished for his conduct.

5 Andrea Felsen, whose father is a wealthy banker, has been convicted of stealing from a jewelry store. The prosecutor argues that she should receive a stiff sentence as an example for "rich kids" and others who think they can get away with whatever suits them. The rationale for punishment that the prosecutor appears to have in mind is:

a. Retribution.

b. Special (individual) deterrence.

c. General deterrence.

d. Reform.

6 Robert Purvis, age 19, was convicted of sexual abuse for inappropriately touching a seven year-old that he was babysitting. The prosecutor argues for a lengthy prison term followed by supervised release because "this defendant obviously is not in control of his distorted desires and presents a continuing risk that requires keeping him where he cannot harm others." The rationale for punishment that the prosecutor appears to have in mind is:

a. Retribution.

b. General deterrence.

c. Incarceration.

d. Incapacitation.

7 Emma Raines was convicted of vehicular homicide after she hit and killed a mother of three young children on a dark night under a shadowy overpass. At the time of the incident her blood alcohol level was slightly above the legal limit. The prosecutor argues that she should receive multiple years in prison because "her conduct has caused the death of an innocent person, and justice cries out for a suitable response." The rationale for punishment that the prosecutor appears to have in mind is:

a. Retribution.

b. Restitution.

c. Recrimination.

d. Deterrence.

8 Derek Plummer has been convicted of vandalizing holiday decorations at a private home while out roaming at night with a group of older boys. The prosecutor concedes that Derek is a "good kid" and would not likely have committed the crime on his own, but she also argues that Derek needs some "serious" response by the law so he will think twice before doing such a thing again. The rationale for punishment that the prosecutor appears to have in mind is:

a. Retribution.

b. Special (individual) deterrence.

c. General deterrence.

d. Incapacitation.

9 Judge Carter believes that sentences should be designed and calibrated so they are just enough to deter future crime, to enhance public safety and to avoid wasting resources on punishment "for its own sake." By contrast, Judge Bottin's primary goal in sentencing is to make sure that those who harm others are made to pay for their crimes.

a. Judge Carter follows a utilitarian approach to punishment and Judge Bottin takes a retributive approach.

b. Judge Carter follows a retributive approach to punishment and Judge Bottin takes a utilitarian approach.

c. Both Judge Carter and Judge Bottin take a utilitarian approach to punishment.

d. Both Judge Carter and Judge Bottin take a retributive approach to punishment.

10 Dr. Ellen Castleton has a patient who is in a persistent vegetative state and, though not "brain dead," is kept alive with life support machinery. It is the medical opinion of Dr. Castleton and her colleagues that there is no hope that the patient will recover and that further treatment would be futile and would not benefit the patient. If Dr. Castleton disconnects the life support and the patient dies a short while later:

a. She would be guilty of murder because she knowingly caused the death of anther.

b. She would *not* be guilty of murder because a doctor is generally allowed to terminate the life of a patient once further medical treatment has become futile.

c. She would *not* be guilty of murder because her conduct would be considered merely an "omission" and doctors are not held criminally accountable for mere omissions.

d. She would *not* be guilty of murder because her conduct would be considered merely an "omission" to continue treatment after the legal duty do so had come to an end.

11 Suppose in the preceding question the patient's nephew (and sole heir) had sneaked into the hospital and disconnected the life support machinery, unaware of the fact that Dr. Castleton had already determined to disconnect it herself. If the patient then died:

a. The nephew would be guilty of murder.

b. The nephew would not be guilty of murder because disconnecting life support machinery is considered an "omission."

c. The nephew would not be guilty of murder because Dr. Castleton had already decided to disconnect the machinery herself (so the patient was going to die anyway).

d. The nephew would not be guilty of murder because the patient was in a persistent vegetative state with no hope of recovery and, therefore, legally dead.

12 Dan Freeburg met a woman in a bar. They seemed to hit it off nicely. He invited her back to his apartment and, once there, she went in the bathroom and didn't come out. After a while, Dan knocked and finally, after no response, he kicked down the door. He found her unconscious on the floor next to an empty syringe. Because Dan was out on parole (and feared going back to jail), he dithered for an hour before calling 911. Due to the delay, she died. Dan is charged with criminally negligent homicide.

a. Dan is probably guilty because he owed a legal duty to the decedent as a guest in his apartment and he negligently omitted to fulfill that duty, resulting in her death.

b. Dan is probably *not* guilty because he had no legal duty to the decedent for purposes of omissions liability.

c. Dan is probably guilty because he had a moral duty to come to the decedent's aid because she was a guest in his apartment.

d. Dan is probably guilty because he secluded the woman by inviting her back to his apartment.

