

SAMPLE ANSWER TO (PRACTICE) MID-TERM EXAM

MULTIPLE CHOICE

1. Answer (a) is correct, because an agreement that one or more of the conspirators will commit a criminal act is the *actus reus* of conspiracy. (b) is incorrect, because no substantial step is required. (c) is incorrect, because an overt act is not required for second degree felonies and above. (d) is incorrect, because only answer (a) is correct.

2. (a) is incorrect, because Pinkman would only be guilty if someone actually made methamphetamine. (b) is incorrect, because again no actual meth has yet been made. (c) is incorrect for the same reasons. Therefore, (d) is the correct answer.

ESSAY QUESTION

This question is based upon the facts of *State v. Sivins*, 138 Wash.App. 52, 155 P.3d 982 (2007), which affirmed a conviction for attempted second degree rape of a child (it's a different crime from the one contained in the MPC).

Conviction of a crime requires two elements: first, the defendant must have had the *mens rea* required by the definition of the crime, and second, the defendant must have committed the *actus reus* required by the statute.

I would recommend charging Sivins with attempted Corruption of Minors, a 3rd degree felony, MPC § 213.3. The substantive offense is committed if the defendant engages in sexual intercourse with a female not his wife, where the female is less than 16 years old and the defendant is at least four years older than the victim. Sivins did not actually commit the offense, but he attempted to do so. In order to convict a defendant of attempting to commit a crime under MPC § 5.01(1)(c), the defendant must have the purpose of committing the crime, and must have taken a substantial step in a course of conduct planned to culminate in the commission of the crime. Thus, we would need to prove two things: *mens rea* (intent or purpose) and *actus reus* (substantial step).

Mens Rea. Sivins would only be guilty if he actually intended to have sexual intercourse with Kaylee, and that he believed her to be less than 16 years old (I'm also assuming that Sivins believed he was more than 4 years older than she was). It is no defense that "Kaylee" was not less than 16 years old. MPC § 5.01(1)(c) looks to what the defendant did "under the circumstances as he believes them to be." If Sivins believed "Kaylee" was 12 or 13 when he took a substantial step, that would be sufficient to constitute an attempt.

He might claim that his purpose was otherwise – for example, he might claim that he was only going to talk with her and explain the dangers of her behavior. While his conduct makes this argument implausible, the jury would still be required to find (beyond a reasonable doubt) that his purpose was to have sexual intercourse with her. It is not a defense that this purpose was conditional – that he intended to have sexual intercourse with her only if she wanted to (he said he would only go "as far as you will let me go"). MPC § 2.02(7) makes it clear that the

requirement of purpose is satisfied even if it is conditional. Sivins may claim that he was ambivalent in his attitude, and that he never fully committed to consummate the crime, but it is sufficient if, while intending to do so, he took a substantial step in the direction of committing the crime.

Actus Reus: Substantial Step. To be guilty of attempting to commit a crime, the defendant must take a substantial step strongly corroborative of his criminal purpose (MPC § 5.01(2)). One category of conduct constituting a substantial step as a matter of law is MPC § 5.01(2)(a), which is “lying in wait, searching for or following the contemplated victim of the crime.” By driving to Fordham, Sivins was searching for or following Kaylee. Also, by sending the email on March 31, Sivins was “enticing . . . the contemplated victim . . . to go to the place contemplated for its commission.” (MPC § 5.01(2)(b)). Finally, by checking into the motel room, Sivins was “reconnoitering the place contemplated for the commission of the crime” (MPC § 5.01(2)(c)). Each of these would be sufficient to establish that Sivins had committed a substantial step.

Defenses. (1) Sivins might argue that he had changed his mind, and that he left the motel room intending to go home or warn Kaylee. However, he is entitled to a defense only if he manifested “a complete and voluntary renunciation of his criminal purpose.” At the time Sivins was arrested he was leaving his motel room. He might argue that he had given up. However, renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time (MPC § 5.01(4))

(2) Sivins might also argue that he was entrapped. Entrapment is only a defense if the police use methods to encourage the commission of a crime that an ordinary law-abiding citizen would succumb to. Here the police only furnished Sivins with an opportunity to commit a crime he already seems predisposed to commit.

If convicted, Sivins would be guilty of a third degree felony.

CHECKLIST

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| <input type="checkbox"/> Overview | <input type="checkbox"/> |
| <input type="checkbox"/> mens rea + actus reus | <input type="checkbox"/> Defenses |
| <input type="checkbox"/> Substantive crime: § 213.3 | <input type="checkbox"/> renunciation |
| <input type="checkbox"/> Attempt under § 5.01(1)(c) | <input type="checkbox"/> not voluntary if only a result of apprehension |
| <input type="checkbox"/> Victim < 16 years old | <input type="checkbox"/> entrapment |
| <input type="checkbox"/> | <input type="checkbox"/> only if he wasn't already predisposed to commit crime |
| <input type="checkbox"/> Mens rea | <input type="checkbox"/> punished as 3 rd degree felony |
| <input type="checkbox"/> Belief re age is sufficient | |
| <input type="checkbox"/> Did S have the purpose of having sex w/ “Kaylee”? | |
| <input type="checkbox"/> Conditional purpose is still purpose | |
| <input type="checkbox"/> Factual question for jury | |
| <input type="checkbox"/> | |
| <input type="checkbox"/> Actus Reus | |
| <input type="checkbox"/> Substantial Step | |
| <input type="checkbox"/> Strongly corroborative | |
| <input type="checkbox"/> searching for victim (a) | |
| <input type="checkbox"/> enticing the victim (b) | |
| <input type="checkbox"/> reconnoitering the contemplated site of crime (c) | |