Professor DeWolf | Criminal Law
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SAMPLE ANSWER TO EXAM

Multiple Choice

1. (a) is only partially correct; Bill's conduct would be a crime pursuant to MPC §5.02. (b) is also only partially correct, because Bill has conspired, pursuant to MPC § 5.03, to commit theft. The overt act is getting in the car. (c) is correct, because both (a) and (b) are true statements.

2. (a) is incorrect, because his behavior does not constitute a substantial step. (b) is correct, because he has agreed with Bill that they will commit the crime, and an overt act has been committed by one of them. (c) is incorrect; whether the crime was "inherently likely"—whatever that means—is irrelevant. (d) is incorrect; see the analysis of answer (b).

3. (a) is partially correct. Theft is taking something with the purpose of depriving the owner of the property (MPC § 223.2). (b) is partially correct. Bill solicited Jack to commit the crime and thus is an accomplice pursuant to MPC § 2.06(3)(a)(1). (c) is correct, because (a) and (b) are both true answers. (d) is incorrect, because the conversion of the property to your own use is not an element of theft.

4. (a) is partially correct; it would be robbery, since robbery consists of a theft, plus inflicting a serious bodily injury. Recklessness is sufficient for the element of causing the injury. (b) is also partially correct, since he had the same mens rea as is required for commission of the substantive offense by Jack. (see MPC § 2.06(4)). This makes (c) the best answer, and (d) is therefore incorrect.

5. (a) is incorrect, since § 2.08 makes lack of awareness of risk immaterial in crimes for which recklessness suffices. Since recklessness is the mens rea for the element of causing bodily injury, intoxication would be irrelevant for that element. (b) is correct, since intoxication might "negative" the existence of purpose. (c) is incorrect, because (a) is incorrect. (d) is incorrect because (b) is correct.

6. The author is (e) Ernest Van Den Haag [text, p. 559]

7. The author is (d) Sanford Kadish [text, p. 181]

8. (a) is incorrect; since the statute allows conviction for *negligence*, awareness of the risk is not required if he *should* have been aware of the risk. (b) is correct, since it would negative the mens rea requirement—that the employee should have known that his conduct posed an unreasonable risk. (c) is incorrect; the statute might have been made a regulatory offense, requiring no mens rea, but here the statute specifically requires negligence. (d) is incorrect. There is no reason to make the two convictions mutually exclusive.

9. (a) is incorrect; not knowing that VIOL was a hazardous chemical goes to the *application* of the statute to specific facts. That is a mistake of penal law, and therefore would be no defense. (b) is correct, since the statute requires knowledge on the part of the person charged with the crime. Vicarious liability doesn't apply here, although the legislature *could have* applied it if it so chose. (c) is incorrect, because under MPC § 2.02(4) the phrase "knowingly" applies to all material elements. (d) is incorrect, because Ron's mistake, as with answer (a), goes to the interpretation of the statute. A mistake of interpretation is a mistake of law, and provides no excuse except under the limited circumstances stated in § 2.04(3). None of those are present here.

10. (a) is incorrect; the defense of duress (§ 2.09) will avoid any criminal liability if the standard is met. (b) is incorrect; whether the person can be identified is relevant only as an evidentiary matter; it is not essential to the defense. (c) is incorrect because § 2.09 allows use of the defense where there is unlawful force against the person of another (§ 2.09(1)). (d) is therefore the correct answer.

11. (a) is correct. Rape requires at least recklessness with respect to her lack of consent; if he is in fact unaware of the risk that she is not consenting—and however hard that might be to believe, it is a question of fact for the jury—then he cannot be found guilty. (b) is incorrect, because being devious is not enough; the jury must find that she was compelled. He might have planned to have sex but believed it to be consensual. (c) is incorrect because Ostrich doesn't have

to believe that she will be killed; the issue is whether Jones compelled her by using force or threats against her. If the jury finds that he did so, whether purposely, knowingly, or recklessly, then he is guilty. What she believes is irrelevant. (d) is incorrect for the same reasons as (c).

