

Exam # _____

Professor DeWolf
Summer 2011

Criminal Law
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MID-TERM EXAM

Instructions

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

THIS EXAM WILL LAST 75 minutes.

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 the jurisdiction where the facts take place (the hypothetical state of Linden).

MULTIPLE CHOICE

Linden Penal Code § 1234 states, “It is a misdemeanor to drive a vehicle in which a child under the age of 8 is a passenger unless such child is restrained in a child restraint system in compliance with the standards of the United States department of transportation.” Baker was stopped by a police officer when he changed lanes without signaling. The officer saw Susan in the back seat using a seat belt and asked her how old she was. Susan replied “Seven.” Susan was in fact 7 years old.

1. Baker would be guilty of violating § 1234 unless:
 - (a) Baker didn’t know that Susan was below the age of 8;
 - (b) Baker reasonably believed that a seat belt was an adequate form of protection;
 - (c) Susan’s mother assured Baker that a seat belt was adequate;
 - (d) None of the above.

2. For purposes of this question only, assume that Baker was driving the car with 7-year-old Susan, but instead of being stopped by a police officer he gets into an accident. Baker wasn’t negligent in causing the accident, but the seat belt wasn’t sufficient to protect Susan from serious bodily harm. Baker is then charged with violating Linden Penal Code § 5678, which provides, “A person is guilty of vehicular assault, a third degree felony, if he or she negligently inflicts serious bodily harm upon another.” Baker could be convicted of violating § 5678 only if:
 - (a) Baker wasn’t reasonable in recognizing the need for a child restraint system;
 - (b) Baker’s conduct was a gross deviation from the standard of a law-abiding person;
 - (c) Baker was aware of the risk that his conduct might cause serious bodily harm;
 - (d) None of the above.

3. Linden Penal Code § 999 states, “A person commits the crime of unlawful harboring of a minor, a misdemeanor, if the person provides shelter to a minor without the consent of a parent of the minor and after the person knows that the minor is away from the home of the parent, without the parent's permission.” Tanner resided in a house along with his son Mike, a senior in high school. Tanner was charged with violating § 999 after Mike invited George to spend the night, after George had an argument with his parents. Which of the following is true:
 - (a) The age of the school friend would be considered a circumstance element;
 - (b) Providing shelter to the friend would be considered a conduct element;
 - (c) The lack of parental permission would be considered a circumstance element;
 - (d) All of the above.

4. Suppose (for purposes of this question only) the same facts as in Question #3, but Jones’ girlfriend Irene also spent the night at the Jones residence. Suppose further that George was in fact a minor and Irene knew he was a minor. Irene could be found guilty of violating § 999 if:
 - (a) Irene was a permanent resident of the house and had control over it;
 - (b) Irene had a legal duty to the school friend;
 - (c) Irene failed to use reasonable care in determining whether or not the school friend was staying in the house without his parent’s permission;
 - (d) None of the above.

ESSAY QUESTION

In April 2010, Matthew Williams was helping his grandmother move out of her house and into another residence. While he was cleaning out his grandmother's garage he came across his deceased grandfather's shotgun. Williams took the shotgun and placed it in the bathroom that was inside the back bedroom--the bedroom that had been his grandmother's--because there was a lock on that door and the garage did not have a lock. He then locked the door to the bedroom to prevent others from stumbling upon the gun and hurting themselves.

The following week, Mr. Williams was leaving his grandmother's house to run some errands when Deputy Sheriff Mark Malloque approached him and inquired about a certain juvenile suspect for whom Malloque was looking. Williams said that the juvenile was not at his grandmother's house. At Deputy Malloque's request Williams allowed him to search the house for the juvenile. He unlocked the bedroom door to allow Deputy Malloque to look for the juvenile. Inside the bathroom Malloque saw the shotgun sitting on top of the toilet tank and noticed that the barrel was shorter than allowed by law. When asked about the weapon Williams initially denied knowing anything about the gun. Upon further inquiry, he said the gun came from the garage. Deputy Malloque arrested Williams. Williams said he did not understand why he was being arrested until Deputy Malloque informed him that the gun was too short. The barrel on the shotgun measured 13 1/8 inches with an overall length of 24 3/8 inches. The State charged Mr. Williams with one count of possession of an unlawful firearm pursuant to Linden Code § 9.41.190:

9.41.190. Unlawful firearms--Exceptions

(1) It is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or have in possession or under control, any machine gun, short-barreled shotgun, or short-barreled rifle; or any part designed and intended solely and exclusively for use in a machine gun, short-barreled shotgun, or short-barreled rifle, or in converting a weapon into a machine gun, short-barreled shotgun, or short-barreled rifle; or to assemble or repair any machine gun, short-barreled shotgun, or short-barreled rifle.

(2) "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

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(4) Any person violating this section is guilty of a third degree felony.

You work in the Prosecutor's Office. Please evaluate the likelihood that Williams can be convicted of the crime charged.

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.