CRIMINAL LAW PROFESSOR DEWOLF
SPRING 2025 April 28, 2025

FINAL EXAM SAMPLE ANSWER

MULTIPLE CHOICE

1. (A) is incorrect, because Morris' awareness or lack thereof is irrelevant to the determination; (B) is CORRECT, because a prospective ruling doesn't affect Morris in an adverse way; (C) is incorrect, because it wouldn't necessarily violate the due process clause, as the *Rogers* case demonstrates; (D) is incorrect, because the MPC doesn't acknowledge the rule of lenity.

2. (A) is incorrect, because Jennifer's inability would not be based on a mental disease or defect; (B) is CORRECT, because sleepwalking is considered involuntary behavior; (C) is incorrect, because Jennifer wouldn't have to prove self-defense if her behavior wasn't voluntary; (D) is incorrect, because there is no greater evil that she could plead justified her behavior.

3. (A) is incorrect, because even if Mike was reckless or negligent in bringing about the necessity, the crime he is charged with requires knowledge; (B) is incorrect, because there is no requirement of "immediate necessity" to qualify under MPC § 3.02; (C) is CORRECT because the crime with which he is charged requires more than negligence; (D) is incorrect because knowledge is the minimum culpability.

4. (A) is incorrect, because even she was not at fault in causing the collision, she has a duty to render assistance; (B) is incorrect for the same reason; (C) is therefore the CORRECT answer; if the collision was not her fault, she has a duty to render assistance; and (D) is incorrect for the same reason.

5. (A) is incorrect, because the minimum culpability under the statute would be recklessness, and even if he did not know the meat contained malaprop, he might be reckless with respect to the risk that it did; (B) is incorrect, because it would be a mistake with respect to the application of the law making the conduct criminal, which is not a valid defense per MPC § 2.02(9); (C) is CORRECT, because the minimum culpability under the statute would be recklessness; (D) is incorrect, because while a statute could be written to impose strict liability, this statute does not.

6. (A) is incorrect, because what matters is whether or not Luke was negligent in failing to ascertain her age; (B) is incorrect, because the burden is on the defendant to prove that he reasonably believed her to be of age; (C) is CORRECT, for the same reason; (D) is incorrect, because intoxication is not a defense if the mens rea is negligence or recklessness.

7. (A) is incorrect, because whether Margaret consented or not is not the issue; (B) is CORRECT, because recklessness would preclude a finding that Luke reasonably believed her to be of age; (C) is incorrect, because her consent is not relevant; (D) is incorrect, because force or the threat of force is the required *actus reus* for rape, not for corruption of minors.

8. (A) is CORRECT, because his intoxication could negative the mens rea of purpose, which is necessary to prove attempted Corruption of Minors; (B) is incorrect, because the mens rea for mistake of age is negligence, which may not be "negatived" by showing intoxication; (C) is incorrect, because even if Luke voluntarily consumed alcohol, intoxication may be used to negative the required purpose; (D) is incorrect, for the same reason.

9. (A) is incorrect, because it is reasonably foreseeable that a death will occur as a result of a robbery; (B) is incorrect, because the "natural and probable consequence" doctrine is not applied under the MPC; (C) is CORRECT, because purpose applies to the conduct, while recklessness would apply to the result; (D) is incorrect, because an accomplice can be convicted

even if the principal is not.

10. (A) is incorrect, because in order to be an accomplice, he must possess the same mens rea as would be required for the commission of the crime. In this case the statute requires the purpose of causing serious bodily harm. Therefore, unless he had the purpose of causing serious bodily harm, he wouldn't be an accomplice to aggravated assault; (B) is incorrect for the same reason; actual purpose is required for the causing of serious bodily harm; (C) is incorrect, because the likelihood that Brendan would carry a gun is not decisive; (D) is CORRECT, because only if he has the purpose of helping Brendan shoot the gun is he guilty.

11. (A) is CORRECT, because the answer correctly states the rule for attempt under 5.01(1)(a). (B) is incorrect, because it is not legitimate self-defense under MPC § 3.04; (C) is incorrect, because under the circumstances as he believed them to be, the gun was a deadly weapon; (D) is incorrect, because whatever he believed, he still intended to shoot the owner.

12. (A) is incorrect, because it relies on a fact that the jury would have to decide; (B) is CORRECT, because the defense of duress requires a threat to person, not just a financial threat; (C) is incorrect, because it would never get to a jury based on the lack of a threat to person(s); (D) is incorrect, because the defendant's negligence is only one factor in determining whether the defense applies.