12. (a) is incorrect, for reasons discussed concerning (b). (b) is correct. § 5.01 requires acting with the culpability otherwise required to commit the crime. The commentary (see text, p. 632), provides that there is liability where the defendant would have been liable if the crime were committed (that is the case here) and he purposively engages in the conduct. (c) is incorrect because the reason for his failure to complete the crime is irrelevant unless it constitutes a voluntary renunciation. (d) is incorrect because a decision to abandon a criminal attempt is not voluntary if it is motivated by circumstances which make it more difficult to accomplish the criminal purpose. (§ 5.01(4))

ESSAY QUESTIONS

My primary concern would be that the company, including the president, could be charged with either (1) serving as an accomplice to speeding and/or conspiring to engage in speeding; or (2) serving as an accomplice to assault and/or manslaughter if accidents result from people who are speeding with the use of the product.

Accomplice to Speeding. The charge would be that our clients acted as accomplices to speeding. In order to prove this charge, the prosecutor would have to show that speeding occurred (which wouldn't be difficult), and that our clients, with the purpose of promoting or facilitating the commission of the offense, (i) solicited speeding; or (ii) aided or agreed to aid or attempted to aid the speeders in speeding. (MPC § 2.06(3)). The hard part for the prosecutor would be to show that our clients acted with the purpose of facilitating the commission of the offense. They would clearly argue that their purpose was to sell products, not to encourage speeding. It is not enough that our clients *knew* that their conduct would result in speeding; the issue is whether they had such speeding as their *purpose*. Unfortunately for our clients, it would probably be an issue of fact for the jury to resolve. After all, if none of the purchasers had any intention of speeding, there would be no point in paying $500 for the product.

Suppose the defendants placed an ad in a racing magazine that stated "Ever Wanted to Take it to the Red Line but Were Afraid of Radar Traps? Try our New *Stealth Bra* and Make That Dream Come True!" Such an ad would clearly establish complicity liability, because it would constitute solicitation of the crime (MPC § 2.06(3)(a)(1)).

In our situation, we don't have anything so clear-cut. Some similar cases would be *Gladstone* (p. 687) in which the defendant was charged with facilitating the purchase of marijuana. The court dismissed the charge but focused in part on the fact that the defendant didn't derive any benefit from the subsequent purchase of marijuana. Here our clients might be accused not just of facilitating the commission of speeding, but profiting from it. Their subjective motivation would be a jury question. I don't think our clients could argue very successfully that they simply wanted to sell these devices but didn't want anyone who used them to speed.

Conspiracy to Engage in Speeding. The MPC defines as conspiracy as an agreement between two more more people that some member of the group will engage in conduct constituting a crime. MPC § 5.03(1). Here the charge could be that the company (through its employees) was agreeing with the purchasers of this product that they would engage in speeding. The MPC requires purpose for proof of conspiracy, and it explicitly adopts the same approach to determining mens rea as with complicity liability. (See the MPC Commentary reproduced on p. 792 of the text.) Thus, proof of the mens rea for complicity liability would establish the mens rea for conspiracy liability, and vice versa. The main difference would be the existence of an agreement. For purposes of conspiracy liability the parties would have to enter into an *agreement*, whereas to be an accomplice it is only necessary that there be *aid*.

Accomplice to Assault, Manslaughter or Negligent Homicide. The MPC defines assault to include recklessly causing bodily injury to another. The MPC includes two forms of homicide (manslaughter, § 210.3; and negligent homicide, § 210.4) that can be committed recklessly or negligently, as the case may be. If a purchaser of the product used it to avoid radar traps and got

into an automobile accident caused by excessive speed, our clients might be charged with negligent homicide or even manslaughter. As with speeding, the issue is whether or not they acted with the purpose of facilitating the conduct causing the injury. The case would be similar to *McVay* (695) and *Abbott* (697). In *McVay* the defendant told his employees to fire up a boiler that he knew to be defective. In *Abbott* the defendant encouraged his friend to engage in drag racing, which resulted in a fatal crash. We might cite the differences in *McVay*; there the defendant ordered the conduct; here there would be no such direct solicitation. Similarly, in *Abbott* there was direct encouragement to engage in the conduct. Here there would be a more difficult time proving it. However, the risk of conviction would be there. Similarly, in *Foster* (p. 698) the defendant was convicted for giving a knife to a co-defendant who later stabbed a suspected rapist. Foster's conviction was upheld.

As to the result of the conduct, the death, it is sufficient if the prosecution can establish that our clients were either negligent (in a prosecution for negligent homicide) or reckless (in a prosecution for manslaughter) with respect to that result (see § 2.06(4)).

As to assault, the prosecution would have to prove that our clients were at least reckless with respect to the risk of injury.

QUESTION 2

Marx could be charged with assault for the injury to Bob. In order to be guilty of assault, he