PACE UNIVERSITY SCHOOL OF LAW

CRIMINAL LAW
PROFESSOR HUMBACH — December 15, 2022
FINAL EXAMINATION — TIME LIMIT: 4 HOURS

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

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

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

GENERAL INSTRUCTIONS:

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

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

It is **strongly recommended** that you **save** a copy of your exam answers to your USB flash drive *before* exit from EXAM4. You will not be able to review your individual exam if you do not do this. You will receive 2 bonus points for using EXAM4.

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

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

1 Defendant has been indicted for "wardrobing." The indictment alleges that Defendant bought expensive clothes from a fashion store with the intention of wearing them once and then returning them for a refund. There is no statute that prohibits "wardrobing," but the prosecutor is urging the court to recognize it as a new common-law crime.

a. Defendant will probably be convicted under the indictment if the prosecutor can prove that Defendant engaged in the alleged conduct.

b. In most states, the indictment would be dismissed because it does not charge a statutory offense and the courts no longer recognize new common-law crimes.

c. It would be proper to convict Defendant under this indictment as long as Defendant's conduct "directly injured or tended to injure the public."

d. In most states Defendant could be convicted even if Defendant did not cause damage to the clothes that were allegedly "wardrobed."

2 Assume in the preceding question that the court applies the principle of legality. According to that principle:

a. Persons are required to comply with the law or else be subject to punishment.

b. Courts are authorized and expected to punish any conduct that directly injures or tends to injure the public.

c. A person cannot properly be indicted or punished for conduct that was not previously defined by law as a crime.

d. Laws should be drawn with mathematical precision or else they may be held void for vagueness.

3 Defendant operated a stolen motorboat on Acton Lake. He was charged under a statute that makes it a crime "to knowingly possess or operate a stolen motor vehicle." Some years ago, the state's top appellate court held that motorboats are not "motor vehicles" within the meaning of the statute. This definition of "motor vehicle":

a. Need not be treated as having the status of law because the courts, even top appellate courts, are only supposed to interpret laws, not make or amend them.

b. Is just one court's opinion as to the meaning of the term "motor vehicle," and it does not limit or constrain lower courts from reaching their own interpretations.

c. Both of the above.

d. Is a binding interpretation of the statute that must be followed in later cases arising in courts subject to the jurisdiction of the top appellate court.

4 During a major league baseball game, Defendant allegedly made rude gestures at the players. When management ordered him to leave the stadium, he refused. Defendant is now charged with criminal trespass for refusing to leave as ordered. The statute defines criminal trespass as "entry on the premises of

another without permission or after being forbidden to do so." The statute does not mention *remaining* on premises after being told to leave. Defendant is therefore asking the court to dismiss the criminal trespass charge.

a. There is no obvious legal reason why the court cannot conform the trespass statute to the facts by redefining the word "entry" to include "remaining."

b. It would not be improper to punish defendant under this statute as long as he knew that what he was doing was wrong.

c. To hold that this statute covers Defendant's conduct would likely be considered an unforeseeable judicial enlargement in violation of due process.

d. Unless Defendant actually read the statute before he acted, he has no right to claim that it does not apply to him.

5 The legislature has enacted a statute that creates a new crime of "hanging out," defined as "loitering without apparent proper purpose on a public sidewalk." Defendant has been indicted under this statute and claims it's unconstitutionally vague and indefinite. The court may properly:

a. Dismiss the indictment if it concludes that the statute does not provide a reasonably ascertainable standard of guilt.

b. Dismiss the indictment if it decides that the statute requires persons of ordinary intelligence to guess as to what conduct it does and does not prohibit.

c. Both of the above.

d. Attempt to formulate a narrowing interpretation of the statute that makes the statutory prohibition sufficiently definite to be valid and enforceable.

e. All of the above.

6 Defendant was caught harvesting mussels (shellfish) from the bottom of a public stream. He was charged with "fishing without a license" Defendant claims that mussels are not fish, and that harvesting them is not "fishing." The court needs to interpret the word "fishing" contained in the statute.

a. If the word "fishing" had an established legal meaning at common law when the statute was enacted, the court should generally prefer that meaning.

b. The court would ordinarily prefer the dictionary meaning of "fishing" at the time the statute was enacted.

c. The court would ordinarily prefer the dictionary meaning at the time the accused was charged with the violation.

d. The court would ordinarily prefer the meaning that Defendant personally understood the word "fishing" to have, as long as his understanding was reasonable.

