

SAMPLE ANSWER TO FINAL EXAM

MULTIPLE CHOICE

1. (A) is incorrect, because one must agree to the commission of a crime in order to be convicted of conspiracy. (B) is incorrect because there may be other reasons for entering into a conspiracy. **(C) is correct**, because if Arnie didn't know that Brenda was aware of his illegal activities, then it is impossible for Brenda to agree with him that the crime should be committed. (D) is incorrect because it incorrectly states the test for duress. It is necessary that a person of reasonable firmness in Brenda's position would be unable to resist the pressure.

2. **(A) is correct**, because if the circumstances were as Charlie thought them to be, he would be committing the crime; therefore it constitutes an attempt to commit the crime. (B) is incorrect, because it imposes an objective standard, whereas the standard is subjective; (C) is incorrect because it adopts a standard of legal impossibility that the MPC does not follow; (D) is incorrect because A is a correct answer.

3. (A) is incorrect, because it does not incorporate the force or threat requirement; (B) is similarly incorrect, because it focuses on consent rather than use of force or threat; **(C) is correct**, because the MPC requires threat or the use of force; (D) is incorrect because it focuses on consent rather than the use of force or the threat of force.

4. (A) is incorrect, because even if Hubert was committing a violent felony it doesn't speak to whether Gary believed he was threatened with death, serious bodily harm, rape or kidnapping; **(B) includes these and is therefore correct**; (C) is incorrect, because under imperfect self-defense the belief justifies with regard to crimes like attempted murder; (D) is incorrect because Gary could actually believe Hubert was a threat to him even if that belief was unreasonable.

5. (A) is incorrect because he doesn't include the element that Irene's conduct must be a gross deviation from the standard of a reasonable person; (B) is incorrect because it sets the civil standard of negligence rather than a "gross deviation" standard; **(C) is correct**, because the but-for causation element is essential to establishing guilt. (D) is incorrect because (C) is a correct answer.

6. (A) is incorrect because it treats voluntary intoxication as though it were a mental disease; **(B) is correct** because alcoholism can be a mental disease if it results in permanent injury. (C) and (D) are therefore incorrect.

7. (A) is incorrect because duress requires that the person be coerced into committing crime; here it is merely the fear of losing her job. (B) is incorrect because it would be a mistake of law; **(C) is correct** because Linda would be an accomplice if, with the purpose of facilitating the conduct, she assists another in committing the crime. (D) is incorrect because the liability of an accomplice may be greater than that of a principal.

8. **(A) is correct** because one can use deadly force in defense of others as well as oneself; if

the charge is attempted murder, which requires purpose, a belief, even unreasonable, provides "imperfect self-defense." (B) is incorrect, since Nancy must have a belief in the need for the use of deadly force to invoke self-defense (or defense of others). (C) is incorrect because it is another way of stating the incorrect premise in (A) regarding the reasonableness of her response; and (D) is incorrect because the MPC only holds aggressors liable if the purpose of the initial aggression is to provoke the need for the use of deadly force.

9. **(A) is correct**, because a conspiracy to commit a second-degree felony requires no overt act; (B) is incorrect for the same reason; (C) is incorrect, because Quentin didn't solicit Roger; (D) is incorrect because (A) is correct.

10. (A) is incorrect, because Stanley may not have been negligent in his conduct; (B) is incorrect because negligence only requires that he *should* have been aware of the risk; **(C) is correct**, because in the absence of causation, there is no guilt; (D) is incorrect because he could still be negligent without the knowledge of the co-worker's irresponsibility.

ESSAY QUESTION 1

The proposal would be a significant alteration to the historical doctrine regarding ignorance of the law. The maxim *ignorantia legis neminem excusat* -- ignorance of the law excuses no one -- was in sharp distinction to way in which mistake of fact affected criminal guilty. Ignorance of fact was available to "negative" (or defeat) the mens rea element(s) of a crime. For example, a defendant was accused of stealing an umbrella would be entitled to an acquittal if the defendant believed (however mistakenly) that the umbrella belonged to the defendant. By contrast, a defendant who believed (however reasonably) that his conduct was legal was just as guilty. There were two competing explanations for this harsh treatment. The first is the desire not to reward people for remaining ignorant of the law; or contrariwise, to remove the need for the prosecution to establish any culpability with respect to knowledge of the law. The second justification was that the criminal law was not something that required study; it reflected a scheme of moral boundaries that was inherent in human nature itself. Laws against rape, pillage and plunder were not invented as an arbitrary set of rules like the rules for playing cribbage; it would be hard to imagine any kind of civilized community that didn't have the basic laws that form the criminal code.

There is justification for skepticism about both of these justifications. First, by punishing people who have made a reasonable attempt to conform their behavior to the law, the goal of criminal law to match criminal punishment with culpability seems to be hurt rather than helped. Second, to the extent that the law is thought to simply reflect some sort of natural law, it is hard to maintain that claim in the face of vast regulatory systems that make it illegal to act in ways that conflict with the regulatory scheme. No one could claim in good faith that such laws are "written on the human heart." A proposed revision to the California Penal Code contained the language that Judge Drang is referring to, and New Jersey adopted it; similarly, the Delaware Supreme Court adopted it in principle. Nonetheless, the weight of authority is against it. Modern defenders of the traditional rule would point out that in the rare case that a criminal defendant would qualify for the rule suggested by the state legislator, prosecutors typically exercise discretion, or at worst a judge would take it into account in sentencing the defendant. For every case where the proposed rule would be appealing, there would be scores of cases in which the prosecution would be forced to establish the defendant's lack of good faith.

