

SAMPLE ANSWER TO FINAL EXAM

MULTIPLE CHOICE

1. **(A) is correct**, because the "imperfect self-defense" principle of the MPC permits the use of the defense to a charge that requires purpose, while permitting conviction for any crime for which recklessness or negligence is sufficient, if the defendant was reckless or negligent (as the case may be) in choosing to use deadly force. (b) is incorrect, because he actually committed two crimes. One was the attempt to kill Quincy; the other was the assault of Russell; (c) is incorrect, because it states the rule followed by the New York court in *Goetz*, which rejected the MPC standard; (d) is incorrect, because assault can be established if the defendant is negligent in the use of a deadly weapon and causing serious bodily injury.

2. (a) is incorrect, because the facts don't establish whether or not the offense is merely a violation or is a crime that permits imprisonment; (b) is incorrect, because it involves Sam in a mistake of law, which is not an excuse for violating the law; **(C) is correct**, because violations may be subject to strict liability; (d) is incorrect, for the same reason discussed in (a).

3. (a) is incorrect, because Daniel could still owe a duty to help her even if she didn't have a legal status that imposed a duty to act; **(B) is correct**, because if Daniel wasn't negligent, he wouldn't have the mens rea required for conviction; (c) is incorrect, because it assumes that Daniel owed a duty to act; (d) is incorrect, because seriousness of injury by itself doesn't create a duty of care.

4. (a) is incorrect, because the standard for carrying a gun is recklessness; (b) is incorrect, because it imposes no mens rea requirement for that element; **(C) is correct**; (d) is incorrect, because burglary doesn't require either bodily harm nor the commission of the crime which was the purpose for the unlawful entry.

5. (a) is incorrect; the MPC doesn't specify the way in which mens rea requirements for accomplice liability are determined for circumstance elements; **(B) is correct**, because George had to have the purpose of encouraging the conduct that constitutes the crime; (c) is incorrect, for the same reasons as (b); (d) is incorrect, for the same reasons as (b) and (c).

6. [This was a poorly worded question. I wound up giving credit for either answer A, C or D.] The mens rea for inflicting serious bodily injury is recklessness, and there is no evidence that Frank was aware of the risk that his conduct might cause injury. Thus I would have preferred answer A, but there are reasons to put down either C or D.

7. (a) is incorrect, because it is no defense that the victim initiated the sexual activity; (b) is incorrect, because it doesn't establish whether or not Tom reasonably believed she was of age; **(C) is correct**; even though it states a higher standard of culpability (recklessness) than is necessary for conviction, a higher level of culpability can be substituted for a lower one (in this case, negligence); (d) is incorrect because one cannot be an accomplice if one is a victim for whose protection the statute was enacted.

8. (a) is incorrect, because he would be treated as though he were sober; (b) requires a purpose standard, whereas an attempt only requires the same culpability (in this case, negligence) that is required for conviction of the crime being attempted; **(C) is correct**; (d) is incorrect, because it requires too much in the way of culpability (recklessness), whereas a conviction can be obtained on the basis of negligence with respect to the age element.

9. (a) is incorrect, because it doesn't require force or coercion; (b) is incorrect, for the same reasons as (a); (c) is incorrect, because it requires a higher level of culpability (purpose), and doesn't talk about force or coercion; **(D) is a correct** statement of the law.

10. (a) is incorrect, because the MPC doesn't require imminence -- only that the use of force was "immediately necessary." (b) is the standard for duress, not for self-defense; (c) is incorrect because it one can never invoke the standard of necessity as a justification for homicide; thus **(D) is the correct** answer.

ESSAY QUESTION 1

The proposed legislation is sometimes referred to as a Good Samaritan law, although it should not be confused with laws that offer immunity to those who voluntarily choose to act as "Good Samaritans." This type of law has actually been adopted in a few states (such as Vermont), with similarly modest penalties for violation. Many European countries also have adopted a similar type of law.

Pros. As the professor's letter indicates, imposing a penalty for failing to notify authorities of a person in peril might contribute marginally to the rate at which people report such situations. It is true, as the letter claims, that law does influence perceptions of morality, and it is not unusual for the law to be used as an instrument of social change.

Cons. On the other hand, many of the determinants of moral behavior are beyond the reach of the law. Many people are generous, even heroic, in the absence of legal rewards for such behavior or penalties for failing to do so. A \$250 fine hardly seems commensurate with the moral gravity of failing to help someone in peril.

ESSAY QUESTION 2

There are some preliminary issues, but the primary question is whether or not Dixon would be entitled to the defense of duress. There are actually four crimes being charged, so I will divide the discussion into two crimes (Receipt / False Statement) and two dates (21 and 24).

Receipt 21

Actus Reus. In order to convict Dixon of the crime of receiving a firearm while under indictment for a felony (EPC § 123.45), the state would have to prove that Dixon received the firearm. It appears that there is no doubt concerning the fact that Dixon actually received a firearm. Even though she may have later given it to Wright, her initial receipt satisfies the actus reus element.

Mens rea. The mens rea for this crime is recklessness. It appears that Dixon actually knew that she was under indictment and therefore it would satisfy the minimum mens rea requirement.

Duress. Dixon would claim that she is not liable for this crime because she was under duress. The Model Penal Code states, "It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist."

