

Exam # _____

Professor DeWolf
Spring 2025

Criminal Law
February 6, 2025

MIDTERM EXAM

Instructions

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

THIS EXAM WILL LAST **60 minutes**. It is a CLOSED BOOK EXAM.

While waiting for the exam to begin, please read these instructions carefully and be sure that you are otherwise ready to begin.

There is ONE ESSAY question. It asks you to assess criminal liability under the Model Penal Code given a hypothetical set of facts.

GOOD LUCK!

ESSAY QUESTION

Gerald Magnant and John Davis were nonsupervisory employees of the Kimshee Bay Indian Community (KBIC), located entirely within the State of Everglade. The KBIC, a federally recognized Native American tribe, recently voted to initiate litigation challenging the authority of the State of Everglade to require tax stamps for tobacco products sold by the tribe to nontribal consumers. On December 11, 2024, the Everglade State Police pulled over a KBIC-owned pickup truck, driven by Davis, for speeding on the Everglade Turnpike. The traffic stop was captured on video. Davis consented to a search of the utility trailer attached to the truck, telling the trooper that it contained “supplies” and “chips.” The trailer actually contained 56 cases holding over 600,000 “Seneca” cigarettes marked with KBIC stamps but not with stamps issued by the Everglade Department of Revenue. The trooper told Davis, “[Y]ou knew that stuff was back there,” to which Davis replied, “I’m just a worker.” The truck’s passenger, Magnant, admitted that he helped Davis load the trailer.

Davis and Magnant were each charged with violating Everglade Revised Statutes § 205.428(3), which provides:

It is a third degree felony for a person to possess, acquire, transport, or offer for sale 3,000 or more cigarettes, where the packaging of such cigarettes does not contain a valid tax stamp.

You represent Davis. Please evaluate the likelihood that he can be convicted. Assume for purposes of your analysis that Everglade has adopted the Model Penal Code in its entirety, and that the KBIC stamp would not be considered a valid tax stamp.

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.