13. (A) is incorrect because it again assumes a fact that may not be true; (B) is incorrect because her desperation to get child care is not a valid excuse; (C) is CORRECT, because the statute requires that she act knowingly, and awareness of a high probability is sufficient to establish knowledge; (D) is incorrect, because it doesn't show that she was aware of a high probability that Duane would abuse Nathan.

14. (A) is CORRECT, because it satisfies the requirement for being an accomplice; (B) is incorrect, because an accomplice may be guilty even if the principal is acquitted; (C) is incorrect, because Duane is an accomplice—he assisted Susan in endangering Nathan's welfare; (D) is incorrect, because it is an irrelevant fact.

15. (A) is incorrect, because simply profiting from another's conduct is insufficient, unless it gives the defendant a "stake in the venture"; (B) is incorrect, because knowledge is insufficient to establish a conspiracy (*see Lauria*); (C) is incorrect; a conspiracy does not require a "formal agreement" (*see Morse*—purchase of a plane for an excessive price was enough); (D) is CORRECT; see *Lauria*.

16.

ESSAY 1

The principle of "ignorance of the law is no excuse" is long-standing in the law. It has been justified by two principles: first, to the extent the law is simply a reflection of basic morality, there is no reason to think that anyone could legitimately claim "I didn't know it was wrong to murder, steal, assault, etc." The second reason is that allowing people to claim ignorance of the law as an excuse would create a perverse incentive to avoid learning what the law requires. If the person who makes an effort to learn that his conduct is illegal, and then acts, is worse off than the person who says "Gee, I didn't know it was wrong," then it would reward the ignorant and punish the diligent. Similarly, if people could rely on a lawyer's advice that conduct was legal, and offer it as an excuse when they are caught, it would similarly reward the least scrupulous lawyers and punish those who give good advice.

On the other hand, it is hard today to defend the claim that the criminal law only punishes things that are obviously wrong. Not only are there many more criminal laws than when the maxim was first applied, but what is punishable often depends on arcane regulations. As to the second rationale, suitable instructions regarding the defense could take care of concerns that a defendant was "gaming the system." Also, by putting the burden on the prosecution to prove culpability, it

might incentivize the government to insure that people most likely to run afoul of the law are properly informed as to the existence, meaning and application of the law.

ESSAY 2

The facts of this case were (loosely) drawn from *People v. Lendof-Gonzalez,* 36 N.Y.3d 87, 163 N.E.3d 15 (2020), which reversed his conviction for attempted murder (applying "dangerous proximity" standard—which the MPC would reject).

Linden could be charged with two counts of three different forms of "inchoate crime"—attempted murder, solicitation, and conspiracy. Each has specific elements, and it may be easier to convict under one theory rather than the other. If all of the theories are proven, and the jury convicts, then Linden could be convicted of two counts; since murder is a 1st degree felony, any of the inchoate crimes to commit 1st degree murder would result in conviction for a 2nd degree felony (MPC § 5.05(1)).

Attempted Murder

The most obvious charge against Linden would be attempted murder. MPC § 5.01(1) provides: "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 . . . (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." The culpability required for the commission of murder is that the defendant "purposely or knowingly causes the death of another human being." MPC § 210.2. In this case Linden's mens rea is pretty obvious: he wanted MS to kill his wife and mother-in-law, thus satisfying the "kind of culpability required for commission of the crime."

MPC § 5.01(1)(c) requires a "substantial step" as the actus reus for a crime of attempt, and the substantial step must be "strongly corroborative" of the actor's criminal purpose. MPC § 5.01(2). The MPC identifies specific examples of a substantial step, none of which appear to apply in this case. (The closest would be MPC § 5.01(2)(g), which identifies as a substantial step "soliciting an innocent agent to engage in conduct constituting an element of the crime." MS is hardly an innocent agent here.) However, the MPC specifically prefaces the list of conduct satisfying the substantial step requirement with the following: "Without negativing the sufficiency of other conduct . . . ." Thus, we would argue that if (g) is sufficient to establish a substantial step, and in this case the only difference is that Linden solicited what he thought was a culpable agent, the substantial step requirement should be met.

The other method to establish guilt for attempted murder would be § 5.01(3): "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." If MS had carried out the murders, Linden would have been an accomplice under § 2.06(3)(a)(i), because he solicited MS to commit murder, and therefore Linden is guilty of attempted murder.

Solicitation

Linden could also be convicted of soliciting MS to murder his wife and mother-in-law. MPC § 5.02(1) defines 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."

