

PACE UNIVERSITY SCHOOL OF LAW

CRIMINAL LAW
PROFESSOR HUMBACH
FINAL EXAMINATION

December 11, 2023
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 correctly using EXAM4.

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

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

1 A homeowner complained to Prosecutor that a group of individuals moved into her home while she was out of town. The homeowner has been forced into a protracted civil proceeding to remove the squatters. Prosecutor believes that criminal charges against the squatters would speed up the homeowner's recovery of her property. Under the modern rule, Prosecutor may properly secure an indictment and conviction against the squatters:

- a. As long as he's able to allege and prove that the squatters' conduct directly injures or tends to injure the public.
- b. Only if the squatters engage in conduct that is prohibited under an existing criminal statute in the jurisdiction.
- c. As long as the court can devise and adopt a new common-law crime that prohibits the squatters' conduct.
- d. More than one of the above is true.

2 We read a case in which the court interpreted the term "human being" in a California statute using the legal meaning that the term had in 1850. The court's rationale for using this meaning was that:

- a. California first became a state in 1850.
- b. The legislature specified in the statute itself that the 1850 meaning should be used.

c. The year 1850 is a commonly used legal reference point, being not too early and not too recent.

d. When legislatures adopt statutory words that have an established common-law meaning, it's presumed that the legislature intended the common-law meaning.

3 A statute makes it a crime "to secretively or maliciously destroy natural habitat of wild mammals, birds, amphibians or fish" in certain sensitive areas of the state. Defendant, a land developer, wanted to clear the way for a building permit so he deliberately clear-cut and destroyed habitat used by species of rare butterfly. The prosecutor wants to use the statute against Defendant. He argues that the reasons for protecting "mammals, birds, amphibians or fish" apply equally to butterflies and, therefore, the statute should be interpreted to apply to insects as well. Plausible and promising arguments for the Defendant include:

- a. The interpretation proposed by the prosecutor would result in an unforeseeable judicial enlargement of the statute, a violation of due process.
- b. Changing criminal statutes to prohibit wholly new or additional kinds of results is more properly left to the legislature, and not within the jurisdiction of courts.
- c. Both of the above.
- d. The statute as written is unconstitutionally overbroad and, therefore, must be struck down as void for vagueness.

e. All of the above.

4 Defendant is accused of hacking another student's password in order to get into the other student's university online account. She is being prosecuted under a trespass statute that forbids "physical intrusion into the land of another without permission." Interpreting the trespass statute to extend to these facts is objectionable because:

- a. It would deprive the defendant of fair warning, which is a first essential of due process.
- b. It would operate like the judicial equivalent of an ex post facto law.
- c. Both of the above.
- d. None of the above. There's no reason why extending the trespass statute to these facts would be objectionable.

5 Defendant is charged under a newly enacted statute. In his defense, Defendant asserts that the statute is void for vagueness. The court agrees that the statute is poorly worded, but it also believes that Defendant's actions were clearly within the range of conduct that the legislature intended to prohibit. The court's most likely response to Defendant's vagueness claim would be to:

- a. Declare the statute unconstitutional for vagueness and dismiss the charges against Defendant.

b. Try to apply a narrowing interpretation to the statute so it is no longer unacceptably indefinite in its application.

c. Send the statute back to the legislature for a clarifying interpretation.

d. Go ahead and convict Defendant if he knew what he was doing was wrong.

6 Suppose that Defendant is charged under a public-welfare statute and asserts that the statute is void for vagueness. In response, the prosecutor points out that the highest court of the state has previously decided a case that interpreted the statute in a way that narrowed its reach and eliminated the alleged indefiniteness. The trial court:

- a. Must follow the interpretation in the prior case.
- b. Should regard the prior case as a valuable guideline for interpreting the statute but should make its own judgment as to the statutory meaning.
- c. Should give the utmost deference to the highest court's interpretation but is not strictly bound by it.
- d. Need not follow the prior case if the trial judge decides it was clearly erroneous or ill-advised.

7 Reasons given for the void for vagueness doctrine include that:

- a. Due process requires fair warning and, therefore, statutes should be understandable to a person of ordinary intelligence.
- b. The democratic form of government presupposes that decisions about what to prohibit and punish should be made by legislatures, not by enforcement agencies.
- c. Criminal statutes that are too vague and indefinite can lead to arbitrary and discriminatory enforcement.
- d. All of the above.
- e. None of the above.

8 Defendant is accused of violating a statutory prohibition on “using a gun in connection with a drug trafficking offense.” Specifically, the prosecutor alleges that Defendant, with the intent to steal drugs for sale, smashed an unloaded gun through a small window in order to gain unlawful entry to the place where the drugs were kept. Defendant’s lawyer urges the court to apply the doctrine of lenity in interpreting the statute.

- a. Applying the doctrine of lenity would mean Defendant should be given the benefit of the doubt in resolving ambiguities in the application of the statutory words.
- b. If the prosecution and the defense disagree about the meaning of the statute, the court is almost certain to apply the doctrine of lenity.

