

MIDTERM EXAM SAMPLE ANSWER

MULTIPLE CHOICE

1. (a) incorrect because his mistake with respect to the invalidity of the permit might be considered a mistake of law. (b) is incorrect because it states too high a culpability standard (knowledge) where the statute is silent and would therefore be a recklessness standard. (c) is similarly flawed. **(d) is correct**, because it states correctly what the prosecution would have to prove.

2. (a) is incorrect for reasons similar to answer (a) in question 1. (b) is similarly incorrect; (c) is incorrect because juries do not find whether or not statutes are vague - that's a question of law. Therefore **(d) is the correct** answer.

3. (a) is incorrect because there is no vicarious liability for crimes that are more than violations. (b) is incorrect because she wouldn't need to be present in order to act negligently; leaving the children with Bowden might be considered negligent. **(c) is correct** because it would negate the mens rea that is required by the statute; (d) is incorrect because it states what is in effect a standard of recklessness (requiring an awareness of the risk) rather than negligence (which requires that one should be aware of the risk).

4. (a) is incorrect because Bowden may not have been negligent in failing to rescue them, but rather in causing the fire in the first place. (b) is incorrect because one can owe a duty by voluntarily assuming the duty to use reasonable care. (c) is incorrect because it imposes a standard of recklessness when the standard is negligence. Therefore **(d) is the correct** answer.

ESSAY

This case is based on the facts of *State v. Schneidewind*, 2006 WL 2829832 (Hawai'i 2006), an unpublished opinion, which held (erroneously, I believe) that Schneidewind was properly convicted of violating the statute because it was a mistake of law.

In order to convict Leopoldo Schneidewind ("LS") of violating the protective order, it would have to be shown that he committed an act proscribed by the statute (the *actus reus*) and that he did so with the *mens rea* -- the mental culpability -- that is specified.

*Actus Reus.* There seems little doubt that LS contacted his ex-wife in this case. Although he did so through agents, that is something clearly identified in the protective order as the same as acting alone, and LS certainly did so voluntarily. There is no real defense based upon the *actus reus* component.

*Mens Rea.* The MPC divides the mens rea inquiry into different levels of culpability, and prescribes rules for how these different levels apply to different elements of the crime. Here the minimum culpability is "knowingly," which is also satisfied by acting intentionally. Here LS certainly knew what he was doing, but he would argue that he did not know that what he did was in violation of the protective order. In fact, he was quite certain, based upon the advice from his lawyer, that he was not in violation of the order. However, whether or not this will excuse him depends upon whether the court classifies his error as a mistake of law or a mistake of fact.

*Mistake of Law.* MPC § 2.02(9) states the familiar rule that "ignorance of the law is no excuse." More specifically, it states that, unlike the culpability required for other elements of the offense, there is no need for the prosecution to show that the defendant had any knowledge or reason to know of the "existence, meaning or application of the law *determining the elements of an offense . . .*" (italics added) If LS's mistake regarding the meaning of "contact" was a mistake regarding the application of the law, then he can't offer his good faith belief as a defense. On the other hand, if he made a mistake of fact, or of *non-penal law*, then he would be entitled to show that he did not commit the violation *knowingly*.

*Mistake of Fact / Non-penal Law.* MPC § 2.04 states that a mistake of fact or [non-penal] law is a defense if it negatives the mens rea that is required. Since LS didn't know that "contact" included service of process by an agent, that would negative the "knowingly" requirement of EPC § 586-11, but only if this is considered non-penal law, i.e., if it does not constitute the law *determining the elements of an offense*. We would argue that LS is in a position similar to that of *Smith*, the tenant who destroyed fixtures that belonged to his landlord. Because he was mistaken about the law of property, not the law of malicious destruction, Smith was allowed to offer his mistaken belief as a defense. We would similarly argue that LS made a mistake as to the meaning of the protective order, not as to whether or not a violation of a protective order is a crime. On the other hand, a court might find that in contacting Russell LS was making a mistake regarding the application of the law and reject a mistake defense.

*Official Reliance.* Even if the court determined that LS made a mistake of law rather than a mistake of fact, there is an escape hatch for official reliance (MPC § 2.04(3)(b)(iv)). Applying that section, it appears that LS reasonably relied upon his attorney, and the attorney in turn did due diligence. However, to qualify for this relief the defendant must have relied upon an interpretation of the law by "the public officer or body charged . . . with responsibility for the interpretation . . . of the law." The two prosecuting attorneys, much less LS's attorney, wouldn't qualify. Thus, it seems unlikely that he would succeed in an official reliance defense, although it might mitigate his punishment.

## ESSAY CHECKLIST

- Overview**
- Actus **Reus** + **Mens Rea**
- Actus Reus** easily satisfied
- LS **voluntarily** instructed agents
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- Mens rea**
- Standard of **knowing**
- Mistake of **Law**
- Penal** or **non-penal** law?
- Did he make a mistake regarding the law **determining the elements** of the offense?
- If so, **no defense**
  
- Mistake of **Fact** or **Non-penal** law
- Protective Order as **Non-penal** law
- MPC: A defense if it **Negatives** the mens rea
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- Analogy to **Regina v. Smith**
- LS didn't **know** protective order prohibited serving process
  
- Official **Reliance** (§ 2.04(3)(b)(iv))
- Reasonable** reliance on attorney
- Not likely to be found the "**public officer**"
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