ESSAY QUESTION 2

The facts for this question were drawn from the case of *State v. Borrero*, 147 Wash.2d 353, 58 P.3d 245 (2002), which affirmed Borrero's conviction for attempted murder.

In order to convict Borrero ("B") of a crime, the prosecution would have to prove that he committed the actus reus of the crime accompanied by the minimum level of culpability ("mens rea") specified in the crime definition.

Mens Rea. The crime of murder, MPC § 210.2, requires that the defendant cause the death of another human being purposely or knowingly. (It is also possible to commit murder by way of the felony murder rule, MPC § 210.2(1)(b); however, no one has successfully argued that "attempted felony murder" is a valid charge. See text, p. 551.) To constitute an attempt to commit a crime, one must act with the purpose of committing the crime (§ 5.01(c), or else one must purposely act in such a way that the proscribed result (in this case, death) will result with no further action on the defendant's part (§5.01(b).

Actus Reus. To satisfy the requirements under § 5.01(c), the prosecution must show that the defendant took a substantial step as part of a course of conduct planned to culminate in the commission of the crime.

Punishment. Attempted murder is punishable as a second degree felony.

Since there are two versions of what happened, we should explore the prosecution's case under each version:

Vaughn's Version. According to Vaughn, B helped load Lemieux into the Jeep and throw him into the river. This would certainly satisfy the requirement of § 5.01(b), since throwing him into the river would have been done "with the belief that it will cause [death] without further conduct on his part."

B's Version. If the jury doesn't believe Vaughn, or at least has doubts about his version, B has a good chance of escaping conviction on the attempted murder charge. Even on B's version, however, one might wonder whether his action of holding Lemieux at gunpoint might constitute attempted murder. MPC § 2.02(6) provides, "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." If it were proven that B had the purpose of killing Lemieux if he resisted, then he could be said to have the purpose of killing Lemieux right then and there, even if, once the robbery was complete, he had no further participation.

Accomplice Liability. B would be an accomplice to the conduct of Anderson and Vaughn if, "with the purpose of promoting or facilitating the commission of the offense, he . . . aids . . . [Anderson/Vaughn] in planning or committing it . . ." MPC § 2.06(3)(a)(ii). B certainly aided in the later attempt to murder Lemieux – he tied him up and put him in the duffel bag -- but he would deny that he did so with the *purpose* of facilitating the later (attempted) murder. Unless the jury believes that B had the purpose of helping them commit murder, he would not be guilty as an accomplice.

ESSAY QUESTION 2½

Accomplice Liability. The primary difference in the treatment of this case in jurisdictions that didn't follow the MPC is the way in which accomplice liability and conspiracy liability would be applied. In cases like *Luparello* (text, p. 604), the court applied a standard for accomplice liability that makes an accomplice to one crime an accomplice to further crimes carried out by the principal so long as that further crime was "reasonably foreseeable" at the time the initial crime was perpetrated. In this

case, B committed a robbery of drugs at gunpoint and bound the victim, stuffing him into a duffel bag. So long as it was a natural and probable consequence that the perpetration of the robbery and kidnapping would result in a killing or even an attempt to kill, then B would be guilty of attempted murder as an accomplice.

Conspiracy Liability. Another route to find B guilty would be to charge him with conspiracy to commit robbery and kidnapping, and then show that the attempted murder was in furtherance of the conspiracy. Unlike the MPC, which rejects the *Pinkerton* doctrine, many jurisdictions (including the federal system) permit conviction for crimes which are not explicitly agreed to by the conspirators, so long as the crime is committed in furtherance of the conspiracy. Here the prosecution would argue that B agreed to the kidnapping and robbery, and the subsequent attempt to murder Lemieux was in furtherance of the conspiracy.

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Checklist

QUESTION 1

- Overview**
- Ignorantia legis neminem excusat*
- Difference from **Mistake of Fact**
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- Two **Justifications**
- (1) Don't **incentivize** ignorance of the law
- (2) Knowledge of crime is **inherent**
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- Modern critique** of *ILNE*
- Maxim conflicts with true **culpability**
- Modern law far **exceeds moral** intuition
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- NJ, Delaware** went for it
- But opponents **rebut**:
- Prosecutorial **discretion** is available
- Judges** can exercise leniency
- A few meritorious cases would be vastly outnumbered by burden on **prosecution**
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QUESTION 2

- Overview**
- Mens Rea + Actus Reus
- Attempt § 5.01(c) = purpose + **substantial step**
- Attempt § 5.01(b) = **last act** to produce result
- No attempted **felony** murder
- Murder is homicide **purposely or knowingly**
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- Vaughn** version
- attempted murder under § **5.01(b)**
- Purpose** of causing death
- Throwing him in river would be **sufficient** to cause death
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- Borrero** version
- Was **the robbery** attempted murder?
- Did he have **conditional purpose** of killing Lemieux?
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- An **accomplice** to attempted murder?
- Under MPC § 2.06, must have **purpose** of aiding in conduct
- Actually did aid** in binding him and stuffing into duffel bag
- Absent **purpose** to cause death, no complicity
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QUESTION 2½

- Accomplice Liability**
- Comparison to *Luparello*
- B was an accomplice to kidnapping & robbery
- Subsequent murder attempt was **a natural and probable** consequence
- Was it **reasonably foreseeable**?
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- Conspiracy**
- Pinkerton* doctrine
- Acts in **furtherance** of conspiracy
- Killing victim** would be consistent
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Exam Number _____