- c. The doctrine of lenity is essentially just a way of saying that the court should find a way to convict Defendant if the statute’s words can possibly support it.
- d. Applying the doctrine of lenity will usually increase the chances of conviction.

9 As Defendant was parking his car, it suddenly lurched through a plate glass window into a restaurant. Several of the diners were fatally injured. Charged with homicide, Defendant claims the deaths were not a result of his act. Specifically, he says, as he pulled into the parking space, a wasp flew in the window and stung him in the neck. An expert witness testified that, as Defendant’s body reacted to the sting, his foot unconsciously slammed down on the gas pedal.

- a. The defense should be rejected because an act means simply a “bodily movement,” and slamming on the gas pedal was a bodily movement.
- b. There appears to be enough evidence to go to the jury on the question of whether the deaths were or were not the result of an “act” of Defendant.
- c. Slamming the pedal should not be considered a criminal “act” unless the Defendant’s bodily movement was a “willed” movement, an exercise of the will.
- d. Both b. and c. above.

10 Defendant is charged with operating a motor vehicle in excess of the posted speed limit, specifically, going 65 mph in a 60-mph zone. Defendant has proof that the cruise control in

his car suddenly raised his speed above the limit just as he passed a radar device. There had never been any previous indication that the cruise control was prone to malfunctioning.

- a. Defendant has a good defense because traffic regulations like speed limits normally require proof of mens rea, such an intention at act unlawfully.
- b. Ordinarily, courts interpret penal statutes to require that, for conviction, a person's criminal conduct must include a voluntary act.
- c. By undertaking to operate a motor vehicle a person assumes that legal risk that mechanical features of the vehicle, like the brakes, will not function properly.
- d. Defendant will probably be convicted because the choice to rely on cruise control was legally reckless.

11 Defendant and his buddy went out drinking and carousing one evening. Several hours later, as they were walking home, Defendant's buddy was sideswiped by a motor scooter while crossing the street. As his buddy lay in the street, unconscious but not seriously injured, Defendant staggered home and went to bed. A short time later Defendant's buddy was hit by a bus and killed. Defendant has been charged with criminally negligent homicide in his death.

- a. It looks like Defendant is probably guilty as charged.

b. Defendant had a moral duty to prevent further harm to his buddy in these circumstances and, therefore, he's probably guilty as charged.

c. Defendant is probably not guilty because he does not appear to have had a legal duty to protect his buddy from further harm.

d. Defendant probably won't be held guilty because his serious intoxication will be an excuse.

12 Suppose in the preceding question that Defendant and his buddy both made it back to Defendant's apartment for a last drink before turning in. At the apartment, Defendant's buddy stumbled and hit his head. Defendant was very tired and went to bed, leaving his buddy unconscious on the floor. The next morning his buddy had died from a concussion, a death that would have been avoided if medical help had been sought promptly. Defendant is probably guilty of criminally negligent homicide:

- a. Because he had a legal duty to his buddy as a guest in his home.
- b. Because he had a legal duty to his buddy as a friend.
- c. Because he had a moral duty to his buddy.
- d. None of the above. Defendant is *not* guilty of criminally negligent homicide on these facts.

13 A patient was brought to Charity Hospital with serious injuries after an automobile accident. Defendant, a doctor who

happened to be at the hospital, began treating her. The care of the patient became very time-consuming and costly, and the patient was recovering steadily but slowly. Having other things he wanted to do, Defendant stopped treating the patient. Soon thereafter, the patient succumbed to her injuries due to lack of treatment. Could Defendant be held criminally responsible for the patient's death?

- a. No. Defendant could stop providing treatment for the patient at any time because cessation of treatment would be merely considered an omission and not an act.
- b. No, because the patient was recovering slowly from her injuries.
- c. Yes, if further treatment of the patient had *not* become futile but, on the contrary, was reasonably likely to benefit the patient.
- d. Yes, because once a doctor has begun treating a patient the doctor may not cease providing treatment without the patient's consent.

14 As Defendant was walking along a pier, a man stepped suddenly in front of her. Defendant was unable to stop or avoid a collision, and she inadvertently knocked the man into the water. Defendant could have called for help, but she didn't want to get involved, so she continued on her way. Though Defendant was in no way at fault in causing the accident, the man drowned because he needed help getting out of the water. Defendant is charged in the death.

- a. Defendant cannot properly be held guilty in the death because she was not at fault in causing the accident.
- b. There's authority for holding that Defendant can be held guilty because, though not initially at fault, she omitted to help a person she'd innocently put in peril.
- c. Defendant can be held guilty in this case because she secluded the victim after assuming a duty of care.
- d. Defendant cannot properly be held guilty in the death because the victim assumed the risk by voluntarily deciding to walk near the water.

15 Defendant entered a large pharmacy with the intention of shoplifting some toiletries. While hiding a bottle of body lotion in one of his pockets, Defendant dropped it on the floor. The bottle smashed spreading oily liquid all around. A few moments later, an elderly woman walking up the aisle slipped on the body lotion and suffered serious injuries in the fall. Defendant is being prosecuted for "maliciously injuring another."

