

Exam # \_\_\_\_\_

Professor DeWolf  
Fall 2008

Criminal Law  
October 6, 2008

MID-TERM EXAM

Instructions

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

THIS EXAM WILL LAST 50 minutes. IT IS A CLOSED BOOK EXAM.

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.

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 answers in the bluebook, or use Examsoft question 1.

(2) ESSAY. You will have one essay question. Please assume that all events occur in a jurisdiction governed by the Model Penal Code

GOOD LUCK!

## MULTIPLE CHOICE

1. Penal Code § 1111 provides:

"It is a misdemeanor to operate a snowmobile in such a way as to run down or harass deer, elk, or any wildlife, or any domestic animal."

In this statute, "Operating a snowmobile" is:

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above

2. Use the same statute as in Question 1. ("It is a misdemeanor to operate a snowmobile in such a way as to run down or harass deer, elk, or any wildlife, or any domestic animal.")

In this statute, "to run down a deer" would be

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above

3. Penal Code § 333 provides:

"It is a misdemeanor for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, teacher, classified employee, or student of any common school who is in the peaceful discharge or conduct of his or her duties or studies."

In this statute, "intimidate by threat of force" is:

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above

4. Use the same statute as in Question 3.

In this statute, "who is in the peaceful discharge or conduct of his or her duties or studies"

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above

5. Penal Code § 555 provides: "A person is guilty of unlawful imprisonment, a third degree felony, if he knowingly restrains another person." Another section of the Penal code defines "restrain" as "to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his liberty."

A defendant charged with violation of § 555 would have the best defense if he could show:

- (A) He reasonably believed that the restraint was lawful;
- (B) He was mistaken with respect to the identity of the person being restrained
- (C) He locked his office door and the victim was trapped inside the office overnight.
- (D) He was a police officer.

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### ESSAY

State Penal Code § 4321 provides as follows:

- (1) It is unlawful for any person knowingly to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice.
- (2) Violation of this provision is a third degree felony.
- (3) A violation of this provision that occurs in any state, county or local correctional facility is a second degree felony.

After arresting Eric Eaton for DUI, a police officer transported Eaton to the Clark County jail, where another officer searched him. During this search, the officer observed what appeared to be a plastic bag taped to the top of Eaton's sock. Inside this plastic bag, the officers discovered methamphetamine. The prosecutor has charged Eaton with a second degree felony under Penal Code § 4321. Assume for purposes of this question that methamphetamine is a controlled substance, that Eaton had no prescription for it, and that the methamphetamine was possessed in a county correctional facility. Please analyze the likelihood that Eaton will be convicted of the second degree felony.

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### 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.

Multiple Choice Answer Sheet

(TEAR THIS OFF AND HAND IT IN)

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2. \_\_\_\_\_

3. \_\_\_\_\_

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5. \_\_\_\_\_