

SAMPLE ANSWER TO MID-TERM EXAM

ESSAY QUESTION

This hypothetical is based on the facts of *People v. Magnant*, 508 Mich. 151, 973 N.W.2d 60 (2021), which reversed the lower courts' refusal to quash the indictment, finding that State had to prove that Davis knew his conduct was illegal.

To convict Davis of violating ERS § 205.428(3), the prosecution would have to show (1) ERS § 205.428(3) was not unconstitutionally vague, (2) that Davis committed the *actus reus* prohibited by the statute, and (3) that he did so with the *mens rea* applicable to such conduct.

Legality. A defendant can challenge the application of a criminal statute if the statute doesn't provide fair notice of the conduct that is being prohibited. Davis might argue that by simply referring to transporting cigarettes without a "valid tax stamp," the statute doesn't provide sufficient guidance to allow compliance with the law. This is likely to fail, given the ease with which one can determine whether a tax stamp is valid or not. Unlike jurisdictions that observe the rule of lenity—requiring that ambiguity in a statute is construed in the defendant's favor—the MPC rejects the rule of lenity

Actus Reus. There are three elements to ERS § 205.428(3):

- a. Transporting
- b. 3000 or more cigarettes
- c. Absence of a valid tax stamp

It is clear that Davis voluntarily transported the cigarettes, and knew they were cigarettes, as well as the quantity. However, whether he knew they lacked a valid tax stamp is another matter. In addition, it will be a question whether the State would have to prove that Davis knew that he was doing something illegal.

Mens Rea. Each element of the crime must be evaluated by the mens rea required to convict. Because no mens rea is specified by the statute, per MPC § 2.02(3) the minimum culpability is recklessness—that is, proof that the defendant was aware of a substantial and unjustifiable risk that the condition existed, and that his decision to proceed in the face of that risk was a gross deviation from the standard of a law-abiding person. Since he loaded the cigarettes, it seems obvious that Magnant knowingly transported more than 3000 cigarettes (although it's theoretically possible that he had no notice that he was loading cigarettes). With respect to the lack of a valid tax stamp, Magnant might claim that he thought the stamp issued by the Tribe was adequate; or he might argue that he didn't know anything about whether the stamps were present or not.

It would be critical to know whether Davis was aware of the ongoing dispute between the Tribe and the Everglade taxing authorities; if he knew that the Tribe didn't accept Everglade's authority to impose taxes, it seems likely that he was at least aware of the potential that the cigarettes he was transporting didn't have a valid tax stamp.

Was it a mistake of law? If Davis argued that he knew that the cigarettes had the KBIC stamp, but he didn't know it was *illegal* for him to transport them, he might be found to have

made a mistake of law, for which there is no defense. When he said, “I’m just a worker,” he might have been saying, in effect, “Yeah, maybe somebody else will get in trouble for selling cigarettes without the proper stamp, but I’m just hauling these cigarettes from one place to another.” The way the MPC distinguishes a mistake of fact (a defense) from a mistake of law (no defense) is that if the defendant makes a mistake regarding *non-penal* law (for example, the law of property), it operates in the same way as a mistake of fact. If, for example, Davis said he saw a stamp on the cigarettes but wasn’t aware of a risk that they might be invalid, he could argue that he lacked the mens rea (recklessness) with respect to that element. However, if he knew that they had a KBIC stamp, but argued that he was unaware that the KBIC stamp was invalid, then he would be making a mistake with respect to the *illegality* of his conduct, and he would fall within MPC § 2.02(9), which states that no mens rea is required with respect to “the existence, meaning or application of the law determining the elements of an offense.”

Depending upon the evidence of what Davis knew or thought at the time, he might be convicted or acquitted.

CHECKLIST

- ☐ **Overview**
- ☐ **Legality** question
- ☐ Did statute give **fair notice** of what was illegal?
- ☐ Rule of **lenity** wouldn’t apply
- ☐
- ☐ **Actus reus**
- ☐ **Transporting** cigarettes
- ☐ Quantity in excess of **3,000**
- ☐ Lacking a **valid tax stamp**
- ☐ **First two** are easily satisfied; third, not so much
- ☐ **Mens rea**
- ☐ Recklessness is the **default**
- ☐ Requires proof that D was aware of a **substantial and unjustifiable risk** of no tax stamp
- ☐ And taking that risk was a **gross deviation** from the standard of a law-abiding person
- ☐ Was D **aware** of the risk that cigarettes wouldn’t have valid stamp?
- ☐
- ☐ Did D make a mistake of **law** or mistake of **fact**?
- ☐ No mens rea required for awareness of **illegality**
- ☐
- ☐
- ☐
- ☐

Exam # _____