7 Defendant works as a prison guard in a neighboring state. He was arrested for carrying an unlicensed firearm. He was convicted despite the fact that the statute expressly exempts officers of "any correctional institution." The lower court held the conviction was proper on the ground that the statute, properly interpreted, exempts only correctional officers of *this* state. On appeal, Defendant claims that he relied on the clear meaning of the statute. According to the case we read in class:

a. Defendant should prevail on appeal because his misreading of the statute was understandable and reasonable.

b. The conviction should be upheld because mistake of law is not an excuse.

c. The conviction should be overturned because, as interpreted, the statute is unconstitutionally vague and indefinite.

d. The conviction should be upheld under the rule of lenity.

8 Defendant is charged under a statute that prohibits "carrying a firearm during and in relation to a drug trafficking offense." According to the interpretation of a similar statute that we studied in class, Defendant should be deemed to have been "carrying" a firearm:

a. If he had a gun tucked in his waistband while selling drugs on a street corner.

b. If, while selling drugs in a pool hall, Defendant had brought along a firearm "just in case" and left it locked in the trunk of his car just outside.

c. Both of the above.

d. None of the above. Defendant shouldn't be deemed to have been "carrying" a firearm unless he actually had one in his hand while conducting drug transaction.

9 Defendant was sitting in her car at a traffic light. Suddenly and unexpectedly, she was stung by a wasp that flew into her car. At the moment of the sting, Defendant's leg shot out reflexively and hit the gas pedal. Her car lurched forward and struck the car in front, seriously injuring one of its passengers. Defendant has been charged with vehicular assault.

a. There is a strong argument that Defendant should not be convicted because hitting the gas pedal was not her voluntary act.

b. Under the Constitution (due process), Defendant cannot be properly convicted because hitting the gas pedal was not her voluntary act.

c. Both of the above.

d. Most would agree that it doesn't matter to the case whether hitting the gas pedal was a voluntary act.

10 As generally understood for purposes of common law, the difference between a mere bodily movement and an "act" that can constitute the actus reus of a crime at common law is that:

a. An "act" has to be intentional whereas a mere bodily movement does not.

b. An "act" is a bodily movement that results from an exercise of the will.

c. An "act" is a bodily movement that is done with culpable mens rea.

d. None of the above. There is essentially no difference between a bodily movement and an "act."

11 Defendant met Renee in a bar. After a few drinks, they walked back to Defendant's apartment. Renee excused herself to go to the bathroom. When she didn't return, Defendant went to check. He found Renee unconscious with a needle sticking out of her arm. Fearing repercussions, Defendant (a parolee) did not call for medical help, hoping she'd be okay. What if, for lack of prompt medical help, Renee died of her overdose?

a. Defendant would be guilty of criminally negligent homicide.

b. Defendant would be guilty of manslaughter because he violated a basic moral duty to seek medical help for another in need.

c. Defendant would be guilty of manslaughter because Renee was a guest in his home.

d. Defendant does not appear to be guilty of homicide because he had no legal duty to seek medical help.

12 Defendant and his friend Mikey were hanging out on a highway overpass. To Defendant's surprise, Mikey picked up a brick and got ready to drop it on a car that was about to pass beneath. Defendant almost yelled "Stop that" but, worried he might look silly, he did nothing. Mikey dropped the brick which broke through the windshield causing the driver's death. Defendant is charged with manslaughter on an "omissions" theory because he didn't even try to prevent the driver's death. Can Defendant properly be convicted?

a. No, because Defendant had no legal duty to the driver of the car.

b. Yes, because fear of looking silly is not a legitimate reason to prevent serious harm or death to another.

c. Yes, because Defendant made himself criminally liable for Mikey's crime by his omission to dissociate himself from it.

d. Yes, because Defendant had a legal duty to prevent Mikey from dropping the brick.

13 Suppose in the preceding question, Defendant was indicted as accomplice for aiding and abetting Mikey in dropping the brick. Defendant can properly be convicted:

a. Based on the fact that he was present and silently watched as Mikey dropped the brick.

b. If Defendant silently resolved to act as a lookout for Mikey even though he never actually gave a warning because the need did not arise.

c. Both of the above.

d. None of the above. The facts given do not, in themselves, disclose a basis for holding Defendant guilty as an accomplice.

14 Suppose in the preceding question, Defendant had said to Mikey "I'll keep an eye out for the cops" but never gave Mikey a warning because the need did not arise.

a. Defendant could properly be held guilty as an accomplice.

b. Defendant could not properly be held guilty as an accomplice because he never actually gave Mikey a warning.

c. Defendant could not properly be held guilty as an accomplice because, to be an accomplice, a person has to do more than just be a lookout.

d. Defendant could not properly be held guilty as an accomplice if Mikey would have dropped the brick even if Defendant had not acted as a lookout.