- a. There is a basis on these facts for holding Defendant guilty if the court applies the *culpability* conception of mens rea.
- b. There is a basis on these facts for holding Defendant guilty if the court applies the *elemental* conception of mens rea.
- c. Both of the above.

d. None of the above. Defendant shouldn't be held guilty because the facts do not show that harm resulted from Defendant's voluntary act.

16 Suppose in the preceding question that the statute did not contain language requiring proof of mens rea. It simply prohibited "conduct that injures another." The way that courts would normally interpret criminal statutes prohibiting conduct that results in injuries to other persons:

a. The prosecutor would ordinarily have to prove that Defendant acted intentionally or knowingly in causing the injuries to the victim.

b. The prosecutor would ordinarily have to prove that Defendant acted intentionally, knowingly or recklessly in causing the injuries to the victim.

c. The prosecutor would ordinarily have to prove that Defendant acted intentionally, knowingly, recklessly or with criminal negligence in causing the injuries to the victim.

d. The prosecutor would ordinarily have to prove only that Defendant proximately caused the injuries to the victim.

17 Under the conception of mens rea usually applied by the courts today (culpability vs. elemental),

a. It is generally enough to support a conviction if the prosecutor shows that the defendant caused a prohibited harm with a generally blameworthy state of mind.

b. Conviction usually requires only that the prosecutor prove the defendant's illegal conduct was meant to cause some wrongful result.

c. Proof of a specific mental state is usually dispensed with as long as the evidence shows that the defendant acted maliciously.

d. Conviction usually requires proof that the defendant's blameworthy mental state was specifically concerned with the harm prohibited by the statute.

18 The state's law was recently changed to raise the minimum value for grand larceny to \$950. Since prosecutors rarely prosecute petty larceny, it became very unlikely that thefts under \$950 would have legal consequences. The press, ever ready to sensationalize, repeatedly pushed the exaggeration that thefts under \$950 were no longer a crime. Defendant was arrested for grabbing and running off with a purse from a table at a sidewalk cafe. Charged with petty larceny, Defendant wants to offer the defense that, based on the press reports, he honestly believed in good faith that it was okay to take other people's things as long as they were worth less than \$950.

a. If Defendant honestly and reasonably believed the law made it legally permissible to take the purse, he'd have a strong defense to a larceny charge.

b. Defendant is not guilty of larceny if he honestly believed it was legally permissible to take the purse even if his belief was not a reasonable one.

c. Defendant's mistake of law in this case, no matter how honest and reasonable, would not be a defense.

d. As long as Defendant is not a trained attorney, he is entitled to rely on press reports as to what the law does and does not prohibit.

19 After checking out of a hotel, Defendant stacked his bags next to the front door and went down to the garage to get his car. When he returned, he popped open the trunk from inside the car and the hotel attendant stacked Defendant's bags in the trunk. Unwittingly, however, the attendant also placed a bag belonging to another guest in Defendant's car. Defendant drove off with the extra bag. Defendant has been charged with common-law larceny of the bag belonging to the other guest.

a. Defendant is not guilty of larceny of the other guest's bag as long as Defendant honestly believed that the bags in his car were all his.

b. Defendant is not guilty of larceny of the other guest's bag only if Defendant honestly *and reasonably* believed that the bags in his car were all his.

c. Defendant is guilty of larceny of the other guest's bag because he took a bag that was, in fact, not his.

d. Defendant could properly be held guilty of larceny for negligently taking the other guest's bag, even if he didn't do so intentionally or knowingly.

20 Two persons went into a store, shoplifted several items each and left. They then entered a second store down the street, again shoplifted several items each, and left. The two then entered a third store where they pretended to browse the shelves. One of them, Defendant, picked up \$20 bottle of cologne and held it in her hand. A security guard swooped in, detained the two of them, and called the police. The two were found to have no money on them or receipts for the various shoplifted items in their possession. Assuming there is evidence from which a jury could conclude that Defendant picked up the cologne with an intent to steal it,

a. She may properly be held guilty of larceny of the cologne on these facts.

b. She has not yet done enough to satisfy all the elements of larceny of the cologne on these facts.

c. She may properly be held guilty of attempted larceny of the cologne on these facts.

d. Both b. and c. above.

21 Defendant was trimming his hedge when the hedge clippers broke. Wanting to finish the job before nightfall, he entered his neighbor's garage (which was open) and, knowing he did not have permission, took the neighbor's clippers, which were hanging from a hook in open sight. When he was done with his

hedge, Defendant returned the clippers to the hook, as had been his plan all along. Based on these facts:

- a. Defendant is guilty of common law larceny.
- b. Defendant is guilty of common law burglary.
- c. Defendant is guilty of common law robbery.
- d. All of the above.
- e. None of the above.