Several subissues are presented: first, does Dixon qualify for the defense? Wright had used unlawful force against Dixon in the past, but all that it says is that Wright "insisted" that she do his bidding on this occasion. Dixon would argue that she reasonably believed that if she didn't acquiesce, Wright would either beat her (as he had done in the past) or carry out the undefined "threats" against her children. She would at least ask for this to be considered a jury question.

Second, what is "the situation" in which Dixon found herself? Dixon would argue that her situation includes what has been called the "battered woman syndrome." Most jurisdictions now permit the use of expert testimony to explain to the jury the effect of continued domestic violence upon the

perception of the victim. Although most of that testimony is in the context of the use of violence against the abuser, here it might be relevant to determining the standard of "reasonable firmness." The prosecution would certainly argue that her subjective perceptions should not set the standard for "reasonable firmness," but a judge might allow this type of testimony.

Third, the MPC provides that duress is unavailable as a defense if the actor recklessly placed himself in a position where duress would be subjected to duress (MPC § 2.09(2)). In order for Dixon to be reckless, she would have to be aware of the risk that she would be coerced into committing crimes in order to help Wright. Since Wright seems to have a criminal background, Dixon might very well have been aware of that risk. In addition, the prosecution could argue that her failure to separate herself from Wright and thus remove herself from that risk constituted a gross deviation from the standard of a law-abiding person, thus constituting recklessness.

Receipt 24

The analysis of her receipt of the additional gun on the 24th would be similar to the analysis of the previous count, but it might be even more difficult for her to establish the defense of duress since Wright wasn't with her. She might have feared for the safety of her children, but again that would depend upon the extent to which Wright was holding them "hostage" until Dixon returned.

False Statement 21

EPC § 123.67 makes it a 3d degree felony to give a false statement where such statement is either intended or likely to deceive the dealer. Even though the mens rea here might be higher than for § 123.45, the facts state clearly that Dixon knew that her statement was false, and she presumably intended to deceive the dealer into thinking that she could lawfully receive the firearm. As with the previous analysis, the defense of duress could be raised, but similarly she would be disqualified from using the defense if she was reckless in putting herself into a position where she would be subject to duress.

False Statement 24

Again, the same analysis would apply as with the previous false statement count, again with the qualification that duress would be even more difficult to establish where Wright wasn't actually present.

Insanity Defense?

There is no evidence that Dixon was suffering from a mental disease or defect that would result in her lacking substantial capacity either to appreciate the wrongfulness of her conduct or to conform her conduct to the requirements of law.

Summary

Under the best of circumstances for Dixon, a jury could find that on both occasions she succumbed to a threat that a person of reasonable firmness would have been unable to resist, and she would be acquitted of all four charges. Under the worst of circumstances, a jury could find that she was guilty of all four counts, and under the MPC would be subject to a sentence of between one year and five years for each count.

QUESTION 2½

The major difference if the MPC had not been adopted is the treatment of duress. Many jurisdictions would reject the use of a duress defense unless the threat was imminent. Thus, it is conceivable that Dixon could qualify for the duress defense if Wright was present when she was making

the false statement(s) and illegally receiving the firearm. However, when she went by herself, it seems highly unlikely that she could show that Wright's threats were imminent.

Another difference might be in the way that the "battered woman syndrome" might be used to affect the determination of whether she was acting as a person of "reasonable firmness."

A final difference would be in the application of conspiracy law in jurisdictions that follow the *Pinkerton* rule. In addition to her guilt for the substantive crimes, she could be charged with additional counts for conspiring with Wright to commit them.

QUESTION 1

Overview

- "Good Samaritan" laws
- A few jurisdictions **have** them
- Otherwise**, no legal duty to act
- Pros
- Criminal law **influences** societal values
- Encouraging** good behavior
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Cons

- Limits** on influence of criminal law
- Modest fine sends **mixed signal**
- Many people already act **heroically**
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QUESTION 2

Overview

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- EPC § **123.45** (Jan. 21)
- Actus Reus**
- Actually **received** firearm
- Giving it to Wright **doesn't change** receipt
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- Mens Rea**
- Minimum of **Recklessness**
- Actual **Knowledge** satisfies minimum culp.
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- Duress** defense
- MPC standard
- Do **Wright's** threats qualify?
- Was **Dixon** personally threatened?
- How did Wright "threaten" **children**
- No **imminence** requirement
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- What "reasonable **firmness**" mean?
- What was Dixon's "**situation**"?
- Is **battered woman** evidence admissible?
- Were Dixon's fears **unreasonable**?
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- Is Dixon **disqualified** b/c of recklessness?
- Was she **aware** of the risk of threats?
- Was her exposure to risk a **gross deviation** from standard of a law-abiding person?
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- False **Statement** (Jan. 21)
- Actus reus** requirement
- Mens rea**
- She intended to **deceive**
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- Jan. 24 crimes
- More **Indirect** connection to threats
- Potential conviction on four counts (or 0)
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QUESTION 2½

- Overview
- Primary difference re **duress**
- Imminence** standard
- Standard other than "**reasonable firmness**"
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- No imminence on **Jan. 24**
- Is "**battered woman**" evidence admissible?
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- Could **conspiracy** be charged?