13 Marjorie Harnes has a live-in boyfriend and a 4-year old son from a previous marriage. The boyfriend does not act as the boy's father, but he does occasionally apply harsh discipline when the boy gets too annoying. Marjorie has told him not to hit the boy so hard, but her reprimands aren't very effective. For personal reasons, she has not moved out or otherwise taken her son elsewhere to live. Last week the boyfriend hit the boy very hard with a metal bucket and the boy died a few hours later. Marjorie can properly be prosecuted for criminally negligent homicide:

a. Because of her *status* as the boy's mother.

b. Because of her *contract* relationship with her boyfriend.

c. As an accomplice.

d. All of the above.

14 Greg Parnell is charged under a statute that makes it a crime "to appear in a public place in an indecent state of undress." Greg had been taking a shower at his frat house when two seniors grabbed him by the arms and legs and, as a prank, carried him out to the street. Greg's defense is that he was not voluntarily out on the street. He argues that, under a proper interpretation of the statute, the prosecutor must show there was a *voluntary* appearance in public. This argument:

a. Is sound because it is unconstitutional to punish a person for doing something that is not a voluntary act.

b. Is sound because there is a widely-recognized common-law rule of interpretation according to which definitions of crimes should be interpreted to include a voluntary act.

c. Should be rejected because the words of the statute do not give any indication that conviction requires a voluntary act.

d. Should be rejected because the courts are not supposed to re-write statutes by adding words or requirements that the legislature chose not to include.

15 Devin Barksdale is charged with assault after striking a man who suddenly came up behind him on a dark street when he wasn't expecting it. As his defense, Devin wants to claim that his reaction was an unconscious conditioned response based on several years of self-defense training.

a. The defense can have no merit because people must be held responsible for their own bodily movements, whatever the circumstances.

b. The defense can have no merit because it is essentially a variation of diminished capacity, which is not a defense in criminal law.

c. The defense that Devin acted unconsciously may have merit if there is substantial evidence to support it.

d. The defense that Devin acted unconsciously could have merit only if Devin was in fact unconscious at the time of the occurrence.

16 Dennis Burns threw a rock off a bridge over a busy interstate highway just as a car was about to pass underneath. The rock hit the car and a passenger was seriously injured. Dennis was charged with "assault with intent to cause grievous bodily harm" In proving the mens rea required by this statute,

a. The prosecutor would have the benefit of a rebuttable legal presumption that a person intends the natural and probable consequences of his acts.

b. Intent can be inferred from the defendant's act, the surrounding circumstances, the size of the object thrown by the defendant and the place from which it was thrown.

c. Both of the above say essentially the same thing.

d. The jury should be told to presume that the defendant acted with the requisite intent unless he can persuade them otherwise.

17 The statute in the foregoing question is an example of a statute that requires proof of:

a. Specific intent.

b. Remorse.

c. Only general culpability.

d. None of the above.

18 On a rainy night, as Dwight was exiting his hotel, the desk clerk offered him a "loaner" umbrella (owned by the hotel). When Dwight got to his destination, a cocktail reception, he placed the loaner umbrella on a rack with a number of other umbrellas belonging to other guests. When he left the reception, he mistakenly picked up and took an umbrella belonging to Ketchem. As it happened, Ketcham's umbrella looked somewhat different from the loaner.

a. Dwight's failure to notice that he did not have the right umbrella, given they were somewhat different, could be considered willful blindness.

b. Dwight would not be guilty of larceny if he honestly believed that the umbrella he took was in fact the loaner.

c. Dwight *would* be guilty of larceny unless he honestly *and reasonably* believed that the umbrella he took was in fact the loaner.

d. Dwight would be *literally* guilty of larceny on these facts simply because he took an umbrella that he didn't think was his own.

19 Taylor set fire to his dry cleaning shop hoping to collect the insurance proceeds. It was not part of his objective to damage any of the customers' clothing in the shop but everything was, predictably, burned up in the fire. With respect to the destruction of the clothing, which of the following is the most serious crime that Taylor could be appropriately charged with:

a. "Purposely or knowingly damaging or destroying the property of another."

b. "Negligently damaging or destroying the property of another."

c. "Recklessly damaging or destroying the property of another."

d. Taylor could not be appropriately charged with any of the above because, strictly speaking, he had no mens rea with respect to the clothing.