15 Defendant is a doctor who's been charged with murder in the death of her patient. The patient, though not brain dead, had been on life support after a serious brain injury. Defendant ordered removal of the life support after it became clear that further treatment would no longer provide any benefit to the patient. Is Defendant guilty of murder?

a. No, once a patient goes on life support, doctors have discretion to terminate the patient's life as an act of mercy.

b. No, removal of the life support could be analyzed as an *omission to continue* treatment, in which case the removal would be lawful if further treatment was futile.

c. Yes, Defendant's conduct must be considered a criminal *act* rather than an omission because she actually *ordered* removal of the life support equipment.

d. Yes, Defendant would be guilty of premeditated murder on these facts.

16 Defendant tried to break into a construction van using a small blowtorch to cut through the metal door. A bunch of oil-soaked rags inside caught fire and ignited the whole van. Defendant has been indicted under a statute that prohibits "unlawfully and maliciously burning any building or motor vehicle." Under the modern approach to interpreting criminal statutes, the word "maliciously" should be interpreted to require the state to prove that:

a. Defendant acted with actual feelings of malice toward the owner of the van.

b. Defendant caused the fire while acting for a generally blameworthy purpose.

c. Defendant caused the fire while intentionally engaging in criminal conduct.

d. Defendant either (1) intentionally caused the fire or (2) foresaw the risk of fire and decided to take the risk anyway.

17 Preparing to shower after a round of golf, Defendant took off his watch and put it in his pocket. After his shower, he approached a row of mirrors over the washbasins. Seeing a watch just like his on the shelf in front of the mirrors, he put it on and took it with him in the mistaken belief it was his. Defendant was stopped and arrested for larceny as he drove home. Suppose the jury finds that Defendant took the watch in the good faith belief it was his:

a. Defendant should not be convicted of larceny.

b. Defendant could still be properly convicted of larceny if the jury also finds that his belief was not a reasonable one.

c. Defendant should be convicted of larceny no matter what he believed because the objective fact is that he stole somebody's watch.

d. None of the above. Mistake of fact is not a recognized defense.

18 Defendant caused a railroad freight car to derail by placing a small rock on the tracks. He has been indicted under a statute that makes it a crime to "cause damage in excess of $5000 to moveable property belonging to a railroad." The statute does not specify any mens rea for the offense. If the statute is interpreted according to the approach to mens rea prescribed in the MPC, the prosecutor must show that Defendant:

a. Purposely caused the damage.

b. Caused the damage either purposely or with an awareness that it was practically certain the damage would occur.

c. Caused the damage purposely, knowingly, or recklessly.

d. Caused the damage purposely, knowingly, recklessly or with criminal negligence.

e. Caused the damage, period. Since the statute specifies no mens rea, no mens rea need be shown.

19 Defendant was arrested while driving a stolen car. He has been tried under a statute that prohibits "knowingly driving a stolen car into or within the state." Defendant didn't actually *know* the car was stolen, but he was aware of a high probability that it was stolen:

a. The jury can properly convict unless Defendant actually believed the car was *not* stolen (MPC).

b. The jury *can't* properly convict unless Defendant took deliberate actions to avoid actual knowledge that the car was stolen (under federal cases).

c. Both of the above are correct statements.

d. The jury can't properly convict unless the prosecution proves that Defendant actually knew the car was stolen (MPC and federal cases).

20 Defendant walked into a fast-food restaurant and started smashing furniture with a hatchet. He was arrested and charged with "malicious destruction of property with intent to threaten bodily harm." On the issue of intent, the judge may properly charge the jury that:

a. The jury is permitted to infer Defendant's intentions from his conduct and words along with the surrounding circumstances.

b. Persons are presumed to intend the natural and probable consequences of their acts.

c. The jury must find Defendant's intent based solely on statements Defendant made to the police after he was arrested.

d. In determining Defendant's intent, the jury should consider only the things Defendant said prior to and during the alleged criminal conduct.

21 Defendant has been charged with "breaking and entering a dwelling with intent to commit a felony on the premises." It would be proper to refer to this offense as:

a. A general intent offense.

b. A specific intent offense.

c. A strict liability offense.

d. A public welfare offense.

22 The term *mala prohibita* generally refers to:

a. Conduct that is prohibited by law but for which no specific penalty is prescribed.

b. Crimes consisting of conduct that is traditionally prohibited by common law because it is wrong in itself.

c. Public welfare offenses consisting of conduct that's not traditionally prohibited by common law but which is wrong to do because the law prohibits it.

d. Prohibitions that are defined to include a specific mens rea element.