In this case Linden clearly "encourage[d] or request[ed]" MS to commit the crime, and therefore he would be guilty of solicitation. Under MPC § 5.04(1)(b) it is immaterial that MS is immune from prosecution.

Conspiracy

"A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he: (a) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime . . .." MPC § 5.01(1). In this case Linden agreed with MS that MS would commit the crime, thus satisfying the requirements of § 5.01(1)(a). The fact that there was no "meeting of the minds" between Linden and MS is not an obstacle under the MPC. MPC § 5.04(1)(b). Also, there is no overt act requirement because it is a conspiracy to commit a first degree felony. MPC § 5.03(5).

Defenses

None of the traditional defenses (self-defense, necessity, duress, intoxication, insanity) would apply in this case. The closest Linden could come to a defense would be entrapment, but under the MPC the standard is quite high: the defense is only applicable when "a public law enforcement official or a person acting in cooperation with such an official . . . induces or encourages another person to engage in conduct constituting such offense." MS was eventually acting in cooperation with law enforcement, but the relationship began with Linden's solicitation of MS, and MS neither induced nor encouraged Linden to engage in the crime.

Conclusion

Linden would likely be convicted of two counts of a 2nd degree felony.

QUESTION 2½

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

Attempt

Some jurisdictions (in fact, the one in which this case occurred) require more than a substantial step to convict a defendant of an attempt to commit a crime. Those jurisdictions may require "dangerous proximity" to the achievement of the crime.

Solicitation

Some jurisdictions would reject the MPC approach, only allowing a solicitation charge if the one being solicited actually had the intent of following through. where the one being solicited had no intent of following through with the crime. This is exemplified in *State v. Davis* (text at p. 633), which characterized similar conversations as "mere acts of preparation."

Conspiracy

Many jurisdictions would not find a conspiracy between two people who didn't share the criminal objective. In this case, it could not be said that there was a "meeting of the minds" between Linden and MS, and thus no conspiracy. On the other hand, the federal system would recognize conspiracy as a separate crime, and it would not merge with the attempt to commit murder. Thus, under federal law Linden could be convicted of attempted murder and conspiracy to commit murder with each victim, thus totaling four separate convictions for which Linden could be punished.

CHECKLIST

ESSAY 1

- ☐ **Overview**
- ☐ "Ignorance of the law is no excuse"
- ☐ Two **justifications**
- ☐ (1) Everybody **already knows** the law
- ☐ (2) Don't want to **reward ignorance**
- ☐ **Lawyer's advice** could be manipulated
- ☐ MPC allows **official reliance**
- ☐

- ☐ **Criticism**
- ☐ Criminal Law **not obvious**
- ☐ **Juries** would be able to distinguish
- ☐ Conforms to **sense of justice**
- ☐ Encourages **making law clear**
- ☐
- ☐

ESSAY 2

- ☐ **Overview**
- ☐ **Three theories** for conviction
- ☐ **Two counts**
- ☐ 1st °crime = **2nd °** inchoate crime
- ☐
- ☐ **Attempted** Murder
- ☐ **Mens rea**
- ☐ **Purpose** to cause death
- ☐ **Actus Reus**: substantial step
- ☐ No **listed** substantial step
- ☐ Was MS an **innocent agent**?
- ☐ But list is **non-exclusive**
- ☐
- ☐ **Complicity**, § 5.01(3)
- ☐ **§ 2.06(3)(a)(i): L solicited MS**
- ☐ Therefore L **attempted murder**
- ☐
- ☐
- ☐

- ☐ **Solicitation**
- ☐ MPC **§ 5.02(1)**
- ☐ L **requested** MS to commit murder
- ☐ **Immaterial** that MS is immune
- ☐
- ☐ **Conspiracy**
- ☐ MPC **§ 5.01(1)**
- ☐ L **agreed** with MS to commit crime
- ☐ **Immaterial** that MS is innocent
- ☐ No need for **overt act**
- ☐
- ☐ **Defenses**
- ☐ None of the **traditional** ones apply
- ☐ **Entrapment?**
- ☐ MS neither **induced** nor **encouraged**
- ☐

ESSAY 2½

- ☐ **Attempt**
- ☐ **Dangerous proximity** test
- ☐
- ☐ **Solicitation**
- ☐ Defense that **MS didn't have intent**
- ☐ Only "**mere preparation"?**
- ☐

- ☐ **Conspiracy**
- ☐ **Meeting of the minds** requirement
- ☐ **Separate Crime** from attempt
- ☐ **Double punishment**
- ☐ **Four** separate convictions
- ☐
- ☐
- ☐

Exam # _____