22 Defendant's car was carjacked by a group of three teenagers while he was sitting at a traffic light on a quiet street. As Defendant stood outside his car, which was about to speed away, he pulled a gun from his pocket, pointed it at the driver's side window and shot, seriously wounding the driver. Defendant is charged with "assault with intent to cause grievous bodily harm."

- a. The prosecutor must present direct evidence of what Defendant intended, namely, that he intended to cause grievous bodily harm.
- b. The court may properly instruct the jury that it may presume that Defendant intended the natural and probable consequences of his acts.
- c. The jury may properly infer, from Defendant's conduct and the circumstances, that Defendant intended to cause grievous bodily harm.

d. The prosecutor need not prove that Defendant intended to cause grievous bodily harm, but only that he intended to commit assault.

23 Defendant, as a joke, pushed a ladder away from a roof while another person was climbing up it. Defendant didn't necessarily want anyone to be hurt but, nonetheless, the person on the ladder was injured in the fall. The jury finds that Defendant knew it was practically certain that the injury would occur.

- a. Defendant would be guilty of "purposely" causing injury to another person (MPC).
- b. Defendant would be guilty of "knowingly" causing injury to another person (MPC).
- c. Defendant would be guilty of "intentionally" causing injury to another person (common law definition).
- d. Both b. and c. above.
- e. All of the above.

24 Suppose in the preceding question that injury to another was *not* practically certain to occur, but Defendant knew there was a high probability of injury to the person on the ladder. Defendant could properly be found guilty of recklessly causing injury to another person

- a. If he consciously disregarded the risk (MPC).

- b. If he foresaw the risk and took the risk anyway (common law).
- c. Both of the above.
- d. None of the above. Defendant would be guilty of negligently, but not recklessly, causing injury to another person (MPC and common law).

25 Defendant hires day workers in his landscaping business, no questions asked. He does not know or care whether the persons he hires are legally eligible to work, and he has no particular belief on the subject. Now he is being prosecuted for “employing persons knowing they are ineligible to work as employees in the United States.” Under the willful blindness rule, Defendant can be properly convicted:

- a. Only if there’s proof that he actually subjectively knew the persons he hired were not eligible to work in the United States.
- b. Even without actual knowledge as long as he knew there was a high probability that the persons he hired weren’t eligible (MPC).
- c. If he knew there was a high probability the persons he hired weren’t eligible, and he took affirmative steps to avoid such knowledge (federal).
- d. Both b. and c. above.

26 While hiking through a state park, Defendant found a pair of antlers lying on the ground. Thinking it was all right to take

them, Defendant picked up the antlers and carried them to his car. As he was placing the antlers in the car he was arrested by two conservation officers who accused him of violating a state law that prohibits “stealing or knowingly converting” any object belonging to the state found on state-owned land. Defendant wants to introduce evidence that he did not know that the antlers belonged to another and honestly believed they belonged to nobody.

- a. The evidence would be irrelevant because the wording of the statute does not require proof that Defendant stole the item knowingly.
- b. If the antlers belong to the state, Defendant would be guilty of common law larceny irrespective of whether he knew or believed they belonged to another.
- c. The court should interpret the statute in light of the common law and hold that proof of mens rea is required to convict Defendant of stealing.
- d. Interpreting the statute in light of the common law, the court should hold that it imposes strict liability for stealing on those who take things belonging to the state.

27 A certain state statute provides a 10-year penalty for possession of any radio receiver capable of receiving and decoding encrypted police communications. The statute does not contain any requirement of proof that the possessor know the receiver has this capability. Defendant bought a scanner radio in Mexico. He brought it home not knowing that it could receive and decode encrypted police communications. He is now being prosecuted for violation of the statute (which is not

considered a public welfare offense). Following the approach exemplified in the Supreme Court’s *Staples* case:

- a. The ordinary preference in interpreting statutory crimes is to require proof of mens rea even if the legislature did not expressly call for such proof.
- b. When a statute prescribes a relatively heavy penalty, that’s normally a factor supporting the conclusion that the legislature intended strict liability.
- c. The fact that the statute prescribes a relatively heavy penalty is generally irrelevant to the question of whether proof of mens rea was intended.
- d. If the legislature did not expressly provide for a culpable mental state in the statute, no such requirement should be implied by the court.

28 Defendant had sexual relations with a person he met in a bar. Because they had several drinks together in the bar, Defendant just assumed that the person was at least 21. In fact, the person turned out to be only 16. Defendant is charged under a statute that prohibits “sexual relations between a person who is age 21 or more with another who is less than 17 years of age. In the majority of jurisdictions (and under the traditional rule):

- a. To obtain a conviction the prosecution must prove that Defendant acted with knowledge that the other person was less than 17 years of age.

- b. Defendant should be acquitted if he can prove that he had a reasonable belief that the other person was over age 17.

- c. Defendant’s honest mistake of fact with respect to the age of the other person would not be a defense.

- d. The fact that Defendant and the other person met in a bar would be strong evidence in Defendant’s favor.