23 The prosecutor proved at trial that Defendant took and carried away a small pump belonging to the state. However, the prosecutor concedes that Defendant intended only to use the pump temporarily, to pump out his basement. Defendant was arrested as he went to return the pump. He's charged under a statute that makes it a crime to "steal property belonging to the state." Defendant's lawyer argues that her client is not guilty because he did not act with the requisite mens rea. Does Defendant's lawyer have a sound basis for this argument?

a. No, because the statute doesn't specify any mens rea requirement, which shows just about conclusively that the legislature didn't intend one.

b. Yes, because when a legislature uses a common-law term like "steal" it presumptively intends to bring along the cluster of meanings surrounding that term.

c. No, because the courts disfavor mens rea requirements and will not imply them into statutes that do not explicitly state them.

d. Yes, because the Constitution generally prohibits punishment of people who haven't intentionally violated the law.

24 Defendant is being prosecuted under a statute that makes it a crime to "knowingly possess a vehicle from which any Vehicle Identification Number (VIN) has been removed." Defendant had a car from which the VIN under the engine block had been removed during a repair. Can Defendant be properly convicted without proof that he knew (or was aware of a high probability) that the VIN was missing?

a. Yes. It is enough for conviction if the prosecution can show that Defendant knowing possessed the car (MPC).

b. No, under the MPC approach to interpreting prohibitions that are worded like this one.

c. No, under the US Supreme Court's usual approach to interpreting criminal statutes worded like this one.

d. Both b. and c. above.

25 Defendant, age 18, is accused of "sexual relations with a person under 17 years of age." The person in question is Defendant's girlfriend, M.

a. In most states, Defendant would be permitted to defend by showing that he honestly believed, based on M's statements, that M was 17.

b. In most states, Defendant would have a good defense if he could prove that he *reasonably* believed that M was 17.

c. Despite Defendant's mistake as to M's age, there's an argument that he acted with "culpability" mens rea under the so-called "moral wrong" doctrine.

d. More than one of the above is true.

26 Defendant installed built-in bookshelves in one corner of his rental apartment. When he later moved out, he removed the shelves and took them with him, believing they were his. Under the local property law, however, the built-in shelves had become the property of the landlord because of the way they were attached to the wall. Defendant is accused of larceny for stealing the bookshelves. Defendant's mistake with respect to the law of property:

a. Cannot be used as the basis of a defense.

b. Negates the mens rea required for larceny.

c. Is legally irrelevant and may not properly be considered by the jury.

d. More than one of the above.

27 Defendant has been indicted under Federal tax law for "willfully failing to file a return and pay the tax due." Defendant's only taxable income during the year in question was a cash prize that he won at his local supermarket for being the 10,000th customer for the year. Defendant says he honestly did not know or believe that the Federal tax law treats such a prize as taxable income. According to the Supreme Court:

a. Defendant should be convicted because a mistake of Federal tax law is not an excuse or defense even if the mistake is reasonable.

b. Defendant should be acquitted as long as his mistake about Federal tax law was reasonable, but he should be convicted if it was unreasonable.

c. Defendant shouldn't be convicted if, due to his mistake, he did not voluntarily and intentionally fail to perform a known legal duty.

d. Defendant *should* be convicted, mistake or no mistake, because he didn't pay his tax.

28 D1 stabbed V during a fight. The injuries would have caused V's death in about 30 minutes. However, after being stabbed, V stumbled into the street where he was hit by a car driven by D2. The injuries from D2's car would not, in themselves, have been fatal. Could the jury properly treat the conduct of D2 as a cause-in-fact of V's death?

a. Yes, as long as D2's conduct *aggravated* V's injuries.

b. Yes, if there's persuasive medical testimony that D2's conduct could have *accelerated* V's death.

c. Yes, if the jury finds that being hit by D2's car made V die sooner than he would have from the stab wound alone.

d. More than one of the above is true.

29 During a bar fight, D1 hurled a metal chair at V, striking V in the head. At about the same time, D2, acting independently, shot V accidentally. While it's not clear which injury occurred first, medical experts testified that either injury, by itself, would have been fatal. V succumbed a few minutes later.

a. The conduct of D1 was a but-for cause of V's death.

b. The conduct of D2 was a but-for cause of V's death.

c. Both of the above.

d. The conduct of both D1 and D2 would be considered substantial factors (and, hence, causes) in bringing about V's death.

e. If V had started the bar fight by unlawfully assaulting D1 or D2, then V would be considered the sole legal cause of his own death.

