

Exam # _____

Professor DeWolf
Summer 2012

Criminal Law
July 14, 2012

MID-TERM EXAM

Instructions

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

THIS IS A CLOSED BOOK EXAM.

THIS EXAM WILL LAST 75 minutes.

If you are using Examsoft, follow the proctor's instructions.

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.

(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 Evergreen).

MULTIPLE CHOICE

1. Evergreen Penal Code § 1234 states, “It is a third degree felony to assault a police officer in the course of his official duties.” Allen was at a bar drinking beer when he got into an argument with Jones, another patron of the bar. Jones told Allen he was an idiot, and Allen pushed Jones off of his bar stool, causing him to strike his head on the floor. It turns out that Jones was an undercover police officer attempting to get information from the bartender. Allen was arrested for violating EPC § 1234. Which of the following is true?
 - (a) Allen would be guilty only if he knew Jones was an undercover police officer;
 - (b) Allen would be guilty if a reasonable person would recognize that Jones was an undercover police officer;
 - (c) Allen would not be guilty if he didn’t know that Jones was a police officer and a reasonable person would not have perceived a risk that Jones was a police officer;
 - (d) None of the above.

2. Evergreen Penal Code § 5678 states, “It is a third degree felony to set fire to an occupied structure. § 5678.1 states, “A violation of § 5678 is a second degree felony if the fire is set with the intent of recovering insurance proceeds. § 5678.2 states, “A violation of § 5678 is a first degree felony if the fire causes serious bodily injury.” Which of the following is true?
 - (a) A defendant could be convicted of violating § 5678 if the prosecution proved that the defendant was reckless in setting fire to an occupied structure;
 - (b) In order to convict a defendant of violating § 5678.1, the prosecution would have to prove that the defendant had the purpose of setting fire to an occupied structure;
 - (c) A defendant could be convicted of violating § 5678.2 if the prosecution proved that the defendant was reckless both in setting the fire and in causing serious bodily injury;
 - (d) All of the above are correct;
 - (e) None of the above is correct.

3. Evergreen Penal Code § 4321 states, “It is a gross misdemeanor to leave a child in a car unattended.” On a hot summer day, Martha left her two children, aged 10 and 8, in her car with the air conditioning running and the car locked with a remote control while she ran into the store to pick up a prescription for her elderly mother. She was only in the store for three minutes. If Martha were charged with violating EPC § 4321, which of the following is true?
 - (a) Martha would be acquitted if she reasonably believed that the children were not unattended because each child was capable of “attending” the other one.
 - (b) Martha would be acquitted if she reasonably believed that by locking the door, leaving the air conditioning on, and being gone for only three minutes, she was not leaving the children “unattended.”
 - (c) Martha would be convicted only if the jury found that she was at least reckless in believing that her children were not “unattended.”
 - (d) None of the above.

4. Assume—for purposes of this question only—all of the facts in the previous question, but in addition—for purposes of this question only—that Martha’s boyfriend Lenny drove to the store

with Martha, and then accompanied her into the store, because Martha asked Lenny to pay for the prescription. If Lenny was charged with violating § 4321, which of the following is true?

- (a) Lenny would be acquitted, because Lenny owed no duty to the children;
- (b) Lenny would be convicted if he was at least reckless in leaving the children;
- (c) Lenny would be acquitted based on the rule of lenity;
- (d) None of the above.

ESSAY QUESTION

Jerome Bastille was incarcerated at an Evergreen State Prison. After three years he qualified for work release. Under the terms of his work release, he was permitted to drive a state van to his job site but was normally required to return no later than 6 pm. On May 29, 2012, Bastille was working at his normal jobsite, Brushworx Painting Company, when his employer asked him to stay late. Bastille informed the employer that he would need permission from his prison supervisor. The employer called John Walkup, the work release program monitor, who told the employer that Bastille could work overtime but would need to return by no later than 11:30 pm. Bastille was told of the response from Walkup and worked until 9:30 pm. Bastille then left Brushworx in the van. At 9:56 pm that night, Officer Gary Tracy spotted the state van parked in the wrong direction on a steep hill. He was concerned about the safety of the occupants of the vehicle. When Tracy approached the van he observed what he believed to be Bastille and a passenger pulling up their pants. Bastille told Tracy that he was on work release and was required to be back at the Prison by 6 pm. Tracy then arrested Bastille and his passenger, and in the course of searching the van discovered cocaine.

Bastille was charged with violating Evergreen Penal Code § 9123, which provides as follows:

- (1) A person is guilty of escape in the first degree if he or she knowingly escapes from custody or a detention facility while being detained pursuant to a conviction of a felony or an equivalent juvenile offense.
- (2) It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from remaining in custody or in the detention facility or from returning to custody or to the detention facility, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to remain or return, and that the person returned to custody or the detention facility as soon as such circumstances ceased to exist.

Please analyze the likelihood that Bastille could be convicted of violating EPC § 9123.

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.