

Exam # _____

Professor DeWolf
Fall 2011

Criminal Law
October 26, 2011

(PRACTICE) MID-TERM EXAM

Instructions

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

THIS EXAM WILL LAST 75 minutes. IT IS ENTIRELY CLOSED BOOK.

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 Linden, the hypothetical jurisdiction where all of the facts take place.

MULTIPLE CHOICE**FACTS FOR QUESTIONS 1 and 2**

Walter White is a chemistry teacher who has cancer. He asked a former student, Jesse Pinkman, to help him make methamphetamine, an illegal drug. Linden Penal Code § 1234 makes it a second degree felony to manufacture methamphetamine. Consider the following questions at this stage of the relationship.

1. Suppose Pinkman and White are charged with conspiring to manufacture methamphetamine. To convict Pinkman, the prosecution would have to prove:
 - (a) Pinkman agreed with White to make methamphetamine;
 - (b) Pinkman took a substantial step in furtherance of the conspiracy;
 - (c) Walt White committed an overt act in furtherance of the conspiracy
 - (d) All of the above

2. Suppose Pinkman was charged with making methamphetamine. Pinkman could be convicted if the prosecution was able to prove:
 - (a) Pinkman agreed to help make methamphetamine, and White proceeded to buy the necessary equipment to begin manufacture;
 - (b) Pinkman told White he would not help him manufacture methamphetamine, but he would sell the product once it was made;
 - (c) Pinkman actually helped White purchase the equipment necessary to make methamphetamine;
 - (d) None of the above.

ESSAY QUESTION

On September 16, 2010, Linden State University (LSU) police intern, Travis Card, created an online Yahoo profile of “KayleeG12” (Kaylee), a fictitious 13-year-old girl who lived in Fordham, Linden. This action was part of an Internet sting operation organized by LSU police who trained student interns to create fictitious personas who would be attractive to child predators. After creating these profiles, the interns waited in teen chat rooms until contacted by a suspect.

Randall Sivins first contacted Kaylee on October 27, 2010, indicating he was a single 23-year-old male who lived in Linden State. When Kaylee communicated that she was just 13, Mr. Sivins replied, “Age is just a number, right?” The rest of their communication established that Kaylee’s favorite drink was vodka, that she was caught drinking by her father, that she had given her boyfriend oral sex, and that she was a virgin.

Kaylee got back on-line on March 1, 2011. During this communication, she told Mr. Sivins that she had had a birthday on November 24, 2010. The next day, Mr. Sivins sent an e-mail informing Kaylee that he had purchased a vibrator for her birthday. She confessed that she had previously lied about her age, explaining that she was only 12 years old when they first communicated, and had just turned 13 on her last birthday. Mr. Sivins replied, "age is just a number." He then mailed a vibrator to Kaylee at a post office box in Fordham, where it was collected by a LSU police sergeant.

Later in the month, Mr. Sivins had a phone conversation with a female police intern posing as Kaylee. He mentioned that he would be in her area on April 1, 2011 and would like to meet her. He stated that if they got together he would like to be "intimate."

On March 31, Mr. Sivins sent an e-mail to Kaylee suggesting they meet in a local motel room the next day. When Kaylee asked him how far he intended to go, he responded, "As far as you will let me go." When she asked if that meant "sex" or a "homerun" he replied, "If that is as far as you will let me go."

On April 1, Mr. Sivins checked into a motel room for two in Fordham. A police officer posing as Kaylee initiated a short phone call to Mr. Sivins to confirm that he was in town, and to get his room number. That evening, police arrested him as he left the room. You are a new prosecuting attorney assigned to the Sivins case. Please prepare a memo identifying the crime(s) for which a conviction can likely be obtained.

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.

§ 5.01. Criminal Attempt.

(1) Definition of Attempt. A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

(a) purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or

(b) when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or

(c) purposely does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

(2) Conduct Which May Be Held Substantial Step Under Subsection (1)(c). Conduct shall not be held to constitute a substantial step under Subsection (1)(c) of this Section unless it is strongly corroborative of the actor's criminal purpose. Without negating the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purpose, shall not be held insufficient as a matter of law:

(a) lying in wait, searching for or following the contemplated victim of the crime;

(b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;

(c) reconnoitering the place contemplated for the commission of the crime;

(d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;

(e) possession of materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances;

(f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, where such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;

(g) soliciting an innocent agent to engage in conduct constituting an element of the crime.

(3) Conduct Designed to Aid Another in Commission of a Crime. A person who engages in conduct designed to aid another to commit a crime which would establish his complicity under Section 2.06 if the crime were committed by such other person, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by such other person.

(4) Renunciation of Criminal Purpose. When the actor's conduct would otherwise constitute an attempt under Subsection (1)(b) or (1)(c) of this Section, it is an affirmative defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of such defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

Within the meaning of this Article, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

§ 5.02. Criminal Solicitation.

(1) Definition of Solicitation. A person is guilty of solicitation to commit a crime if with the purpose of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct which would constitute such crime or an attempt to commit such crime or which would establish his complicity in its commission or attempted commission.

(2) Uncommunicated Solicitation. It is immaterial under Subsection (1) of this Section that the actor fails to communicate with the person he solicits to commit a crime if his conduct was designed to effect such communication.

(3) Renunciation of Criminal Purpose. It is an affirmative defense that the actor, after soliciting another person to commit a crime, persuaded him not to do so or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

§ 213.1. Rape and Related Offenses.

(1) Rape. A male who has sexual intercourse with a female not his wife is guilty of rape if:

(a) he compels her to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or

(b) he has substantially impaired her power to appraise or control her conduct by

administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

- (c) the female is unconscious; or
- (d) the female is less than 10 years old.

Rape is a felony of the second degree unless (i) in the course thereof the actor inflicts serious bodily injury upon anyone, or (ii) the victim was not a voluntary social companion of the actor upon the occasion of the crime and had not previously permitted him sexual liberties, in which cases the offense is a felony of the first degree.

(2) Gross Sexual Imposition. A male who has sexual intercourse with a female not his wife commits a felony of the third degree if:

- (a) he compels her to submit by any threat that would prevent resistance by a woman of ordinary resolution; or
- (b) he knows that she suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct; or
- (c) he knows that she is unaware that a sexual act is being committed upon her or that she submits because she mistakenly supposes that he is her husband.

§ 213.3. Corruption of Minors and Seduction.

(1) Offense Defined. A male who has sexual intercourse with a female not his wife, or any person who engages in deviate sexual intercourse or causes another to engage in deviate sexual intercourse, is guilty of an offense if:

- (a) the other person is less than [16] years old and the actor is at least [4] years older than the other person; or
- (b) the other person is less than 21 years old and the actor is his guardian or otherwise responsible for general supervision of his welfare; or
- (c) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him; or
- (d) the other person is a female who is induced to participate by a promise of marriage which the actor does not mean to perform.

(2) Grading. An offense under paragraph (a) of Subsection (1) is a felony of the third degree. Otherwise an offense under this section is a misdemeanor.