29 Defendant is charged under a statute that makes it a crime to “knowingly possess a gun that is capable of firing multiple shots with one pull of the trigger.” Defendant admits that he knowingly possessed the gun in question, but there’s no proof he knew that it was capable of firing multiple shots with one trigger pull. Defendant can be properly convicted:

- a. Under the interpretive approach used by the MPC (the prosecutor need only prove that Defendant knew he had possession of a gun).

- b. Under the interpretive approach preferred by the US Supreme Court (the prosecutor need only prove that Defendant knew he had possession of a gun).

- c. Under the approach that would be used by a court applying the rule of lenity (the prosecutor needn’t prove that Defendant knew anything in particular).

- d. None of the above

30 Defendant has been indicted for “willfully failing to file a tax return” for the year 2021. Defendant claims that he

honestly believed he wasn't required to file a return for that year because he was living abroad and he didn't know that income earned abroad is subject to US income tax.

- a. In order to obtain a conviction, the prosecutor must show that the defendant failed to perform a known legal duty.
- b. Ignorance of the law is no excuse, and Defendant's misunderstanding of the law would not prevent a conviction in this case.
- c. Mistake of law can be a defense in a case like this, but only if defendant's mistake was a reasonable one.
- d. Tax laws are generally strict liability laws, and so Defendant should be held liable irrespective of mens rea.

31 Defendant powerfully struck X with a baseball bat intending to kill him. To give himself time to get away, Defendant disposed of the body by burying it in a pile of snow, assuming X was dead. According to later medical testimony, however, X was not killed by the bat but died as a result of being buried in the snow. Defendant is charged with murder.

- a. Defendant acted with the intention to cause death, and did cause death, and therefore is clearly guilty of murder.
- b. Defendant has a possible defense because he did not have an intent to kill at the time that he engaged in the conduct that caused the victim's death.

c. Defendant has a possible defense because the coldness of the snow and exposure to the elements was the superseding (proximate) cause X's death.

d. Defendant can be properly found guilty of murder on the theory that his culpable negligence (in burying X in the snow) was the proximate cause of X's death.

32 Defendant and V got into a roadside argument after V ran a stop sign and crashed into Defendant's car. Defendant appeared to threaten V with a raised tire iron. Defendant meant no actual harm, but his conduct greatly alarmed V who jumped over a fence and started running across a field to escape. There was an unmarked well in the field. Not seeing it in time, V fell in the well and drowned.

- a. Defendant's conduct was not a cause in fact of V's death because Defendant didn't know there was an unmarked well in the field.
- b. Defendant's conduct could not be considered a cause in fact of V's death because Defendant meant no actual harm in raising the tire iron.
- c. Defendant's conduct was a cause in fact of V's death.
- d. Defendant's conduct would be considered a "substantial factor" but not a but-for cause of V's death.
- e. Both c. and d. above.

33 Following a serious automobile accident, V was in an ambulance traveling to the hospital. Defendant, late for an appointment, ran a red light and rammed the side of the ambulance, causing V's nearly instant death. According to medical testimony, V would have died anyway, in less than an hour, from the injuries already sustained in the initial automobile accident.

- a. Defendant's conduct was a cause in fact of V's death.
- b. Defendant's conduct would be considered a but-for cause of V's death.
- c. Both of the above.
- d. Defendant's conduct would not be considered a cause of V's death because V was going to die anyway.

34 Suppose in the preceding question that V's injuries from the initial automobile accident would not have been fatal but, due to V's weakened condition, the added injuries from the ambulance collision were enough to put V over the edge. V died shortly after reaching the hospital.

- a. Defendant's conduct would be considered the sole cause of V's death.
- b. Defendant's conduct would best be analyzed as a substantial factor in causing V's death.
- c. The original accident would not be considered a cause in fact of V's death.

- d. Defendant's conduct was a but-for cause of V's death.

35 Suppose again that V was in an automobile accident. This time V was uninjured and reached a point of safety at the side of the road. A couple of minutes later, V went back into the road to inspect the damage to his car. Another driver, coming down the road, accidentally hit V and killed him. Defendant, whose serious negligence caused the original accident, is charged in V's death. It would not be proper to convict Defendant:

- a. If the other driver's conduct were found to be a superseding cause of V's death.
- b. Because Defendant's conduct was not the cause in fact of V's death.
- c. If V's own conduct in going back into the road were found to be an intervening cause of V's death.
- d. All of the above.

36 V was killed during a turf dispute with members of a rival gang. Defendant pointed his gun at V and pulled the trigger. The bullet struck V in the head. Simultaneously, another member of Defendant's gang recklessly discharged his pistol while running after a third person. The bullet also struck V in the head. Either wound would have killed V instantly, even if the other had not occurred.

- a. Defendant’s conduct was a but-for cause of V’s death.
- b. The other shooter’s conduct was a but-for cause of V’s death.
- c. Both of the above
- d. Both shooters can be properly convicted of homicide for causing V’s death.

