

MIDTERM EXAM SAMPLE ANSWER

MULTIPLE CHOICE

1. (a) is incorrect, because it imposes a standard of knowledge, which is higher than the default setting of recklessness. (b) sets too low a standard, which is that Allen was negligent, whereas the statute requires recklessness. (c) is incorrect because it misstates the rule for recklessness; to be convicted, Allen would have to be aware of a risk that Jones was a police officer. Even if a reasonable person would not have perceived a risk, perhaps Allen did perceive a risk. Thus, **(d) is the best answer.**

2. (a) is partially correct, because it follows the default setting of recklessness. (b) is also correct, because the intent to recover insurance proceeds is inherent in setting the fire. (c) is also partially correct, since there is no specification of culpability and the standard of recklessness applies to all of the elements. Thus **(d) is the correct answer** and (e) is incorrect.

3. (a) is incorrect, because Martha's mistake has to do with the "meaning" or "application" of EPC § 4321. (b) is similarly a mistake having to do with the application of EPC § 4321. (c) is also incorrect, because it has to do with a mistake regarding the meaning of "unattended." Thus, **(d) is the correct answer.**

4. (a) is incorrect, because Lenny may have owed a duty to the children; **(b) is correct**, because he did actually leave the children; although the case sounds like the ones that involved a failure to act, the statute actually makes it a crime to do something – to leave children unattended. (c) is incorrect because there is no guarantee that the rule of lenity would apply in Lenny's favor; (d) is incorrect because (b) is a correct answer.

ESSAY

The facts for this question were drawn from *State v. Carlson*, 143 Wash.App. 507, 178 P.3d 371 (2008), which affirmed Carlson's conviction for first-degree escape.

Bastille ("B") could be convicted of violating EPC § 9123 if the jury finds that he committed the actus reus of the crime and that he did so with the minimum culpability (*mens rea*) required by the statute.

Actus Reus

To commit escape in the first degree, the defendant has to (1) escape (2) from custody (3) while being detained for a felony. There is no real question as to whether or not he was in custody for a felony, but there is some question as to whether he "escaped."

*Voluntary Act.* The actus reus must include a voluntary act. B would undoubtedly argue that he was involuntarily detained by Officer Tracy, and he did not choose to "escape," but was unable to return. B would argue that his case is similar to the *Martin* case, in which the defendant was dragged into public and then charged with "appearing" drunk in public. The court interpreted the statute to require that the "appearance" resulted from the defendant's voluntary action. Since ¶ (1) of EPC § 9123 requires that the defendant "escape" from custody -- and doesn't literally include

cases where the defendant simply failed to return to custody, B would argue that simply not returning to custody doesn't satisfy the actus reus component.

On the other hand, if this is a question of statutory intent, then the prosecution would have a strong argument based upon the second paragraph that EPC § 9123, unlike the statute upon which *Martin* was based, specifically contemplates situations in which the defendant is involuntarily removed from custody or is involuntarily prevented from returning to custody, such as is the case here. The prosecution would argue that it is like an epileptic who has a seizure while driving. Even if the seizure is involuntary, it is permissible to impose punishment for putting oneself in a situation where the involuntary action causes the forbidden result.

Thus, the actus reus component appears to be satisfied.

### Mens Rea

Even if B committed the actus reus that is required, he would argue that he lacked the minimum mens rea. EPC § 9123 requires that one "knowingly" escape from custody. It seems that "escape" or the failure to return would be either a conduct or a result element. If it is a result element, then the MPC requires that the prosecution show that B was aware "that it is practically certain that his conduct will cause such a result." B would argue that at worst he took a risk by diverting from a return to the prison and parking the van in a way that would attract police attention.

The prosecution would argue that by including the second paragraph, the drafters of the statute took into account that a person might be prevented from returning by "uncontrollable circumstances," such as being arrested by a police officer, so long as the "uncontrollable circumstances" arose through reckless disregard by the defendant of the potential for such circumstances to arise. In fact, to avoid conviction based upon such a case, the defendant would have to show that his voluntary actions did not cause the circumstances to arise. For example, if the defendant drove a car that broke down on a deserted road and mechanical failure was the uncontrollable circumstance that prevented him from returning at the appointed time, he could still be convicted unless he could show that he did not *contribute* to the mechanical failure. If he was supposed to put water in the radiator or drive slowly on a rough road, cause of his failure to return by *reckless disregard*. Under the Code, B would be reckless if (1) he was aware of the risk that his conduct would result in being arrested; and (2) his conduct in taking this risk was a gross deviation from the standard of a law-abiding person. Parking illegally, being in a situation where he and his passenger had to pull up their pants, and telling the officer he had to be back by 6:00 pm seem like behaviors from which it could be argued he was both aware of the risk that he might be stopped and taken into custody, and that his behavior was a gross deviation from the standard of a law-abiding person. In any event, it seems like it would be a jury question. As to the cocaine, that would certainly enhance the argument that he was engaging in reckless behavior that would risk being detained. However, since the cocaine was discovered only after he had been arrested, it might not be relevant to whether or not he risked the arrest in the first place.

In summary, Bastille has some arguments that could be made to avoid conviction, but there is adequate evidence for a jury to convict him.

## ESSAY CHECKLIST

EXAM # \_\_\_\_\_

- Overview**
- Actus **Reus** + **Mens Rea**
- Actus Reus:**
- Elements:** Escape + custody + for a felony
- Escape** is the only issue
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- Was his act **voluntary**?
- Comparison to *Martin*
- Does “escape” require **affirmative** act?
- Statute also contains ¶ 2, addressing **involuntary** component
- An “involuntary” act can result from **previous voluntary** conduct
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- Mens rea**
- Crime definition uses the term “**knowingly**”
- B would argue that **recklessness is insufficient**
- B: He was not **practically certain** that he would be detained
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- Prosecution** would argue statute only requires recklessness
- Reading ¶ 2 with ¶ 1, it appears that **reckless disregard** is sufficient
- recklessness requires **conscious awareness** of the risk of involuntary detention
- Was B **subjectively aware** of the risk of being arrested?
- Must also be a **gross deviation** from standard of law-abiding person
- Behavior** in illegal parking + pants down + telling officer he was overdue
- Would **cocaine** possession be relevant?
- Sufficient evidence would support **jury in finding** recklessness
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