

FINAL EXAM SAMPLE ANSWER

MULTIPLE CHOICE

1. (A) is incorrect, because a solicitation does not require agreement on the part of the object of the solicitation; (B) is incorrect for the same reason; (C) is incorrect, because the killing must be *immediately* necessary in order to prevent rape, kidnapping, or death; thus, **(D) is the correct** answer.

2. (A) is incorrect, because one can be guilty of solicitation even if the one being solicited isn't receptive to the solicitation; **(B) is correct**, because her words could be interpreted as encouraging the commission of the crime; (C) is incorrect for the same reason as (A); (D) is incorrect because it isn't sufficient to show that Melanie was lying about the abuse; she must still have the purpose of encouraging murder.

3. (A) is incorrect, because the threat doesn't need to be imminent; it only needs to be "immediately necessary." (B) is incorrect, because she might claim imperfect self-defense. **(C) is correct**, for the same reason as (B); (D) is incorrect, because imperfect self-defense doesn't require the reasonableness of a belief in the need for self-defense, so long as the mens rea required is higher than negligence (which in this case, solicitation, it is).

4. **(A) is correct**, because it is the standard of duress (although it assumes ; (B) is incorrect, because "but-for" causation does not apply in cases of accomplice liability; (C) is incorrect, because negligence in subjecting oneself to duress is sufficient for a conviction only for those crimes for which negligence suffices as the minimum culpability; murder is not one of those crimes; (D) is incorrect, because it would be sufficient to deny the defense of duress if one is reckless in putting oneself in a situation where duress will probably be applied.

5. (A) is incorrect, because driving the car was a voluntary action; (B) is incorrect, because if she was negligent in failing to recognize that the car had been negligently repaired, her mens rea would be sufficient to satisfy the minimum culpability for the crime; **(C) is correct**, because it would constitute recklessness, which more than satisfies the minimum culpability, which is negligence. (D) is incorrect, because (C) is a correct answer.

6. (A) is incorrect, because it was a mistake of law; (B) is incorrect, because Mike could be guilty as an accomplice; (C) is incorrect, because Mike would have to have the *purpose* of facilitating the illegal copying; (D) is incorrect, because the "natural and probable consequences" standard (the *Pinkerton* standard) is not accepted by the MPC; thus **(E) is the correct** answer.

7. (A) is an incorrect answer, because it assumes that Ann owed a duty to prevent Caroline from choking. She might, but it's not necessarily the case. (B) is incorrect, because it states a negligence standard, and the statute requires at least recklessness. **(C) is correct**, because causation is an essential part of the crime definition. (D) is incorrect for the same reason as (A) -- it assumes a fact not necessarily the case.

8. (A) is (partially) correct, because intoxication can be a defense to a crime requiring knowledge or purpose; (B) is (partially) correct, because manslaughter only requires recklessness, and intoxication is effectively irrelevant to a finding of recklessness; (C) is (partially) correct, because extreme emotional disturbance reduces murder to manslaughter. Thus, **(D) is the best answer** and (E) is similarly incorrect.

9. (A) is incorrect, because the mens rea with respect to the circumstance element of the

crime (the amount of marijuana) is not defined by the MPC with respect to accomplice liability; (B) is similarly incorrect; (C) is similarly incorrect. Thus, **(D) is the correct** answer.

10. (A) is incorrect, because her growing marijuana was directly related to the alleviation of the evil she was hoping to avoid; **(B) is correct**, because in the absence of such proof there is no necessity; (C) and (D) are incorrect, because it is the actual necessity of her conduct, rather than her belief about the conduct, that determines whether or not the defense of necessity applies.

11. (A) is (partially) correct, because it accurately states the rule with respect to the law of conspiracy. (B) is (partially) correct, because it correctly states the rule regarding accomplice liability; (C) is (partially) correct because of the "merger" rule. Thus, **(D) is the best answer**, and (E) is correspondingly incorrect.

12. (A) is incorrect, because the default culpability is recklessness with respect to all of the elements (including Jack's identity as a law enforcement officer); **(B) is the correct** statement of the rule; (C) imposes too high a standard, as does (D).

