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SAMPLE ANSWER TO FINAL EXAM

MULTIPLE CHOICE

1. **(A)** is correct. (B) is incorrect, because even if voluntary, intoxication is a defense to crimes that require purpose or knowledge; (C) is incorrect because her *actions* were voluntary; her *intoxication* was not, and therefore might serve as a defense. (D) is incorrect for the same reasons that (B) is incorrect.

2. (A) is incorrect, because the obligation to retreat only applies when the actor *knows* that he can retreat *with complete safety*. Neither of these conditions is specified. (B) is incorrect, because the MPC permits the defense even where it is unreasonable. **(C)** is correct, because of the "imperfect justification" rule that the MPC follows; and (D) is therefore incorrect.

3. (A) is incorrect, because the minimum mens rea for rape is *recklessness*. (B) is incorrect, because Adam could be an accomplice to Carl's rape of Jill. **(C)** is correct, because the liability of the principal is not a precondition to liability as an accomplice. (D) and (E) are therefore incorrect.

4. **(A)** is correct, because was attempting to commit the crime; (B) is incorrect, because the MPC doesn't include the "dangerously close" requirement; (C) is incorrect because the behavior of going to her apartment could be found to be strongly corroborative of his criminal intent; (D) is incorrect, because the MPC looks at "the circumstances as [Tom] believes them to be."

5. (A) is incorrect, because recklessness is insufficient for the mens rea for attempt, or for complicity in an attempt; (B) is incorrect, because knowledge is also insufficient; (C) is incorrect, because if Tom took a substantial step, and Sarah was an accomplice, that would be sufficient; **(D)** is correct, because if she did have the purpose of facilitating his contact with children for the purpose of sexual contact, it would establish her liability for attempt.

6. (A) is incorrect, because Tom never had contact with the victim; (B) is incorrect, for the same reason; **(C)** is the correct answer; (D) is incorrect because the MPC does not recognize this form of legal impossibility.

7. (A) is incorrect, because there is no clear mens rea requirement for the circumstance element of this crime; (B) is incorrect, because the statute could be interpreted to impose no mens rea requirement for the circumstance element; (C) is incorrect, because the MPC is ambiguous with respect to this aspect of conspiracy law; **(D)** is therefore the correct answer.

8. **(A)** is the correct answer, under MPC § 3.02; (B) is incorrect, because duress only arises as a result of human pressure; (C) is incorrect, because it is not his behavior prior to the final act that is the subject of his criminal liability; even if he were negligent in bringing about the circumstances that led to his choice, Michael would not be guilty of murder; (D) is incorrect, because deadly force is only justified when *unlawful* force is directed toward the actor.

9. (A) is incorrect, because under MPC § 2.02(7) actual knowledge is not required; (B) is potentially correct if the statute were interpreted to extend "knowingly" to the fact that the waste was toxic, but it could be incorrect if the statute is not so interpreted; (C) is incorrect, because the boss's liability is irrelevant to her culpability; **(D)** is correct, because MPC § 2.02(7) permits it.

10. (A) is incorrect, because York's actions could still be a proximate cause of Lisa's death; **(B)** is correct, because proximate cause is a requirement of criminal liability under MPC § 2.03(2)(b); (C) is incorrect, because Woods may be acquitted, for example, by reason of insanity. (D) is incorrect because it omits the proximate cause requirement.

11. (A) is incorrect, because renunciation is a defense under § 2.06(6)(b) only if the actor either "wholly deprives [his complicity] of effectiveness" or "gives timely warning to law enforcement"; **(C)** is correct because Mike can be convicted as an accomplice under § 2.06(3)(a)(ii); (D) is incorrect for the reasons explained in (C).

12. (A) is incorrect, because the criminal conduct need only include a voluntary act, and

locking Larry into the closet was a voluntary act; (B) is incorrect because intoxication is not an effective defense to crimes for which recklessness suffices; **(C)** is correct, because permanent mental injury, even if it results from long-term drug abuse, may qualify as a mental disease. (D) is incorrect because (C) is a correct answer.