30 As Defendant was hot-rodding in his motorboat, he passed so close to V's canoe that he swamped it, throwing V into the river. V washed up on a tiny island. An onlooker standing on the riverbank yelled to V that he'd called the sheriff's office and the River Patrol was on the way. V grew impatient, however. Despite knowing the risks, he decided to swim for shore. He got caught in the current and drowned. Defendant argues that his conduct was not the proximate cause of V's death. Which of the following, if any, would tend to support Defendant's argument?

a. V made a free, deliberate and informed decision to swim for shore instead of waiting for help that was on the way.

b. The apparent safety doctrine.

c. Both of the above.

d. None of the above.

31 During a traffic stop, Defendant became nervous and agitated as he waited in his car. He hit the gas and took off. The police officer, suspecting that Defendant was a dangerous felon driving a stolen car, shot at Defendant's car but missed. The bullet fatally struck a passenger who was riding in a car coming the other way. Can Defendant's conduct be considered the proximate cause of the death?

a. No, because it was the police officer's conduct, not Defendant's, that caused the death.

b. Yes, even if the police officer is found to have been negligent in discharging his firearm as he did.

c. Yes, even if the police officer is found to have been grossly negligent in discharging his firearm as he did.

d. Both b. and c. above.

32 Defendant stole a valuable bracelet while working as a babysitter. She was arrested and convicted of larceny. Her lawyer argues that a jail sentence is not necessary because the arrest and prosecution process have been so frightening that there's no way Defendant will risk repeating the experience by getting in trouble again. The rationale for punishment that the lawyer appears to have in mind is:

a. Retribution.

b. General deterrence.

c. Incapacitation.

d. Special deterrence.

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

a. Retribution.

b. Rehabilitation.

c. Special deterrence.

d. General deterrence.

34 Defendant has been convicted of attempted child abuse using social media on the internet. As part of the sentence, the judge prohibited Defendant from making any use of the internet for a period of five years after he's released. The rationale for this prohibition that the judge appears to have had in mind is:

a. Deterrence.

b. Retribution.

c. Incapacitation.

d. Restitution.

35 As Defendant drove home from a party she accidentally struck and killed a person walking along the side of the road. Defendant is personally devastated and remorseful. Even so, the prosecutor argues that Defendant deserves to spend several years in the penitentiary because that no one should "just get away with" causing another's death. The rationale for punishment that the prosecutor appears to have in mind is:

a. Deterrence.

b. Retribution.

c. Rehabilitation

d. Incapacitation.

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

a. Rehabilitation

b. Deterrence.

c. Retribution.

d. Incapacitation.

e. More than one of the above.

37 Defendant is on trial for a homicide. The jury has concluded that Defendant killed V intentionally but without premeditation. Based on this finding, would Defendant be guilty of murder or manslaughter?

a. Murder, because the grand criterion that distinguishes murder from manslaughter is whether the accused *intended* to kill.

b. Manslaughter, because Defendant did not act with premeditation.

c. Cannot be determined on these facts because a person who kills intentionally might be guilty of either murder or manslaughter.

d. Depraved heart murder because only a person with a depraved heart would intentionally kill another.

38 Defendant accidentally bumped into V who was standing at a bar having a drink. V reacted with explosive hostility, loudly shouting inflammatory ethnic slurs at Defendant and accusing Defendant of being a big ugly (expletive) and coward "as everyone knows." The tone of V's diatribe was such as would cause almost any normal person of average disposition to become enraged and lose self-control. Indeed, in a burst of blind rage Defendant bashed a whisky bottle across the side of V's head. V died from the injury and Defendant was indicted for murder:

a. It doesn't appear that this case falls within any of the traditional, narrowly-defined circumstances of adequate provocation.

b. As long as Defendant acted out of understandable rage, rather than reason, V's words would generally suffice to justify reducing the charge to manslaughter.

c. There is enough here for a judge to charge the jury on the defense of provocation under the traditional common law approach.

d. Both b. and c. above.

39 When Defendant arrived home from work, his wife told him that their daughter, aged 5, had been molested by V, who lived next door. Defendant flew into a fit of fury, lost self-control and, grabbing a heavy metal bar, went to confront V. When it was all over, V lay dead on his kitchen floor, having been struck by Defendant several times with the metal bar. It was later determined that the alleged molestation never happened. Defendant was indicted for murder. Should Defendant have benefit of the provocation defense?

a. Some would say no because his heat of passion was induced by mere words.

b. Some would say yes because, even under the "mere words" rule, "informational words" like these can serve as adequate provocation.

c. Both of the above.

d. Yes because, even under the common law approach, mere words, if sufficiently inflammatory, often constitute adequate provocation.

e. All of the above.