ESSAY 1

There are strong arguments both for and against:

Pro: Capital punishment in such cases would serve several purposes of punishment. (1) *Retribution.* The punishment should fit the crime. The rape of a child, particularly one below the age of 10, is so horrific in its consequences that only the most severe punishment is appropriate. Particularly where the defendant has been convicted of two previous rapes, there can be little question that the defendant *deserves* the most severe punishment. Moreover, to the extent that "vengeance" is questioned as a legitimate basis for punishment, this crime more than any would fit the claim by Sir James Fitzjames Stephen that it is "morally right to hate criminals." Otherwise, society's failure to impose the most severe punishment would undermine society's condemnation of the behavior. (2) *Deterrence.* While there is fierce debate over whether capital punishment deters murder, and there is no evidence as to whether capital punishment would deter child rape, one could argue that whereas murder is often a result of passion, child rapists frequently display stealth and cunning, and might "calculate" to a greater extent than other criminals. (3) *Incapacitation.* Obviously the execution of child rapists will protect the public, although it is debatable whether it provides greater protection than life without parole. (4) *Rehabilitation.* While rehabilitation might be an appropriate goal for certain kinds of offenses, the repeat child rapist is the least likely to qualify for rehabilitation.

In answer to the question about constitutionality, the decision rejecting the death penalty for child rape (*Kennedy v. Louisiana*) was a 5-4 decision and relied heavily upon "trends" both nationally and internationally. If Evergreen and other states pass such laws, and particularly if they can be distinguished from the statute in *Kennedy* by reason of the "3-strikes" character, it might be found constitutional.

Con. The first argument against this law is that the Supreme Court has already found a similar law unconstitutional (*Kennedy v. Louisiana*). The point of the decision was that imposing the penalty of death is commensurate only with a crime that results in death. Otherwise the penalty is disproportionate. Even if it were found constitutional (because of a change in the court), it still fails to satisfy the expectations of the four purposes of punishment: (1) *Retribution.* Although executing child rapists would satisfy the desire to "get even" with the wrongdoer, a criminal justice system, in order to encourage law-abiding behavior, must be measured. Executing child rapists would be excessive and disproportionate, and would therefore undermine the principle that punishment fits the crime. (2) *Deterrence.* Executing child rapists might actually make it more likely that children will be hurt or killed, by eliminating the difference in penalty between leaving a rape victim alive and killing the witness to the crime. There is strong evidence that sex crimes are

products of compulsion, and not susceptible to the kind of "calculation" that the deterrence principle relies upon. (3) *Incapacitation*. Executing criminals is actually more expensive than life imprisonment. Thus, for a lower cost, the public can be protected from future crime by life imprisonment without possibility of parole. (4) *Rehabilitation*. Even though the prospects for reforming child rapists is remote, the rehabilitation principle looks for at least the possibility that the humanity and dignity of the offender can be restored. Execution is a rejection of the potential every human being has the ability to accept responsibility and change their behavior.

ESSAY 2

The facts of this case were drawn from *State v. Cramer*, 2007 WL 1094360 (N.J. 2007), in which the defendant's conviction for second-degree manslaughter was affirmed.

We will consider charging Cramer with the highest grade of homicide (murder), but the jury might convict him of a lesser form of murder such as manslaughter or negligent homicide. Cramer may argue self-defense or insanity to avoid conviction.

Homicide

The different forms of homicide must be reviewed in order to determine the *actus reus* components for each grade of homicide as well as the *mens rea*.

Actus Reus. Each form of homicide seems to share the same actus reus, namely that the defendant *caused* the death of another human being.

Causation. As to causation, there are two components: first, was his conduct a "but-for" cause -- would the death have occurred but for his conduct? The answer to that question is a straightforward "yes." The second aspect is that the result is not so remote or accidental in relation to Cramer's conduct that it fails to have a just bearing on Cramer's guilt. Even though Cramer may not have struck August with an intent to kill, the resulting death is not so remote or accidental in relation to the blow that Cramer struck that it would prevent us from saying that Cramer caused August's death. With what mens rea he caused the death is the key question.

Mens Rea. As noted above, the different grades of homicide are distinguished by the level of culpability with which the defendant caused the death.

Murder, MPC § 210.2(1)(a). In order to be convicted of murder, a first degree felony, Cramer would have to have caused the homicide purposely or knowingly. If Cramer intended to cause August's death, or if he knew it would cause his death, then he would be guilty of murder. Under the MPC, knowledge of a result requires a showing that the defendant was aware that it was "practically certain" that the result would follow. It would be difficult to show that Cramer, even though he wanted to harm August, thought it was "practically certain" that he would cause death. Nonetheless, Cramer's state of mind could be inferred from his behavior; even if he denied wanting to kill August, or even being aware of the danger of the blow that he struck, a jury could still find that in fact he not only had an awareness of the risk, but actually wanted to inflict a fatal blow.