ESSAY QUESTIONS

QUESTION 1

The author is suggesting an abandonment of, or at least an exception to, the traditional prohibition of euthanasia. Before evaluating this proposal we must understand the rationale for the traditional rule. First, the criminal law has classically distinguished non-action (allowing someone to die) from action (killing). Ordinarily non-action is not criminalized, unless the actor owes a duty to prevent the harm. By contrast, taking action to cause another's death has traditionally required very significant justification, such as self-defense or necessity. Defenders of the traditional rule argue that a high burden must be met before allowing legal killing; for example, in *Dudley v. Stephens* even the desire to save one's life didn't permit legal killing of the cabin boy.

Further, allow euthanasia in "hard cases" would arguably be exploited, leading via a "slippery slope" to abuse of the privilege, as it arguably has been in places like the Netherlands. In particular, it is the vulnerable (the elderly, the disabled, the poor) who are most likely to be the victims of involuntary euthanasia, with a veneer of consent but more likely with pressure brought to bear upon the vulnerable to justify killing them.

By contrast, critics of the traditional rule point out that the distinction between killing and letting die is (at least to some extent) contrived; even a traditionalist like Justice Scalia would agree that, for example, a person who places himself on the beach and allows the waves to drown him has acted as much as the person who takes poison.

In addition, there are constitutional rights, such as the right to privacy, that may be infringed when the government places criminal penalties on the most agonizing and personal kinds of decisionmaking. As in other areas, the argument is that families, together with medical personnel, ought to be free to arrive at solutions that make sense for them as families rather than place the heavy hand of the law in the middle of it. Moreover, to the extent that these decisions infringe upon a person's autonomy to decide for themselves how to live, how to answer the "mystery of life," the law's guiding principle ought to be personal autonomy rather than imposed codes of behavior. To the extent that the criminal law is being used to impose a moral vision only shared by some members in society, it is being misused.

In answer, critics of euthanasia argue that it is precisely in the intimacy of the family that some of the most brutal violence takes place (such as battered spouses), and the criminal law has a rightful place in protecting society's interest in the value and dignity of each human life.

In addition to the merits of the respective arguments, the debate is in part about whether individual consent ought to be the guiding light, or whether other principles (such as nearness to death or the "approval" of the end to this particular life) should be considered. In addition, is this a question best left to legislatures, or is there an important role for courts in protecting individual rights -- whether a right to privacy or a right to life.

QUESTION 2

Shareef ("S") would face charges of violating the Criminal Use of Explosives ("CUE") statute. He can be charged with a variety of different versions of CUE (commission of the crime, attempt to commit the crime, and conspiracy to commit the crime), but all of them are second degree felonies.

S could defend on the basis of insanity.

Committing (2d degree) CUE

One way in which the crime can be committed is if an individual "attempts to damage or destroy, by means of fire or an explosive, any building, or other real or personal property." I'm assuming at the outset that a hand grenade is an explosive; its explosive quality is referred to on p. 11. The crime can also be committed by actually damaging or destroying property, but since that did not take place, we must focus on the version of the crime committed when one attempts to cause damage or destruction.

Under MPC § 5.01(c), criminal attempt occurs when the defendant, acting with the culpability otherwise required for the commission of the crime, purposely does . . . anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime." Here S appears to be planning to throw grenades in a shopping mall, which he hopes would result in damage or destruction of real property.

An attempt requires a substantial step that is "strongly corroborative" of the actor's criminal purpose (MPC § 5.01(2)). One of the acts that is considered a substantial step is "reconnoitering the place contemplated for the commission of the crime," which S did (p. 10).

If S were convicted of committing CUE, it is a second degree felony.