40 Reasons that have been given for having the provocation defense include:

a. It is a concession to human frailty recognizing that even reasonable people are sometimes emotionally driven to act out of passion rather than reason.

b. Those who severely provoke another to attack have brought the attack on themselves by their own improper conduct, thus partially justifying the attack.

c. Both of the above have been mentioned as reasons for the provocation defense.

d. One who attacks another under unusual and severely provoking circumstances is, in a real sense, "not herself" due to the provocation—a partial excuse.

e. All of the above.

41 Defendant is accused of causing V's death during a July 4 fireworks party. The court concludes that Defendant handled the fireworks in such an extremely risky manner that he "must have known" he was highly likely to cause a fatal accident. There is, however, no evidence that Defendant actually foresaw the risk. Defendant could be properly convicted of unintentional (depraved heart) murder:

a. Using the traditional common-law conception of recklessness in which the primarily focus is on the high probability of death from the accused person's conduct.

b. Using the more modern awareness-oriented conception of recklessness as exemplified in the MPC.

c. Both of the above.

d. None of the above. Actual awareness of the risk has always been a key indispensable element of recklessness and depraved heart homicide.

42 Defendant, a teenage driver, took out some friends for an evening joyride. After an hour or so of incautious driving, their fun came to an end when Defendant crashed his car into a stone pillar. The impact caused a chunk to come off the pillar and fly through the air. It hit V, an innocent bystander, who was killed. Defendant can properly be convicted of criminally negligent homicide:

a. Only if there's proof Defendant was actually aware of the risk of death that his incautious driving posed to others.

b. As long as Defendant failed to use ordinary care.

c. Only if it Defendant was guilty of more-than-ordinary negligence (e.g., gross negligence) in causing the accident.

d. As long as Defendant's driving was the proximate cause of V's death.

43 Defendant, an ex-con, was cleaning his gun at home when it accidentally went off. The bullet went through the ceiling, killing the person who lived in the apartment upstairs. Defendant is charged with felony murder. The prosecutor asserts that the predicate felony is "possession of a gun by a person who has been previously convicted of a felony." Would this asserted predicate felony qualify to support a conviction for felony murder?

a. In some states, this felony would qualify only if it is deemed to be inherently dangerous in the abstract (which it may well not be).

b. In some states, this felony would qualify as long as it was committed in an inherently dangerous manner (even if not inherently dangerous "in the abstract").

c. Both of the above.

d. In most states, it's essentially irrelevant whether the alleged predicate felony was inherently dangerous or not, as long a death ensued from it.

44 During a quarrel at work on a construction site, Defendant maliciously tossed a half-full plastic water bottle at V, who was working on a scaffold. It knocked V off-balance and he fell to his death. Assume that the assault on V was a felony but the jury is not persuaded that Defendant acted with an intention to cause serious bodily injury or death.

a. The merger doctrine, if it applies, would make the assault available for use as the predicate felony for felony-murder.

b. The effect of the merger doctrine would be to expand the felony-murder rule to a case like this where a person committed unprovoked fatal attack on another.

c. The merger doctrine, if it applies, would prevent the use of the assault as the predicate felony for felony murder.

d. The felony-murder rule is not necessary to convict Defendant of murder because the assault on V, being malicious, was therefore "with malice aforethought."

45 Defendant and D2 needed some money for Saturday night. They decided to rob a convenience store with the help of D3. D2 carried a small gun and pointed it at the clerk behind the counter. When D2 was distracted by a commotion at the back of the store, the clerk whisked out a shotgun and shot D2, causing his death. Defendant has been indicted for D2's death. Under the now dominant approach to cases in which a co-felon is killed, can Defendant be held guilty in D2's death?

a. Yes, because, under the agency theory, D2 was acting as Defendant's agent.

b. No, because the conduct that directly caused D2's death was the conduct of somebody other than Defendant or his accomplice.

c. Yes, because Defendant can properly be held guilty for any killings that occur due to his felonious conduct, even if the death is directly caused by the felony victim.

d. No, because under the agency theory, Defendant was not acting as D2's agent.

46 Defendant was arrested for possession of a controlled substance. A local statute makes it a crime to possess any controlled substance but also provides that having a valid prescription is an affirmative defense.

a. Under the general rule today, Defendant would have the burden of proving the affirmative defense by a preponderance of the evidence.

b. The Constitution requires that, to obtain a conviction, the prosecution must *disprove* the affirmative defense beyond a reasonable doubt.

c. The statute would probably be unconstitutional because it creates a presumption of guilt on a key element of the crime.

d. The statute would probably be constitutional even though an important blameworthiness factor (having a prescription) is handled as an affirmative defense.