20 During a dinner party at her home, Marilee served coq au vin to her guests, including a teenager who was there with her parents. She was charged under a statute that prohibits "knowingly serving food or beverages containing alcohol to persons under 21 years of age." She was completely unaware that cooking removed only part of the alcohol in the wine she used to prepare the coq au vin. She was so sure in her (erroneous) belief that the alcohol was all boiled away that she did not bother to check to see if that was correct.

a. Marilee should probably be convicted on the basis of willful blindness under the MPC.

b. Because Marilee did not bother to check to see if her belief was correct, she should probably be convicted based on willful blindness under the federal (Supreme Court's) approach.

c. Both of the above.

d. None of the above. If Marilee actually believed that the food she served contained no remaining alcohol, she should *not* be considered guilty based on willful blindness.

21 In the preceding question, it is disputed whether Marilee actually knew that her guests' daughter was under 21 years of age. The prosecutor maintains that the word "knowingly" in the statute only applies to the first element of the offense, *i.e.*, the only knowledge that the state needs to prove is that Marilee knew the food contained alcohol:

a. Under the MPC approach to interpreting statutes, the prosecutor would be right.

b. Under the almost universal approach to interpreting statutes worded like this, the prosecutor would be right.

c. Both of the above.

d. Under the MPC approach to interpreting statutes, the prosecutor would be wrong, and the "knowingly" requirement would apply to every material element.

22 Cole Borden stole the batteries from a smoke detector in a public corridor of his apartment building. Later a fire broke out. A resident of an apartment near the disabled detector was seriously injured due to smoke inhalation. Borden is charged under a statute that makes it a crime "to unlawfully and maliciously do any act that endangers another." To establish the mens rea required for conviction using the usual interpretive approach:

a. It is enough for the prosecutor to prove that Borden took the batteries with an intention to commit larceny.

b. It is enough for the prosecutor to prove that Borden took the batteries knowing full well that theft is wrong.

c. The prosecutor must prove that Borden either intended to endanger another person or that he foresaw his act would do so.

d. The prosecutor must prove that Borden acted with malice aforethought.

23 Marcus Petri is accused of "sale of opiate derivatives without a special license prescribed in this statute." The statutory definition of the crime does not mention a mens rea requirement, but the jurisdiction follows the MPC rule:

a. Petri cannot properly be convicted unless he knew the existence of the facts that made his conduct a crime, or was reckless with respect to such knowledge.

b. Petri cannot properly be convicted unless he knew that the act of selling opiate derivatives without a license is a crime, or was reckless with respect to such knowledge.

c. To support a conviction the prosecutor need not prove that Petri acted with any particular mens rea because no mens rea requirement is stated in the statute.

d. Petri can properly be convicted only if he purposely violated that statute.

24 Ted Dobbs and Clara Talbot met at a party and the two ended up going to Ted's apartment where they enjoyed an extended amorous encounter. Although Clara said she was a sophomore at a nearby college, it turned out she was actually a 16 year-old high school student who had come to the party with a friend. Ted is charged under a statute that makes it a crime to "engage in sexual intercourse with a person under 17 years of age." Ted admits having sex but insists that he honestly and reasonably believed Clara was "at least 19 or 20 years old."

a. In most states, the normal requirement of mens rea applies and Ted cannot properly be convicted if he did not know that Clara was an underage person.

b. Under the majority rule, Ted *can* properly be convicted even if he honestly and reasonably believed that Clara was over 17.

c. Ted would have mistake of fact defense in most states as long as he *honestly* believed Clara was over 17.

d. Ted would have mistake of law defense in some states as long as he did not actually know that age of consent.

25 Clem Grimsby is charged under a statute that prohibits "pouring any substance containing BTU (a hazardous chemical) down a drain that connects to the public sewer system." When cleaning out his appliance repair shop, he found some old cleaning fluid and decided to dump it into the drain. He was not aware that it contained BTU or that putting BTU down the drain was a crime.

a. If the charged offense is considered a public welfare offense, it would probably be deemed proper to convict Grimsby even if he did not know the fluid contained BTU.

b. If the charged offense is considered a public welfare offense, it would probably *not* be deemed proper to convict Grimsby unless he knew the fluid contained BTU.

c. It would be improper to convict Grimsby if he did not know it was a crime to pour BTU down the drain.

d. It would not be constitutional to convict Grimsby if he did not know the facts that made his conduct a crime.