Attempting to Commit 1st degree CUE

Alternatively, S might be charged with attempting to commit 1st degree CUE. First degree CUE is the same, except for the infliction of personal injury. From the affidavit, it is clear that S intended to cause personal injury to people in the area around the garbage cans. Even if proof were lacking that S intended to cause personal injury, it is still a criminal attempt if S acted with respect to the result (personal injury) with the same culpability that is sufficient for commission of the offense. The aspect of the crime that makes it a first degree felony (personal injury) is a result element, and it may require a different mens rea from the conduct (attempting to destroy property). The prosecution would undoubtedly argue that the result element only requires recklessness, since it is the default setting for mens rea (MPC § 2.02(3)). On the other hand, we could argue that under § 2.02(4) you must apply the specified mens rea "maliciously" (which could be interpreted as requiring something more than recklessness) to the entire crime. The prosecution would probably respond with the argument that the definition of the crime does distinguish material elements for 1st degree CUE and thus maliciously only applies to the act of setting off the explosives rather than the element of causing personal injury.

If S were convicted of attempting to commit 1st degree CUE, it would still be a 2nd degree felony (MPC § 5.05(1)).

Conspiracy to Commit 1st degree CUE

S could also be charged with conspiring to commit 1st degree CUE. In order to be convicted of a conspiracy to commit a crime, the defendant must agree with another person that they will engage in conduct that constitutes the crime. In this case S agreed with the Confidential Source ("CS") (pp. 9-10) that they would both place grenades at the same time. Although CS never intended to do what they "agreed" to do, the MPC follows the unilateral conspiracy doctrine. Thus, even though CS never agreed to commit the crime, if S agreed with him, it is enough for a conspiracy conviction.

Because it is a conspiracy to commit a 1st degree felony, there is no overt act requirement. (§ 5.03(5))

Under MPC § 5.05(1), a conspiracy to commit a 1st degree felony is a felony of the second degree.

Merger Under MPC

Under the MPC, even if the defendant is guilty of all three crimes, he can only be convicted of one. MPC § 5.05(3) (combining all forms of preparatory conduct); MPC § 1.07(1)(b) (prohibiting conviction for both an offense and a conspiracy or other preparatory

conduct to commit the same offense).

Insanity Defense

The primary defense S would offer is mental disease or defect, MPC § 4.02. Under MPC § 4.02, no one can be convicted for otherwise criminal conduct if the defendant "at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law." We don't know what history of mental problems S might have, but we would have to meet one of the two prongs of the test. However, before getting to the appreciation and control prongs, we first must establish that S has a mental disease or defect, and that it was this defect that caused him to fail one of the two prongs. He apparently has the belief that God (Allah) wants him to commit acts of violence against innocent people in a shopping mall. Although this might casually be referred to as an "insane" idea, to constitute a defense it must be classified as a mental disease. Whether we could get psychiatric testimony to support this is questionable.

1. *Appreciation Prong* One good thing for S under the MPC is that the test is whether the defendant *appreciates* the wrongfulness of his conduct. This is more than a cognitive test; it requires appreciation of wrongfulness. However, cases have held that it is appreciation of *legal* wrongfulness, as distinguished from *moral* wrongfulness, that is required. Thus, in *State v. Crenshaw*, a defendant unsuccessfully tried to use his religious beliefs to show that he could not distinguish right from wrong; but the court made it clear that knowing the moral wrongfulness is not required so long as the defendant knows what the law requires. If this standard is used, S doesn't have much hope. However, in *Crenshaw* (although it is not a decision based on the MPC it is not precluded by the MPC definition) the court left open the question of whether a *deific decree* would constitute a defense. It would seem in this case that S thought he was doing the will of God (Allah), but whether this would even qualify as a "deific decree" is questionable.

2. *Control Prong*. There doesn't seem to be any evidence that S suffered from an inability to control his conduct; it's just that he makes bad decisions.

We would also have the problem of getting S to agree to plead insanity. He might view it as a betrayal of his religious beliefs, but if he is facing a long prison term he might change his mind.

QUESTION 3

There are a couple of areas in which a non-MPC jurisdiction might use an approach that would change S's potential liability.

Attempt. Some jurisdictions impose a higher standard for what constitutes a criminal attempt; they might permit conviction for attempt only if there is a "dangerous proximity" to success. Under that standard, S might be viewed as never getting close enough to success to justify a conviction.