37 Defendant was towing his friend on water skis behind his motorboat. Just for fun, Defendant executed a number of sharp turns in an attempt to knock his friend off the skis—normally harmless conduct. He succeeded, and while his friend was bobbing in the water another motorboat suddenly came up at high speed, didn't see his friend in the water and ran over him, causing his death. Defendant has been charged with criminally negligent homicide in his friend's death. Defendant should not be found guilty:

- a. If the conduct of the other boater is found to be the superseding cause of the accident.
- b. If the jury finds that Defendant’s negligence was, at worst, a failure to use ordinary care and not some greater degree of negligence (such as gross negligence).
- c. Both of the above.
- d. If the jury finds that other boater had been drinking at the time of the accident.

38 Lawyer is arguing on behalf of Defendant in the preceding question. Lawyer should succeed in obtaining an acquittal if she can persuade the factfinder that:

- a. It wasn’t reasonably foreseeable that another boater would come along at just that time, not see the friend in the water and run over him.
- b. The voluntary intervening conduct of another person superseded Defendant’s conduct as the proximate cause of the friend’s death.
- c. Both of the above.
- d. The Defendant did not intend to cause his friend's death and deeply regretted his role in it.
- e. All of the above.

39 Judge Reynolds is a retributivist when it comes to punishment and rejects utilitarian rationales on principle. Which of the following statements would Judge Reynolds be most likely to agree with?

- a. “Punishing criminal activity is a good thing in itself because it gives wrongdoers what they deserve.”
- b. “The main purpose of punishment is to dissuade others from engaging in criminal activity.”
- c. “Punishment is evil but it is justifiable in order to prevent a greater evil.”

- d. “People should not be punished unless some useful purpose is served by doing so.”

40 During a home invasion looking for prescription pain killers, Defendant struck the homeowner with a chair, causing serious injury. Defendant has been convicted of various offenses including aggravated assault. The prosecutor argues that Defendant needs to be sent to prison where he won’t be able to prey on honest citizens in the future. The rationale for punishment that the prosecutor appears to have in mind is:

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

41 Defendant was caught breaking into a mobile home to steal items that he could sell to support his drug habit. The prosecutor argues that Defendant should be sentenced to a substantial term of incarceration in order to set an example, to protect the public and to provide him an opportunity to change his ways by learning to live a law-abiding life. The rationale(s) for punishment that the prosecutor appears to have in mind is:

- a. Deterrence.
- b. Rehabilitation.
- c. Incapacitation.

- d. All of the above.

42 After being warned twice not to speak out at a city council meeting, Defendant emitted a sharp laugh when the mayor said something she thought was absurd. She is charged under a local law that prohibits “any conduct that disrupts a public meeting.” The prosecutor asserts that she should receive a substantial punishment to discourage others from disruptive behavior at public meetings. The rationale for punishment that the prosecutor appears to have in mind is:

- a. General deterrence.
- b. Special deterrence.
- c. Retribution.
- d. Incapacitation.

43 Defendant is accused of homicide in the death of Victim. The evidence shows that Defendant killed Victim intentionally during a sudden fit of rage but not under circumstances that would qualify as adequate provocation. According to the state’s statutory framework for murder, first-degree murder is defined as “willful, deliberate and premeditated killing.” Second-degree murder is defined as “all other kinds of murder.” Manslaughter is defined as homicide without malice. As the courts interpret “premeditated” murder:

- a. Defendant could properly be found guilty of first-degree murder in some but not all of the states that have a statutory framework like this one.

b. Defendant would probably be found guilty of first-degree murder in nearly all of the states that have a statutory framework like this one.

c. Defendant could not properly be found guilty of first-degree murder in any state that has a statutory framework like this one.

d. Defendant could properly be found guilty of manslaughter, but not murder.

44 Defendant shot Victim in the head on the orders of his gang leader. Victim was taken to a hospital where doctors maintained his breathing and heartbeat using life support machinery. Doctors later removed Victim's vital organs for transplant and saved several other patients' lives. Now indicted for murder, Defendant argues that he did not cause Victim's death.

a. Under the more modern cases, removal of the Victim's vital organs by the doctors would be considered the proximate cause of Victim's death.

b. In some states, Victim could be considered legally dead once his brain had permanently ceased functioning.

c. Victim could not be considered legally dead under the modern cases as long as his heart continued to beat, even if it was no longer beating on its own.

d. If Victim's heart was no longer able to beat without outside medical help, Victim would be considered legally dead even if his brain was still functioning.

45 As used in the common-law definition of murder, "malice aforethought":

a. Means the killing was done with premeditation.

b. Would exist if the accused acted with intention to cause grievous bodily harm even if he had no intention to cause death.

c. Encompasses any form of malice or culpability that could be included within mens rea.

d. Is basically surplusage that serves only to reflect the idea that, to be murder, a killing must be unlawful.