26 Tricia Webster entered a drawing at her local supermarket and won second prize, which was $150 of free groceries. She consciously decided not to include the value of the prize on her federal income tax return because she honestly but mistakenly believed it was not taxable. Now she is charged with "willfully failing to pay a tax due on taxable income":

a. She should definitely be found guilty.

b. Under the *general* rule for mistakes of law, she should be found not guilty if her erroneous belief was reasonable.

c. Under a special rule recognized for income tax matters, she should be found guilty even if her erroneous belief was reasonable.

d. Under a special rule recognized for income tax matters, she should *not* be considered guilty of the charged offense.

27 Kenneth Martens and his girlfriend, Lydia Pratt, are on trial in the death of Lydia's young daughter, Lanie. The child died from multiple beating blows, first by Lydia and, about a day later, by Kenneth. Two medical experts testified at trial. Both agreed that the beating administered by Lydia was enough to cause the child's death. In addition, one expert said the additional blows by Kenneth possibly hastened the death. The other expert agreed that Kenneth aggravated the situation, but he could not say that Kenneth made the child's death come any sooner. After this testimony Kenneth moved for a directed verdict of not guilty on the homicide charge.

a. The motion should be granted.

b. There is no basis for granting the motion and it should be denied.

c. On these facts, although Kenneth is not the sole cause of death, his acts are the proximate cause because they came later in time.

d. There is no basis for convicting Kenneth of anything on these facts.

28 During a gang fight X inflicted a stab wound on V that would have caused V to die in 15 minutes. A couple of minutes later, while V was still alive and lying helpless on the ground, D shot V causing him to die instantly. Who would be considered the cause in fact of V's death?

a. Both X and D.

b. Only X.

c. Only D.

d. Neither since the act of each legally cancelled out the other.

29 Suppose in the preceding question X had inflicted a *non*-fatal stab wound on V. However, V died at the hospital when a doctor in the ER failed to use proper care in treating the wound:

a. X's act would not be considered the proximate cause of V's death if the doctor was negligent in treating V.

b. X's act would not be considered the proximate cause of V's death if the doctor was grossly negligent in treating V.

c. Both of the above.

d. X's act *would* always be considered the proximate cause of V's death because X's state of mind was more culpable than the doctor's.

30 Jake and Billy were playing around with Billy's new pistol that he'd just illegally bought. Jake accidentally shot Billy in the leg inflicting a serious but treatable wound. Billy refused to have the wound treated by a doctor, however, because he was an ex-con and thought the doctor might report the incident. He didn't want to end up arrested for illegal possession of a firearm. Because the wound was not properly treated, it became infected and Billy died from the infection. Jake is indicted for criminally negligent homicide.

a. Jake has a strong argument that his act was not the proximate cause of Billy's death under the voluntary human intervention doctrine.

b. Jake has a strong argument that his act was not the proximate cause of Billy s death under the omissions doctrine.

c. Both of the above.

d. Jake has no plausible argument that his act was not the proximate cause of Billy's death.

31 Vetch decided to burn down his neighbor's barn in order to get even on a previous grudge. He sneaked into the barn one night, piled some oily rags against a wall, lit them and quickly left. His little rag pile fire went out harmlessly but, when Vetch slammed the barn door during his quick exit, he loosened a kerosene lantern hanging from a nail. A minute or two later, the loosened lantern fell and broke on the floor, starting a fire that consumed the entire barn. Vetch is charged with arson:

a. Vetch cannot properly be convicted of arson if the falling of the lantern could not reasonably have been foreseen.

b. Vetch cannot properly be convicted of arson because his intended result did not occur in the way he had expected it to.

c. Both of the above.

d. The harmful result that Vetch intended did in fact occur so there is a strong argument that his acts should be considered the proximate cause of the fire.

32 Jeff and Tyler were sitting at a red light on a deserted street very late at night. Jeff revved his engine and leered over at Tyler, who gunned his engine in return—signaling a tacit agreement to drag race. When the light turned green both peeled out and headed full speed down the street. Then, with the race over, Tyler turned around and speeded back the other way until he hit an ice patch at 72 m.p.h. He lost control of his car, collided with a lamp pole and died of injuries in the crash. Jeff is indicted for criminally negligent homicide:

a. Jeff should definitely be considered a proximate cause of Tyler's death.

b. Jeff should not be considered the proximate cause of Tyler's death because Tyler made his own decision to head back at high speed.

c. Jeff cannot properly even be considered a cause in fact of Tyler's death.

d. Jeff could not be considered the proximate cause of Tyler's death because the ice patch was not foreseeable by Jeff.

