

MIDTERM EXAM SAMPLE ANSWER

MULTIPLE CHOICE

1. (A) is incorrect, because the statute only requires recklessness with respect to the element of Susan's age. (B) is incorrect, because it would constitute in effect a mistake of law. The statute makes a specific requirement, and B's belief isn't a defense. (C) is similarly incorrect. Thus, (D) is the **correct** answer.

2. The statute requires a minimum culpability of negligence with regard to causing serious bodily injury. Thus, (A) is **correct**, because at a minimum Baker has to be unreasonable in failing to recognize that, because Susan is below the age of 8, she requires a seat belt system. (B) is incorrect, because it imposes a higher standard of culpability (recklessness) than the statute requires. (C) is incorrect, because again it requires recklessness -- awareness of the risk. The statute only requires that Baker is negligent in failing to recognize the risk. (D) is incorrect, because there is a correct answer.

3. (A) is correct; (B) is correct, and (C) is correct. Thus, (D) is the **best** answer.

4. [I messed up in the description. "Jones" should have been "Tanner." I hope this was reasonably clear] (A) is incorrect, because she might not know that George was there without his parents' consent. (B) is incorrect, for the same reason as (A). (C) is incorrect, because the statute requires at least recklessness. Thus, (D) is the **correct** answer

ESSAY

This case is based on the facts of *State v. Williams*, 158 Wash.2d 904, 148 P.3d 993 (2006), which affirmed Williams' conviction, in a 5-4 split.

In order to convict Williams ("W") of violating LC § 9.41.190, we would need to prove beyond a reasonable doubt that (1) he committed the actus reus identified by § 9.41.190, and (2) he possessed the culpability (*mens rea*) required by the statute.

I. Actus Reus

The statute permits a conviction if the defendant is found to "have in possession or under control" a short-barreled shotgun. (§ 9.41.190(1)) On these facts it appears that W either had in his possession, or under his control, the short-barreled shotgun. He has to commit a voluntary act, but he clearly knew that it was a dangerous weapon and moved it to a place where he could lock it. His behavior was clearly voluntary. And by locking the door he seems to have put into his possession or under his control the shotgun. And there seems no question that the gun is "short-barreled."

W might respond that he didn't own the shotgun, and he didn't do anything other than moving it to a safer location. But that doesn't negate the actus reus component. Someone could hand you a shotgun and for the time that you held it (voluntarily) you would possess it. Similarly, the conscious efforts that W took over the shotgun demonstrate that he had "control" over it.

II. Mens Rea

We also must prove that W did the foregoing acts with the requisite *culpability* that make the conduct criminal. The definition of the crime does not specify a culpability standard, so by default the standard is recklessness (MPC § 2.02(3)). That means that, even if W didn't know or intend each of the elements, he at least had an awareness of the risk that his conduct might constitute the requisite standard, and that his failure to avoid the risk is a gross deviation from the standard of the law-abiding person. The relevant elements here are:

- (1) possessing or having under control
- (2) a shotgun
- (3) with a barrel less than 18 inches.

As to (1), there doesn't seem to be any dispute as to his awareness that he was in control of or possessing the shotgun. He intended to move it to a safer place, and he was able to control access to the room. Similarly, as to (2), he knew it was a shotgun -- that's why he moved it.

It's only with respect to #3 that he would claim that he didn't know the shotgun barrel was too short to be legal. His willingness to show the officer the room where the shotgun was located, and his surprise when he was arrested suggest he might have been innocent of its illegal character. On the other hand, his initial denial of knowledge of the shotgun suggests the opposite.

Even if he wasn't aware that the shotgun barrel was not long enough to be legal, there is no culpability required with respect to the fact that the shotgun violated the law. One way to put the problem is to ask what he would have done if he had an encyclopedic knowledge of the criminal law. Suppose he could have told you that a barrel less than 18" rendered the gun illegal. Wasn't it obvious that the barrel was only 13-1/8" -- less than 73% of the minimum length? It's quite plausible that W wasn't thinking about how long the barrel was -- he just knew under any circumstances the gun was dangerous and needed to be sequestered, but with a significant disparity between the actual length of the barrel and the minimum length, it would be hard to say that he was making a mistake of fact rather than a mistake of law. By contrast, suppose he took out a ruler and thought that the ruler measured inches instead of centimeters, and he thought the barrel was actually more than 18" long. That doesn't seem plausible, but if it were the case, then W would be more like the defendant in *Staples*, who didn't know that the gun he possessed was capable of automatic fire. Unlike *Staples*, this seems less like to be a mistake of fact, and more like *Marrero*, where the officer committed a mistake of law, and could not avoid conviction. Similarly here I think W might be guilty as charged.

Checklist

MC Score _____

Exam # _____

ESSAY

 Overview Actus **Reus** + Mens Rea Actus **Reus**: Did W **possess** or **control** the gun? Mens rea Crime definition is **silent** with respect to culpability Thus, Default level is **recklessness** Elements of the Crime He **possessed or controlled** the shotgun (he did this knowingly or **purposely**) It was a **Shotgun** Again, culpability not an issue The barrel was < **18 inches** Here he would argue **mistake** Was it mistake of **Fact** or mistake of **Law**? Assume an **encyclopedic** knowledge of the law; If so, barrel length seems **obviously** less than 18" **Only 72%** of minimum length Compare case of **bad ruler**, where he thought it was 18" but was mistaken Thus, error seems to be **ignorance of law** MPC states that no culpability required re illegality Thus conviction seems justified.