47 Defendant is accused of murdering V. The death occurred when, out of the blue, V attacked Defendant on the street at night. Defendant should not be convicted of murder:

a. As long as he honestly believed he was in imminent peril of death or serious bodily injury and his use of deadly force was necessary to protect himself.

b. If he reasonably believed that he was in imminent peril of death or serious bodily injury and that use of deadly force was necessary to protect himself.

c. Only if he was actually in imminent peril of death or serious bodily injury and deadly force was in fact necessary to protect himself.

d. Simply because V was the one who started it.

48 V was riding in a car driven by X. As X pulled the car up next to Defendant, V hopped out and grabbed Defendant's gold chain. V hurried back into the car, chain in hand, ready to leave the scene. As he did so, however, Defendant pulled a gun, pointed it at V and yelled: "Stop right there!" In response, V aimed his own gun toward Defendant from inside the car. When Defendant saw V's gun, Defendant immediately fired, fatally wounding V. Defendant has been charged with murdering V. He pleads self-defense. Who would be considered the initial aggressor?

a. V.

b. Defendant.

c. Both V and Defendant are equally the aggressors.

d. Neither V nor Defendant should be considered the aggressor on these facts.

49 V and Defendant got into a knife fight. Defendant killed V. If Defendant is found to have been the initial aggressor:

a. It would nullify the right of self-defense that Defendant otherwise might have had.

b. It would elevate the charge from second degree murder to first degree murder.

c. It would reduce the charge from murder to manslaughter.

d. None of the above. It would probably have no legal effect.

50 Following a highway collision, Defendant and the other driver got into a roadside argument. It ended when Defendant knocked the other driver to the ground with a rock. At home early the next day, Defendant was awakened by noises downstairs. Looking through a window, he saw two men with rifles trying to force open the lock on his back door. One of them looked like the guy he'd hit with a rock. Defendant grabbed his own gun and, as the men pushed open the door, he fired at them. He's charged with attempted murder. The defense-of-habitation defense would be available:

a. Only if Defendant waited until the men had crossed the threshold into the house before shooting.

b. Only if, at the time he shot, Defendant was legally entitled to use deadly force in self-defense or defense of others.

c. As long as Defendant reasonably believed the men were forcing entry into his home in order to commit a violent felony.

d. None of the above because Defendant was the initial aggressor.

51 Defendant was arrested for stealing groceries from a supermarket. In his defense, he tried to present evidence that he'd lost his job a number of weeks before and had not eaten for days. The evidence showed also that he had taken only a small quantity of inexpensive items—the minimum necessary for stave off starvation.

a. The defense of economic necessity probably applies under these circumstances.

b. Economic necessity is ordinarily looked on with favor by the courts as a defense to theft.

c. Both of the above.

d. Economic necessity is not generally regarded as a defense to theft.

52 Defendant saw a dog in a parked car at the side of the street. Finding the car to be locked, and fearing for the dog's safety in the heat, Defendant broke the side window to rescue the dog. It turns out that the car was an EV in "dog mode," which automatically holds the car's interior at a safe temperature while parked. The dog was never in danger. Defendant is charged with destruction of property. The defense of necessity could apply:

a. Only if Defendant's action was actually necessary to avoid a greater harm that would otherwise occur.

b. Even if the court does not agree that the harm Defendant intended to prevent was the greater evil.

c. If Defendant reasonably believed his action was necessary to avoid another harm that was, in fact, a greater harm.

d. None of the above: The defense of necessity does not apply unless the situation involves potential loss of human life or limb.

53 Defendant and his friend, Max, went to visit V, one of Max's old acquaintances. Max and V got into a major argument. Max ordered Defendant to hold V at gunpoint while Max went out to find some rope. Max threatened to "beat the #@%&!" out of Defendant if V wasn't still there when he got back. Defendant complied with the order and has been charged with false imprisonment. In order for Max's threat to serve as an excuse of Defendant's conduct, the evidence must show that:

a. Defendant had a well-grounded fear that Max's threat to him would be carried out.

b. The circumstances presented Defendant with no reasonable opportunity to escape (a fact that might be hard to prove in this case).

c. Both of the above.

d. The harm to himself that Defendant was seeking to avoid (by following Max's order) was the greater evil.

e. All of the above.