33 Dawson shot Jerrold Storgjeld while trying to rob him. At a hospital, Storgjeld was put on life support to maintain his heartbeat and breathing but, soon thereafter, the doctors declared him brain dead. Now the doctors want to remove the life support and take Storgjeld's organs for transplant. If they do:

a. They will properly be considered the proximate cause of Storgjeld's death (though not guilty of a crime).

b. They will make it legally impossible to hold Dawson legally responsible for Storgjeld's death.

c. Their acts would not be treated as "causing death" in some states on the ground that cessation of brain function is either the criterion or a supplementary criterion of death.

d. Their acts would not be treated as "causing death" under the common law because the common law conception of death traditionally meant brain death.

34 Trescott is accused of first-degree murder. The local statute defines first degree murder as murder with "premeditation":

a. It is generally held that no particular minimum amount of time is required for premeditation to occur.

b. To show premeditation, it would be enough in some states for the prosecutor to prove that Trescott caused another's death with a specific intention to kill.

c. Facts such as pre-planning by the defendant, precautions to avoid detection and a history of antagonism between the victim and defendant are all relevant to show premeditation.

d. All of the above.

35 Gibbons and O'Craig got into a barroom dispute in which Gibbons died due to a blunt force injury inflicted by O'Craig. All of the witnesses agree that the argument was very heated, with Gibbons calling O'Craig and his family some very insulting names in front of everyone present. Some say that, just before O'Craig struck the fatal blow, Gibbons had reached up and grabbed O'Craig by the throat. But this fact is disputed. O'Craig claims that he killed in heat of passion. It would be appropriate for the jury to consider this defense:

a. Under the traditional common law approach if it finds that that Gibbons did in fact commit the alleged assault on O'Craig.

b. Under the traditional common law approach based on the insulting words only, even if it finds that that Gibbons did not in fact commit the alleged assault on O'Craig.

c. Both of the above.

d. Under the more modern approach only if it finds that Gibbons did in fact commit the alleged assault on O'Craig.

e. Under the Model Penal Code only if it finds that Gibbons did in fact commit the alleged assault on O'Craig.

36 In a highly emotional mental state, Hammond intentionally killed Felipe with a shotgun. He claims the shooting was provoked. In order for the provocation to be considered "adequate" under the traditional common law approach, it must:

a. Be such as would cause a reasonable person to act out of passion rather than reason.

b. Be triggered by one of a narrow list of kinds of circumstances, such as defendant's sudden discovery of his spouse's adultery or injury to a close relative.

c. Lead to the homicidal act before defendant had a reasonable opportunity for his passions to cool.

d. All of the above.

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

37 In the preceding question, if adequate provocation exists, then (under the traditional common law approach):

a. The defendant can properly be convicted of manslaughter rather than murder.

b. It would negate the malice that would otherwise exist based on the defendant's intention to kill.

c. Both of the above.

d. The defendant should be totally acquitted.

38 Donnie is a member of his college fencing team. His roommate set up a secret webcam and made a recording of Donnie being unfaithful to his fiancée while she was away at home for a weekend visit. Later, he showed the video to Donnie and told him (falsely)

that he'd also sent it to the fiancée as well. In a blind rage, Donnie tried to kill his roommate with a fencing sword. Under the Model Penal Code, a jury could properly hold Donnie guilty of attempted manslaughter if Donnie acted under the influence of extreme emotional disturbance:

a. As long as the disturbance was real and not feigned.

b. If the jury finds there was a reasonable explanation or excuse for the disturbance under the circumstances as they actually existed.

c. If the jury finds there was a reasonable explanation or excuse for the disturbance under the circumstances as Donnie believed them to be.

d. Only if there was adequate provocation based one of the several accepted kinds of provoking circumstances recognized by law.

39 While on her way out of a fireworks shop, Vivian mischievously lit a string of firecrackers despite numerous signs saying "Danger! No smoking! No flames! Explosive materials!" and the like. The shop went up in flames, with numerous spectacular explosions. Three people died in the blaze. In view of the circumstances, the jury believes that Vivian did not care in the least whether her actions killed anybody or not. Ignoring the felony murder rule, the jury could properly convict Vivian of murder:

a. Only if it also finds that she intended to kill or seriously hurt a *particular* person or persons.

b. On an "abandoned or malignant heart" or extreme indifference theory.

c. Even if she had no actual intention to cause death or harm to anybody.

d. Both b. and c. above.