46 Defendant is accused of killing a coworker during a violent argument. Just prior to slamming an iron bar against the side of the coworker's head, Defendant had been attacked by the coworker, who had pulled Defendant's hair and kned him in the groin. Defendant violently responded while suddenly overcome and inflamed with ungovernable passion due to the coworker's words and conduct. The Defendant's wants to use provocation as a defense. Under the traditional common-law rule,

a. The coworker's physical contact with Defendant would be considered essential elements in Defendant's provocation defense.

b. The coworker's physical contact with Defendant would be helpful to support Defendant's provocation defense, but not strictly speaking essential.

c. The jury could properly acquit Defendant of all homicide charges based on the coworker's words and conduct.

d. Both b. and c. above.

47 Defendant has an explosive personality. It manifests itself in the form of poorly calibrated emotional reactions to the ordinary, everyday disappointments and annoyances of life. He cannot help this; it's just the way he is. One day, standing in a supermarket line, Defendant was accidentally bumped several times in the behind by the shopping cart of the person behind him. Defendant picked up a large can of vegetable juice and threw it at the person's head, causing his death.

a. The fact that the Defendant has a "short fuse" or is short-tempered would generally be taken into account in deciding whether his response was reasonable.

b. The judge should instruct the jury to acquit Defendant because, basically, Defendant could not help acting as he did.

c. It would be proper to instruct the jury to decide whether a person of fair and average disposition would become so emotionally enraged as to act as Defendant did.

d. In deciding a case like this, the jury ordinarily must extend mercy based on personality traits that could affect a defendant's capacity for self-control.

48 During a visit to the state fair, Defendant was impressed with a huge bull that was on display. The animal was clearly very angry and agitated. It stomped around its small pen, glared menacingly at passersby, and snorted loudly through its brass nose ring. Uncaring about possible consequences and hoping to stir up a little chaos, Defendant playfully clicked open the latch on the bull's pen and let it loose into the crowd. Predictably, someone was killed on the bull's horns.

a. If Defendant did not intend to kill anybody, the most he can be properly held guilty of is criminally negligent homicide.

b. If Defendant did not intend to kill anybody, the most he can be properly held guilty of is involuntary manslaughter.

c. Even if Defendant did not intend to kill anybody, there's a good argument that the jury can properly convict him of murder on facts like these.

d. None of the above. If Defendant did not intend to kill anybody, he should be convicted of, at most, a property offense.

49 Defendant was driving down a country road with some of his teenage friends. On a railroad track parallel to the road, a freight train was lumbering along heading towards the crossing a mile or so further on. Defendant wanted to get to the crossing

before the train so they wouldn't have to sit and wait for the train to pass by. Hitting the gas, Defendant drove at high speed hoping to beat the train to the crossing. It was a tie. The train smashed into the car killing all of its occupants except, miraculously, Defendant. He has been indicted for depraved-heart murder.

- a. Under the traditional approach, the jury could properly convict if it finds that the magnitude of risk was so great that Defendant *must have been* aware of it.
- b. Under the traditional approach, Defendant could be properly convicted only if jury is persuaded that he *consciously disregarded* the risk.
- c. Under the more modern approach, Defendant could be properly convicted based on the magnitude of the risk, irrespective of whether he was actually aware of it.
- d. Under the more modern approach, Defendant would not be guilty of murder without evidence that he actually intended to cause his friends' deaths.

50 Defendant and a friend committed a felonious robbery of a jewelry store. As the two of them left the store, the owner grabbed a large knife and took chase after them. The friend saw the owner coming and pointed a gun at him, as though to shoot. Defendant shouted: "No! Don't shoot him," but then fumbled his own gun and accidentally killed the owner.

- a. Defendant is not guilty of murder because he didn't intend to kill anybody.

- b. Defendant is not guilty of murder because the killing was not a necessary part of the robbery.
- c. Defendant is not guilty of murder because his shot was accidental.
- d. Defendant is guilty of felony murder.

51 Defendant was cleaning a gun in his apartment when it accidentally went off. The bullet pierced the wall and fatally struck a person sitting in the apartment next door. Defendant had previously been convicted of a felony, and his possession of the gun was itself a felony. The prosecutor charges Defendant with felony murder citing illegal possession of the gun as the predicate felony. In most states:

- a. To convict Defendant of felony murder, the possession of a gun by a felon would have to be considered an inherently dangerous felony.
- b. Defendant could be convicted of felony murder irrespective of whether possession of a gun by a felon is considered an inherently dangerous felony.
- c. To convict Defendant of felony murder, the possession of a gun by a felon would have to be considered inherently dangerous in the abstract.
- d. Defendant could not properly be convicted of felony murder because the possession of guns is protected by the 2nd amendment.

52 Defendant was playing a game at a pool hall when he got into an argument with his opponent over an alleged table scratch. Defendant threw a hard little pool ball at the opponent. The ball did not cause a wound, but it did cause the opponent to lose his balance. He hit his head on a table edge as he fell to the floor. Suppose he were to die of his injuries:

- a. Defendant would be guilty of felony murder under the merger doctrine if his act of throwing the ball were considered an inherently dangerous felony.
- b. If the merger doctrine applies, throwing the ball should not be considered eligible as the predicate felony for felony murder.
- c. Because the ball did not cause a wound, Defendant's conduct cannot be considered a but-for cause of the death.
- d. Both b. and c. above.