54 Defendant is on trial for murder. The state applies the traditional *M'Naghten* rule. Defendant has already presented expert testimony that he did not know the nature and quality of his act and that he was unable to tell right from wrong. In order for the insanity defense to apply, the evidence must *also* show that:

a. Defendant acted from an irresistible impulse.

b. Defendant's cognitive incapacities were due to a mental defect or disease.

c. Both of the above.

d. None of the above. The expert testimony already presented is sufficient to support the defense of insanity under *M'Naghten*.

55 Defendant is accused of murder and wants to plead insanity as a defense. The legislature recently adopted a statute that is meant to cut back sharply on the use of the defense. Defendant's lawyer wonders if the statute is constitutional. In a relatively recent decision, the U.S. Supreme Court held that:

a. States are explicitly authorized to abolish the insanity defense entirely.

b. The Constitution lets states deny the insanity defense to persons who, due to mental disease or defect, are incapable knowing right from wrong.

c. States are required to put the burden of proof on insanity on the prosecutor.

d. States are required to make the defense available to persons who, due to mental disease or defect, lack the (volitional) capacity to conform is conduct to law.

56 Defendant, as a prank, threw a can of lighter fluid into a campfire. The can exploded and splattered burning liquid over several people who were standing around the fire. According to expert testimony, Defendant's act could easily have killed somebody—though that was not Defendant's intention. Even so, several were seriously injured. Defendant appears to be guilty of:

a. Attempted murder.

b. Attempted voluntary manslaughter.

c. Attempted involuntary (recklessness) manslaughter.

d. Defendant does not appear to be guilty of any attempted homicide offense at all.

57 Defendant entered a drugstore intending to shoplift some personal care items. When she thought no one was looking, Defendant stuffed a number of jars and boxes from the shelves into the large pockets of her bulky winter coat. As she moved toward the exit, Defendant noticed a store detective eyeing her suspiciously. Fearing she might be stopped, Defendant turned back and, out of sight of onlookers, emptied the items from her pockets into a large bin near the back of the store. She was indicted for attempted larceny. To support a conviction the prosecutor must show that:

a. Defendant acted with a purpose to steal the items and performed a substantial step, strongly corroborative of her purpose, to commit the theft (MPC).

b. Defendant intended to steal the items and did a direct act beyond mere preparation towards completion of the theft (common law).

c. Both of the above are correct statements.

d. None of the above. Defendant cannot be convicted because the store detective made it factually impossible for her to actually steal the items from the store.

58 Defendant had a plan to steal some valuable gadgets from the electronics store where he worked. While on the job during the day, he fixed the back door so it wouldn't lock properly, allowing him to enter the store that night. Also, he assembled the items he planned to steal into a cloth bag and hid them under a counter. Later that night, Defendant got on his bike started to the store. On his way, he had second thoughts about the theft and turned back home. Under the usual American common-law approach, is Defendant guilty of attempted larceny?

a. Yes, because he intended to steal and took several substantial steps to commit the theft before he had second thoughts.

b. No, because Defendant never had a present intention to steal at any time when he was present at or dangerously near the location of the planned theft.

c. Yes, as long as his conduct as a whole was strongly corroborative of an intention to steal even if none of his acts went beyond mere preparation.

d. No, because there cannot be a legal "attempt" unless the accused does all that is necessary on his part to complete the crime.

59 A confidential informant observed Defendant purchase a quantity of counterfeit $100 bills. Unbeknownst to Defendant, some of the bills he purchased were genuine. Later, as he tried to use several $100 bills at a casino, Defendant was arrested charged with attempted distribution of counterfeit money. It turned out, however, that the bills Defendant tried to use in the casino were all genuine. Under the traditional common law rule, the defense of impossibility would be available to Defendant if the court holds:

a. It was factually impossible for Defendant to commit the completed offense.

b. It was legally impossible for Defendant to commit the completed offense using genuine $100 bills.

c. Both of the above.

d. None of the above. Defendant would guilty as charged if it's found that he tried to use the genuine $100 bills in the belief that they were counterfeit.

60 D2 planned to burglarize the warehouse where Defendant worked as a forklift driver. In order to make it easier for D2 to get in (and without being asked), Defendant left an emergency exit door unlocked. However, Defendant forgot to tell D2 that the door was unlocked, and D2 entered the warehouse through an air vent.

a. Defendant is guilty as an accomplice in the burglary.

b. Defendant is not guilty as an accomplice in the burglary because, obviously, D2 didn't need his help and would have committed the burglary anyway.

c. Defendant is not guilty as an accomplice in the burglary because he did not tell D2 that he'd left the door open and, therefore, provided no help to D2.

d. Defendant is not guilty as an accomplice in the burglary because he was not present when the burglary took place.

<End of examination>