40 While mowing his lawn on a steep hill, Grover lost his grip on his power mower and it rolled down into the street in front of a passing car. The driver of the car lost control when she rammed the runaway mower and the car crashed into a utility pole. The driver died in the crash and Grover is charged in her death. Under the general rule with regard to mens rea, Grover can be can properly be convicted of criminally negligent homicide:

a. Based on a jury finding that he failed to use ordinary care.

b. Based on a jury finding that he was grossly negligent.

c. Based on a jury finding that his negligence was sufficient to make him liable in tort.

d. All of the above.

41 Vince Phillips invited a witness in a pending case out to lunch with a view to offering him a bribe. He carried $10,000 cash for the purpose. While driving the witness to the restaurant where the bribe was to be offered, Vince's car hit an oncoming vehicle that had swerved to avoid a cat. The prospective witness was killed. The prosecutor says that, because Vince was in the process of committing the felony ("witness tampering") at the time of the crash, he is guilty of murder:

a. He would be probably guilty of felony murder in most states.

b. He would probably not be guilty of felony murder in most states because he did not recklessly or negligently cause the death.

c. He would probably not be guilty of felony murder in most states because the predicate felony was not inherently dangerous.

d. He would probably not be guilty of felony murder in most states because the death was completely accidental.

42 "Dr." Royce Riemann is a self-professed faith healer. He treated Halbard for cancer using charms and crystals, and he received total fees exceeding $50,000. The treatments were totally ineffective. Halbard died even though he would almost certainly have survived much longer with proper medical care. Riemann is charged with felony murder based on a statute that makes it a felony to "obtain money or other value from another person using force, violence, threats or deceit." Under the usual (though not universal) rule:

a. Riemann probably could not properly be held guilty of felony murder because the conduct prohibited by the statute is not, in the abstract, inherently dangerous.

b. Riemann probably could not properly be held guilty of felony murder because his violation of the statute was not a contributing cause of Halbard's death.

c. Riemann probably *could* properly be held guilty of felony murder because the way he violated the statute was inherently dangerous under the particular facts of the case.

d. Riemann probably *could* properly be held guilty of felony murder, even if he honestly believed that his treatments would be effective.

43 Needing some money for the weekend, Dave and Charlie decided to rob a convenience store. During the robbery, the store clerk killed Dave. Charlie was charged with murder in Dave's death.

a. There is no authority under which Charlie can be convicted of murder in Dave's death since Charlie is not the person who killed Dave.

b. Charlie can be convicted of murder in Dave's death under what is known as the proximate cause theory of felony murder.

c. Charlie can be convicted of murder in Dave's death under what is known as the agency cause theory of felony murder.

d. Both b. and c. above.

44 Ferdie Philpot is charged under a statute that defines murder as "causing another's death with malice aforethought." The statute defines malice to include "an unprovoked intention to kill." Philpot admits that he intentionally shot the victim but insists that he did so under provocation resulting from the victim's assault against him. Under this statute and the Constitution:

a. Philpot has the burden of proving the elements of the provocation defense.

b. The prosecution has the burden of disproving the elements of the provocation defense.

c. The state can place the burden of proving the elements of the provocation defense either on the prosecutor or the defendant, as it sees fit.

d. It is up to the jury to decide who has the burden of proof.

45 Suppose in the preceding question that Philpot wants to assert the defense of self-defense, arguing that he thought the victim was about to use deadly force against him. For this defense to properly serve as a basis for acquittal, the jury must find that:

a. The use of deadly force by Philpot was in fact necessary to protect himself from imminent death or grievous bodily harm.

b. Philpot actually and honestly believed the use of deadly force was necessary to protect himself from imminent death or grievous bodily harm.

c. Philpot honestly and reasonably believed the use of deadly force was necessary to protect himself from imminent death or grievous bodily harm.

d. Philpot honestly and reasonably believed the use of deadly force was necessary to protect himself against a use of unlawful force, either immediately or in the not-too-distant future.

46 Granger is charged with murder in the death Rathbone. The killing occurred in front of Rathbone's house on a street that Granger used daily as the shortest route to reach his bus stop going to work. He claims self-defense, arguing the Rathbone pulled a knife on him. A knife was found at the scene, but the prosecutor argues that it is irrelevant. His reasoning is that Granger was "asking for trouble" by taking a loaded gun with him that day because Rathbone had previously threatened to beat the crap out if him if he ever saw him on that street again. The defense of self-defense:

a. Would not be available if the jury finds Granger was the initial aggressor based on proof that he was the first to make unlawful use of deadly force.

b. Should not be available because Granger was asking for trouble by taking his usual route to the bus stop after Rathbone's threat.

c. Would definitely not be available under the MPC.

d. Would only be available if Granger waited to shoot until Rathbone lunged at him with the knife.