53 Which of the following would probably be considered an inherently dangerous felony in the abstract?

- a. Possession of a firearm by a convicted felon.
- b. Sale of Adderall without a prescription.
- c. Reckless operation of a motor vehicle in a manner that poses a serious risk to life or property.
- d. Aggravated child abuse that endangers the child's mental or physical health.

- e. None of the above.

54 After Defendant was caught encroaching on the territory of a rival narcotics dealer, he was confronted by the rival in a deserted parking garage at night. There was an exchange of words that ended in a gunfight. A number of shots were fired. Then, from his partially protected location behind a car, Defendant killed the rival.

- a. Defendant could not successfully plead self-defense if he were considered to be the initial aggressor in the confrontation.
- b. On these facts, Defendant clearly appears to be the initial aggressor in the confrontation.
- c. Both of the above.,
- d. Most courts would agree that Defendant had a duty to retreat.

55 Suppose in the preceding question that, while Defendant was crouched behind the car, the rival dealer turned, got in his own car and started to drive away. Before he left, however, he said "Me and my boys will be seeing you, and next time you won't be so lucky." Shaken by the threat, Defendant carefully aimed at his rival's departing car and killed him with a shot through the back window.

- a. Defendant can properly be acquitted based on self-defense because the person he shot had just issued an unambiguous death threat.

b. If the jury decides the rival was the initial aggressor in the confrontation, Defendant would have been entitled to shoot the departing rival in self-defense.

c. Defendant was not entitled to kill in self-defense because, at the time, he couldn't have reasonably believed he was in imminent peril.

d. Defendant was entitled to kill his rival in anticipatory self-defense rather than wait until he was attacked again at the time of the rival's choosing.

56 Defendant was watching TV at home when he heard some scraping noises from back in the kitchen. He grabbed his rifle and crept towards the sounds. Peering around the edge of the kitchen door, he saw someone had broken a window and seemed to be getting ready to crawl in. If Defendant were to shoot the person crawling through the window, he should be able to claim defense of habitation:

a. If Defendant reasonably believed that shooting was necessary to prevent a forcible entry for the purpose of committing a violent or atrocious felony.

b. Only if he waited until the person had actually entered before pulling trigger.

c. Only if he asked the intruder what he was doing there before pulling the trigger.

d. Only if Defendant met the legal requirements for claiming personal self-defense under the circumstances.

57 Defendant is accused of unlawfully copying confidential documents belonging to his employer and supplying them to X. He did so because X threatened Defendant's life if he didn't. Defendant should have a defense to the crime charged:

a. As long as the threat is deemed to be an unlawful one (common law).

b. Only if it's found that Defendant had no reasonable opportunity to escape (MPC).

c. As long as the threat is found to be one that a person of reasonable firmness could not have resisted (MPC).

d. All of the above.

58 Defendant sent some obscene images over the internet to a person he believed to be 17 years old. In fact, the recipient was an undercover police officer, age 34. Defendant is charged with "attempted distribution of obscene materials to a minor."

a. Defendant should be able to successfully assert the defense of factual impossibility under the traditional rule.

b. Defendant should be able to successfully assert the defense of factual impossibility under the MPC.

c. It is probable that Defendant can be convicted under the MPC rule even though actual completion of the offense was not factually or legally possible.

- d. All of the above.

59 While being chased by police, Defendant drove his car into a pedestrian shopping mall and went for a considerable distance at high speed, forcing startled shoppers to jump out of the way and almost killing several of them. Fortunately, no one was hurt.

- a. Defendant is guilty of attempted depraved-heart murder
- b. Defendant cannot be properly convicted of attempted murder unless it can be shown that he acted with a specific intent to kill.
- c. Defendant can be properly convicted of attempted murder as long as it can be shown that his conduct came very near to causing the death of one of the pedestrians.
- d. In most states, Defendant can be properly convicted of attempted felony murder on these facts.

60 Defendant made a plan to burn down his neighbor's barn. He bought some gasoline and a length of fuse (both legal), placed them in his pickup and went home to wait for nightfall. As it got dark, Defendant got in his pickup and started driving towards the neighbor's property. Before reaching the property, he had a change of heart and went back home. Defendant tearfully admitted these facts to the police and is charged with attempted arson.

- a. Under most of the US cases, Defendant cannot be properly convicted because he did not do all that was necessary to make the crime happen.
- b. Under the traditional American rule, Defendant *can* be properly convicted because he has taken substantial steps that strongly corroborate his intention.
- c. Under many of the cases, Defendant cannot be properly convicted because he never reached the place where the intended crime was to be committed.
- d. In general, preparations constitute an attempt, and persons can be properly convicted of attempt based on his mere preparations alone.

<end of examination>