

Exam # _____

Professor DeWolf
Summer 2010

Criminal Law
July 17, 2010

MID-TERM EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL YOU ARE TOLD TO BEGIN.

THIS EXAM WILL LAST 75 minutes.

If you are using Examsoft, follow the proctor's instructions. If you are using bluebooks, please make sure your exam number is on each of the bluebooks. Start a NEW BLUEBOOK for each question.

The MODEL PENAL CODE applies to all multiple choice questions and the Essay Question.

(1) MULTIPLE CHOICE. Please select the *best* answer. Some answers may give a wrong reason for an otherwise correct result. Make sure that you read *all* the answers thoroughly and select the one that comes closest to a correct statement of the law. Write the letter of the correct answer in your bluebook, or for users of Softest, at the beginning of the Essay Question.

(2) ESSAY. You should analyze the problem assuming that the Model Penal Code is in force in the jurisdiction where the facts take place.

MULTIPLE CHOICE

FACTS FOR QUESTIONS 1 and 2

Roger Steele grew up in the state of Evergreen. He moved to West Dakota for a job, but he still had family in Evergreen. Evergreen instituted a lottery for hunting trophy animals that permitted Evergreen residents to apply on line. Steele states that he read the conditions “very carefully” and concluded that he qualified as an Evergreen resident. He listed his wife’s parents’ address as his for purposes of his application. He won the lottery, and was then granted a “once in a lifetime” permit. He succeeded in taking a coveted trophy male mule deer. Authorities then learned of his residence in West Dakota and charged him with violating Evergreen Penal Code § 23-20-3, which declares as follows:

A person is guilty of wanton destruction of protected wildlife, a third degree felony, if that person takes protected wildlife unaccompanied by a valid license, permit, tag, certificate of registration, bill of sale, or invoice

1. In order to convict Steele of violating § 23-20-3, the prosecution would have to prove:
 - (a) Steele was reckless in forming his belief that he was an Evergreen resident
 - (b) Steele knew that he was not an Evergreen resident
 - (c) Steele knew that he did not have a valid permit
 - (d) Steele’s permit was not valid, regardless of what Steele believed.

2. Steele would be entitled to an acquittal if the jury found:
 - (a) A reasonable person would believe that he qualified for a permit
 - (b) Steele actually believed that the permit he possessed was valid
 - (c) The standard for what constituted a “resident” was impermissibly vague
 - (d) None of the above.

FACTS FOR QUESTIONS 3 and 4

Sharan Ann Williams had two daughters, Ujeana and Precious, aged 7 and 8. She went to the home of her boyfriend, Herbert Bowden, and informed him that she wanted to go out with friends. The girls did not want to be left in the dark, so when it was time to go to bed Bowden put a candle in a pie plate and set it on the floor. After Williams left, Bowden periodically checked on the girls but didn't blow the candle out. Bowden fell asleep on the couch in the living room. He was awakened at 1:00 a.m. by loud screams and the sight and smell of a house fire. He attempted to rescue the girls but was unsuccessful. They both perished in the fire.

3. In a prosecution of Williams for negligent homicide (defined as causing the death of another through negligence), which of the following is true?
- (a) Williams could be held vicariously liable for Bowden's failure to prevent the fire
 - (b) Williams could not be convicted if she wasn't present when Bowden failed to extinguish the candle
 - (c) Williams could not be convicted if she reasonably entrusted the care of her children to Bowden
 - (d) Williams would be guilty of negligent homicide only if she was aware of the risk of leaving her children with Bowden
4. In a prosecution of Bowden for negligent homicide, which of the following would be true?
- (a) Bowden would not be guilty if he did not owe a duty to rescue the children
 - (b) Bowden did not owe a duty to rescue the children because he was not legally or biologically related to the children
 - (c) Bowden would not be guilty if he made a reasonable effort to rescue the children
 - (d) None of the above.

ESSAY QUESTION

Vickie Russell filed for divorce from her husband, Leopoldo Schneidewind. In the course of the family law proceedings, the family law judge entered a protective order that prohibited Schneidewind "along with any of his officers, agents, servants, employees, attorneys, or any persons in active concert or participation with them" from having any contact with Russell, their minor daughter, and also prohibited being or passing within 100 yards of Russell's residence or workplace for a period of one year from the date of the order. Three weeks after the issuance of this order, Schneidewind desired to serve legal documents on Russell. He called his attorney, Gerald Johnson, who in turn contacted two friends of his who were prosecuting attorneys. Based upon his own experience as well as the advice of his two friends, Johnson told Schneidewind that service of legal documents would not constitute "contact" within the meaning of the protective order. Schneidewind subsequently asked two friends of his, on two separate occasions, to serve legal documents upon Russell at her residence.

Schneidewind was then charged with violating Evergreen Penal Code § 586-11, which reads as follows:

Violation of an order for protection. (a) Whenever an order for protection is granted pursuant to this chapter, a respondent or person to be restrained who knowingly or intentionally violates the order for protection is guilty of a misdemeanor.

You work in the office of a criminal defense attorney to whom Schneidewind has been referred. Please analyze his potential criminal liability.

SELECTED PROVISIONS OF THE MODEL PENAL CODE

§ 2.02. General Requirements of Culpability.

(1) Minimum Requirements of Culpability. Except as provided in Section 2.05, a person is not guilty of an offense unless he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.

(2) Kinds of Culpability Defined.

(a) Purposely.

A person acts purposely with respect to a material element of an offense when:

(i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

(b) Knowingly.

A person acts knowingly with respect to a material element of an offense when:

(i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

(ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(c) Recklessly.

A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(d) Negligently.

A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

(3) Culpability Required Unless Otherwise Provided. When the culpability sufficient to

establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly or recklessly with respect thereto.

(4) Prescribed Culpability Requirement Applies to All Material Elements. When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(5) Substitutes for Negligence, Recklessness and Knowledge. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

(6) Requirement of Purpose Satisfied if Purpose Is Conditional. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.

(7) Requirement of Knowledge Satisfied by Knowledge of High Probability. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist.

(8) Requirement of Wilfulness Satisfied by Acting Knowingly. A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

(9) Culpability as to Illegality of Conduct. Neither knowledge nor recklessness or negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such offense, unless the definition of the offense or the Code so provides.

(10) Culpability as Determinant of Grade of Offense. When the grade or degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly or negligently, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

§ 2.04. Ignorance or Mistake.

(1) Ignorance or mistake as to a matter of fact or law is a defense if:

(a) the ignorance or mistake negatives the purpose, knowledge, belief, recklessness or negligence required to establish a material element of the offense; or

(b) the law provides that the state of mind established by such ignorance or mistake constitutes a defense.

(2) Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense had the situation been as he supposed. In such case, however, the ignorance or mistake of the defendant shall reduce the grade and degree of the offense of which he may be convicted to those of the offense of which he would be guilty had the situation been as he supposed.

(3) A belief that conduct does not legally constitute an offense is a defense to a prosecution for that offense based upon such conduct when:

(a) the statute or other enactment defining the offense is not known to the actor and has not been published or otherwise reasonably made available prior to the conduct alleged; or

(b) he acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in (i) a statute or other enactment; (ii) a judicial decision, opinion or judgment; (iii) an administrative order or grant of permission; or (iv) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense.

(4) The defendant must prove a defense arising under Subsection (3) of this Section by a preponderance of evidence.