47 Ricky was sitting at home watching TV when he heard a sound at the front door. Peering through the peephole, he saw to two masked men with big guns trying to forcibly open the storm door. Because Ricky kept gold coins in his house, he feared the men intended a robbery. He grabbed his shotgun and pointed it at the door. If Ricky ends up killing one or both of the masked men, the defense of defense of habitation would be available:

a. Only if he waits until the victim(s) actually come inside the house before shooting.

b. Only if he reasonably believes he is in imminent danger of death or serious bodily injury at the time he shoots.

c. As long as he reasonably believes that the men are trying to get in his home to commit a forcible and atrocious felony.

d. All of the above.

48 George Ventura is a guard on an armored truck that delivers money from various businesses to banks for deposit. He has been issued a big shotgun by his employer. A group of robbers approach the armored truck as it is being loaded. Under general principles of criminal law (*i.e.*, assuming no special statutes), George would be justified in shooting at them with the gun:

a. If necessary in order to protect the money from theft.

b. If necessary in order to protect himself from an imminent use of unlawful deadly force.

c. If necessary in order to protect the driver of his armored truck from an imminent use of unlawful deadly force.

d. All of the above.

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

49 Kevin, a high school student, is charged with complicity in a homicide, thought to be gang related. There is proof that Kevin supplied the gun used in the crime. In his defense, he claims that another student threatened to "kill" him if he did not get his father's gun and bring it to the other student "by next weekend." He did as he was told out of fear for his own life. Assuming that the court deems this evidence sufficient to show that Kevin had a reasonable basis to fear that the threat would be carried out:

a. These facts, if proved, are enough to satisfy the elements of the defense of duress.

b. Kevin would be considered justified in stealing his father's gun and turning it over to the other student.

c. The judge should order that the case be dismissed based on the defense of duress.

d. These facts would still not be enough to require the judge to charge the jury on the defense of duress.

50 Suppose in the preceding question that Kevin knew that the student demanding the gun planned to use it to murder a gang rival. Because of that knowledge, Kevin is charged as an accomplice in the murder.

a. In American law, the availability of the defense of duress is not affected by the fact that the crime charged happens to be murder.

b. In some states, that fact that the crime charged is murder means that the duress defense will not be allowed.

c. Duress is never available as a defense to murder.

d. It is always left up to the jury to decide whether duress should be available as a defense to murder.

51 Dennison was walking down the street on a hot summer day. He came to a parked car locked with the windows rolled up and a desperate-looking puppy inside. After ascertaining that there was nobody around who could unlock the car, he bashed in the window with a large rock to provide the suffering animal with some fresh air

and ventilation. He is charged with vandalism to the car and asserts necessity as a defense. In considering the defense:

a. It is for the court to determine whether the harm Dennison caused by his actions was disproportionate to the harm he prevented.

b. The necessity defense should apply as long as Dennison actually believed that the harm he caused was not disproportionate to the harm he prevented.

c. The necessity defense could *not* apply if the court or jury decides that Dennison's actions were not in fact needed to prevent serious harm to the dog.

d. The necessity defense can apply even if the jury concludes that Dennison knew there were adequate alternatives.

52 While on vacation with her family, Raylene was charged with "assault on a minor" after she was seen spanking her child. The state had, unknown to her, recently outlawed corporal punishment under all circumstances. Her lawyer argues that, in Raylene's family, spanking was normal when she was growing up and remains an accepted child-rearing practice in her home state of Kentucky.

a. Courts have become multi-cultural and, in most states, a defendant acting in accordance with her own cultural background would have a valid cultural excuse.

b. Typically, cultural background is a valid basis for making an exception to the usual rule concerning mistake of law.

c. In most states, there is no general cultural defense just because a defendant can show she was acting in accordance with normal practices within her own cultural background.

d. Because Raylene and her family are from a different state, the court will tend to be deferential to the family practices of the state that they come from.