Manslaughter, MPC § 210.3(1)(a). The next lowest grade of homicide, manslaughter, a second degree felony, only requires proof that the defendant caused the death recklessly. Recklessness means that the defendant was aware of the risk that the result could occur, and his conduct in taking the risk was a gross deviation from the standard of a law-abiding person. Cramer may or may not have been aware of the risk that the blow he struck could cause death. If he actually lacked such awareness, even if he should have been aware of such a risk, he can't be found

to be reckless. Again, however, a jury might infer such awareness from his behavior. And if he was aware of the risk, there isn't much question that his conduct in striking the blow was a gross deviation from the standard of a law-abiding person.

Negligent Homicide, MPC § 210.4(1). The lowest grade of homicide, Negligent homicide, a third degree felony, only requires proof that the defendant *should have been aware* of the risk of causing death, and his failure to avoid the risk was a gross deviation from the standard of a reasonable person. This would be the easiest test to meet. Given the close proximity of August, and the force with which he was struck, it shouldn't be difficult to convince a jury beyond a reasonable doubt that Cramer should have recognized that such a blow could result in death.

Defenses

The first defense Cramer might offer is self-defense. To qualify for self-defense under MPC § 3.04, Cramer would have to show that he believed the force was necessary to protect himself from unlawful force. To begin with, the force being used against him was not unlawful. Although a *belief* that the force was unlawful would still qualify (under the principle of imperfect self-defense, discussed below), it is doubtful that Cramer actually believed such force was necessary. He seemed to want to punish August rather than protect himself from unlawful force. Nonetheless, to the extent that Cramer actually believed that the force was necessary (however unreasonable such a belief might be), it would be a defense to murder, because it would "negative" the mens rea that is required. On the other hand, if Cramer was reckless in forming the belief that the force being used against him was unlawful, or that it was necessary, he could be convicted of a crime (manslaughter) that only requires recklessness. Similarly, if his belief was unreasonable, or to put another way, he was negligent in forming the belief, he could be convicted of negligent homicide. Thus, self-defense appears to have relevance only if would otherwise be convicted of murder.

Insanity. An additional defense is based upon MPC § 4.01, "Mental Disease or Defect Excluding Responsibility." Cramer was clearly in a psychiatric institution and was diagnosed with paranoid schizophrenia. The psychiatrist found that he was competent to stand trial, but that is a much lower standard than the one that is applied in evaluating whether or not the defendant is criminally responsible for his behavior. Nonetheless, even conceding that Cramer suffered from a mental disease or defect, the prosecution could still ask the jury to deny the application of this defense, for the following reasons:

(1) The criminal behavior was not a *result of* the mental disease. MPC § 4.01 would excuse Cramer's otherwise criminal behavior only if, *as a result of* his paranoid schizophrenia, he lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law. As the doctor pointed out, he was not suffering from hallucinations at the time he kicked August. Cramer may have been *affected* by his mental illness, but unless it *resulted in* his lacking substantial capacity to appreciate the wrongfulness of his conduct, or conform it to the requirements of law, his defense should fail.

(2) The evidence seems to support a finding that the defendant had substantial capacity both to appreciate the wrongfulness of his conduct and to conform his conduct to the requirements of law. Since Cramer characterized his actions as being designed to "teach [August] not to f*** with me," it appears that Cramer was well aware of what he was doing, appreciated the wrongfulness of his conduct. Similarly, his purposeful action suggests that he had the ability to conform his behavior to the requirements of law, but simply chose not to. Thus, we should be able to defeat a defense arguing insanity.

The major differences in a non-MPC jurisdiction would be:

A different standard for homicide. Many jurisdictions use formulations of homicide that differ from the MPC. The ways in which homicide is graded in non-MPC jurisdictions were beyond the scope of our course coverage, but there could be substantial differences in how murder, manslaughter, and negligent homicide are defined and graded.

No "imperfect defense". Many jurisdictions limit the application of self-defense to a *reasonable* assessment of the need for protective force. If Cramer unreasonably believed that such force was necessary, he would not be able to assert it even with regard to murder.

Insanity. The MPC is probably the most generous formulation of the insanity defense. Many jurisdictions have replaced the MPC standard with something closer to the *M'Naghten* formulation. Still, *M'Naghten* does contain a requirement that the defendant understand the nature and quality of his act and know that it was wrong. However, *M'Naghten* and other more restrictive definitions of the insanity defense have eliminated the control prong found in the MPC.