Conspiracy. Many jurisdictions do not permit conviction for conspiracy unless there is genuine agreement. In other words, unilateral conspiracy might be rejected. Also, under the *Pinkerton* rule followed by some jurisdictions (including federal law), it is permissible to obtain a separate conviction for the substantive crime and for a conspiracy to commit a substantive crime. Thus, if S conspired to commit 1st degree CUE and actually committed 2d degree CUE (by attempting to use explosives to destroy a building), that would be two convictions, rather than the one permitted under the MPC's merger doctrine.

Insanity. Some jurisdictions have adopted different standards for the insanity defense. In general the move has been toward a stricter interpretation of insanity, limiting it to cognitive knowledge of legal right and wrong (the *M'Naghten* test) rather than the "appreciation" test under the MPC. Similarly, many jurisdictions have abandoned the control prong.

Legal Impossibility. Some courts (see *Jaffe*) have dismissed prosecutions based on legal

impossibility. The MPC rejects the distinction between factual and legal impossibility (retaining it, however for "true" legal impossibility -- not present here). I don't think it would do S much good, but it might be an argument that S never was in possession of explosives and thus couldn't attempt to use them.

Fall 2006 Criminal Law Checklist Exam _____

QUESTION 1

- ☐ **Overview**
- ☐ Support for **traditional rule**
- ☐ Distinction between **act** and omission
- ☐ **Killing** v. letting die
- ☐
- ☐ **Slippery** slope
- ☐ Protection of **disabled, vulnerable**
- ☐ State's leg. interest in **preserving life**
- ☐
- ☐
- ☐ **Criticism** of traditional rule
- ☐ **Privacy** concerns
- ☐ Relief of **Suffering**
- ☐ Individual **autonomy**
- ☐ Criminal Law Can't Enforce **Morality**
- ☐ Can **consent** be proper boundary
- ☐ Q for **Legislature** vs. **Courts**?
- ☐
- ☐
- ☐

QUESTION 2

- ☐ **Overview**
- ☐ Criminal Use of Explosives **(CUE)**
- ☐ Incorporates **Attempt** concept
- ☐ Is hand grenade an **explosive**?
- ☐ **Mens Rea** for Attempt
- ☐ Evidence **establishes** purpose
- ☐
- ☐ **Substantial Step** under 5.01(c)
- ☐ Strongly **corroborative**
- ☐ **Reconnoitering** shopping mall
- ☐ Acquisition of weapons
- ☐ Simple CUE is **2d °** felony
- ☐
- ☐ Attempt to Commit **1st °** CUE
- ☐ What is **Mens rea** for result?
- ☐ Might be **"maliciousness"**
- ☐ Might be **"recklessness"**
- ☐ Attempted 1st ° felony is **2d °** felony
- ☐ **Conspiracy** to Commit 1st ° CUE
- ☐ Requires **Agreement**
- ☐ Evidence Shows Shareef **Agreed**
- ☐ MPC permits **unilateral** conspiracy
- ☐ **No overt** act requirement
- ☐ Conspiracy to commit 1st ° is **2d ° felony**
- ☐
- ☐ **Merger** Principle
- ☐ No conspiracy regarding **separate** acts
- ☐ No **substantial** step to separate acts
- ☐
- ☐ **Insanity** Defense
- ☐ Did Shareef have a **Mental Disease**?
- ☐ **Appreciation** test favors Shareef
- ☐ Concerns ***legal*** wrongfulness, not *moral*
- ☐ **"Deific Decree"** exception?
- ☐ **Control** Prong?
- ☐ Would Shareef **willingly** plead insanity?
- ☐
- ☐

QUESTION 3

- ☐ Test for what constitutes **Attempt**
- ☐ **Dangerous proximity** test
- ☐
- ☐ **Conspiracy**
- ☐ No **unilateral** conspiracy?
- ☐ Separate crime: **No merger** with substantive offense
- ☐
- ☐
- ☐ Test for **Insanity**
- ☐ Reversion to **M'Naghten**
- ☐ **Cognitive** standard, not "appreciation"
- ☐ Abandonment of **control** prong
- ☐
- ☐ Legal **Impossibility** as Defense
- ☐
- ☐