53 While robbing a gas station, Cagey Lawrence had a gun that he waved back and forth at the clerk. The gun accidentally went off but, fortunately, nobody was hit. Fearing that somebody might have heard the shot and would call the police, Cagey ran from the store without taking any money. Can Cagey properly be convicted of attempted felony murder?

a. Yes, because he did committed a very dangerous act while attempting a felony.

b. Yes, because he engaged in conduct that was almost murder except for the fortuitous fact that nobody was killed.

c. No, because the crime of attempted felony murder requires a specific intent to kill and, because Cagey shot accidentally, he can not properly be convicted of that crime.

d. In most states, no, because most states do not recognize the crime of attempted felony murder.

54 Wilcox shot and seriously wounded Tobias during a heated argument. He is being tried for attempted homicide. There is some evidence of adequate provocation and also evidence that Wilcox shot Tobias intentionally, but there also is rebuttal evidence on these points. At any rate, it appears as though Wilcox (who was drunk at the time) was at least reckless in brandishing the loaded gun. The

judge must decide which crimes to include in her charge to the jury. Which of the following should the judge *not* include?

a. Attempted murder.

b. Attempted involuntary manslaughter.

c. Attempted voluntary manslaughter.

d. The judge can properly include any or all of the above.

55 Alex Goss decided to blow up the downtown ticket office of a foreign airline as a protest against the treatment of refugees. He entered the ticket office pretending to be a customer and, when no one was looking, hid a cellphone–activated explosive device in a potted palm. His plan was to come back at night and set it off at a time when no one would be in the office. That night he headed back to the office but, before he got close enough to do anything, he slipped on an oil patch and accidentally lost his cellphone activator in a sewer grate. The explosive device was found and harmlessly defused the next morning.:

a. Alex could not be guilty of attempted destruction of property because he did not commit the last act necessary to carry out his criminal intent.

b. Alex could properly be convicted of attempted destruction of property under the substantial step doctrine that is applicable in some states.

c. Alex could properly be convicted of attempted destruction of property under the substantial step doctrine in virtually every state.

d. There is no doctrine under which Alex could properly be convicted of attempted destruction of property because he never actually got to the point of *trying* to destroy anything.

56 In the preceding question, there are several arguable policy rationales for punishing Alex even though he did not do the harm he had planned to do. Which of the following is *not* among them?

a. To ease the burden of proving mens rea in cases where no completed crime has occurred.

b. To provide equality of treatment (so that luck is less of a factor in determining who gets punished).

c. To permit intervention by law enforcement early enough to prevent harms before it is too late.

d. The permit the authorities to deal proactively with people whose failed attempts to do harm demonstrate dangerous propensities.

57 Assume that the court in the preceding question, when charging the jury on the line between mere preparation and actual "attempt," said: "If you find it is clear that defendant intended to destroy the property by explosive device, then even slight acts toward the accomplishment of that intention are sufficient to convict." In giving such a charge, which approach to the law of attempt is the court employing?

a. Objectivist.

b. Subjectivist.

c. Intentionalist.

d. Unequivocalist.

58 Tim Copperman was standing on a street corner with a group of his high school friends. Seeing a car pass by with two decidedly nerdy members of their class, one of Tim's friends picked up a rock and threw it at the car. Tim took no action but he watched as the rock hit the car and broke a window. Tim can properly be held guilty as an accomplice in his friend's crime:

a. If he said "do it" just before his friend threw the rock.

b. Whether or not he said "do it" just before his friend threw the rock.

c. If he said "don't do it" just before his friend threw the rock but his friend misunderstood him and thought he said "do it."

d. All of the above.

59 Webster Farrington has been indicted as an accomplice in a fraudulent sale of a forged artwork (a modern painting). He supplied the perpetrator, a fellow artist named Gleason, with some cadmium blue paint that Gleason used in creating the forgery. Gleason told Webster that he needed the paint to finish a canvas, but not that he was producing a forgery to pass off fraudulently as the real thing.

a. Webster is guilty as an accomplice because his conduct aided and abetted Gleason's crime.

b. Webster is guilty as an accomplice because his conduct made Gleason's crime possible.

c. Webster is not guilty as an accomplice because his conduct did not constitute the actus reus for accomplice liability.

d. Webster is not guilty as an accomplice because he did not act with the mens rea required for accomplice liability.

60 By pre-arrangement, Walter acted as a lookout while his friend, Tony, shoplifted a bottle of tequila at a liquor store. For purposes of accomplice liability, Walter is:

a. A principal in the first degree.

b. A principal in the second degree.

c. An accessory before the fact.

d. Vicariously liable for criminal punishment.

<End of examination>