Also, in place of the "substantial capacity" test of the MPC, some jurisdictions require a "complete prostration" of faculties. And in place of the "appreciation" test used in the MPC, many jurisdictions require only that the defendant be *aware of* either the nature and quality of the act, or the wrongfulness of the conduct.

CHECKLIST

ESSAY 1

- | | |
|--|---|
| <input type="checkbox"/> Pros | <input type="checkbox"/> Cons |
| <input type="checkbox"/> Retributive principles | <input type="checkbox"/> unconstitutional |
| <input type="checkbox"/> Gravity of crime requires DP | <input type="checkbox"/> <i>Kennedy</i> : DP requires death of victim |
| <input type="checkbox"/> Repetition, (" 3 strikes ") justifies | <input type="checkbox"/> Retribution: Disproportionate |
| <input type="checkbox"/> Deterrent effect | <input type="checkbox"/> " Vengeance " doesn't justify punishment |
| <input type="checkbox"/> Do child rapists calculate ? | <input type="checkbox"/> No evidence for deterrent effect |
| <input type="checkbox"/> Incapacitation | <input type="checkbox"/> " Brutalizing " effect may increase crime |
| <input type="checkbox"/> Is it better than life w/o parole ? | <input type="checkbox"/> Would rapists just kill their victims? |
| <input type="checkbox"/> No need for rehabilitation | <input type="checkbox"/> Incapacitation : life impr. is sufficient |
| <input type="checkbox"/> Constitutional rebuttal | <input type="checkbox"/> Rehabilitation : Not likely, but don't deny offender's humanity |
| <input type="checkbox"/> Narrow decision; trends matter | <input type="checkbox"/> Expense of capital punishment |
| <input type="checkbox"/> <i>Kennedy</i> didn't involve multiple victims | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |

ESSAY 2

- | | |
|---|--|
| <input type="checkbox"/> Overview | <input type="checkbox"/> Negligent Homicide |
| <input type="checkbox"/> Actus Reus + Mens Rea | <input type="checkbox"/> Mens Rea = Negligence |
| <input type="checkbox"/> Actus Reus : causing death | <input type="checkbox"/> Proof that C should have been aware |
| <input type="checkbox"/> Causation analyzed | <input type="checkbox"/> |
| <input type="checkbox"/> But-for + "not too remote / accidental" | <input type="checkbox"/> Defenses |
| <input type="checkbox"/> | <input type="checkbox"/> Self-defense , MPC § 3.04 |
| <input type="checkbox"/> Mens rea | <input type="checkbox"/> Only to protect against unlawful force |
| <input type="checkbox"/> Murder: Purposely or knowingly | <input type="checkbox"/> Imperfect Self-defense |
| <input type="checkbox"/> Knowing = practically certain of result | <input type="checkbox"/> Belief is sufficient, even if unreason. |
| <input type="checkbox"/> Intent May be inferred from behavior | <input type="checkbox"/> No evidence he thought it necessary |
| <input type="checkbox"/> | <input type="checkbox"/> Likely useful only for murder |
| <input type="checkbox"/> Manslaughter | <input type="checkbox"/> |
| <input type="checkbox"/> Requires proof of Recklessness | <input type="checkbox"/> Insanity , MPC § 4.01 |
| <input type="checkbox"/> Was C aware of the risk that he might kill August | <input type="checkbox"/> Competence for trial vs. insanity |
| <input type="checkbox"/> Was his behavior a gross deviation | <input type="checkbox"/> Lack of capacity must be a result of mental disease / defect |
| <input type="checkbox"/> | <input type="checkbox"/> C didn't lack capacity to appreciate |
| <input type="checkbox"/> | <input type="checkbox"/> C seemed able to control his conduct |
| <input type="checkbox"/> | <input type="checkbox"/> |

ESSAY 2½

- | | |
|---|--|
| <input type="checkbox"/> Difference in grading of homicide | <input type="checkbox"/> different standard for insanity |
| <input type="checkbox"/> Different standard for self-defense | <input type="checkbox"/> <i>M'Naghten</i> test? |
| <input type="checkbox"/> No imperfect self-defense | <input type="checkbox"/> no control prong |
| <input type="checkbox"/> | <input type="checkbox"/> complete prostration vs. sub. capacity |
| <input type="checkbox"/> | <input type="checkbox"/> appreciation |
| | <input type="checkbox"/> |

Exam # _____

