

SAMPLE ANSWER TO MIDTERM EXAM

Multiple Choice

1. (A) is the correct answer.
2. (A) is incorrect. Although it might sound like a conduct element, the statute focuses on whether a *result* of the operation of a snowmobile is to run down a deer. (B) is incorrect. (C) is correct. (D) is incorrect.
3. (A) is correct. (B) is incorrect. (C) is incorrect. The statute focuses on the behavior of the defendant in intimidating someone. It doesn't require any particular result to occur. (D) is incorrect.
4. (A) is incorrect. There's no conduct on the part of the defendant. (B) is correct. It describes a circumstance in which the victim is engaged. (C) is incorrect. The statute focuses on the behavior of the defendant in intimidating someone. It doesn't require any particular result to occur. (D) is incorrect.
5. (A) is the best answer, because the statute appears to include knowledge of the unlawfulness of the restraint in the definition of the crime. (B) is incorrect, because the restraint might still be unlawful. (C) is incorrect because the defendant might have done so knowingly. (D) is incorrect because the restraint could still be unlawful even if the defendant were a police officer.

Essay

[The facts for this problem were drawn from *State v. Eaton*, 143 Wn.App. 155, 177 P.3d 157 (2008), in which the court reversed a conviction based on the lack of voluntariness.]

To convict Eaton of the second degree felony, the prosecution would have to prove that Eaton committed the conduct (actus reus) proscribed in the statute, and that he did so with the minimum level of culpability (mens rea) proscribed in the statute.

The elements of the crime are (1) possessing (2) a controlled substance (methamphetamine) (3) without a prescription (4) in a correctional facility. The standard of "knowingly" certainly applies to the first three elements, and under the MPC this standard would apply to the 4th element, unless the definition of the offense "distinguish[es] among the material elements thereof" (MPC § 2.02(4)). Here it is at least arguable that the element of "in a correctional facility" is in fact distinguished, and therefore it is not governed by "knowingly." In that case it would fall under MPC § 2.02(3), which prescribes recklessness as the minimum culpability when the definition of a crime is otherwise silent. It doesn't seem to matter particularly in this case, since it seems safe to assume that when Eaton was brought into the correctional facility, he knew he was there. It would only be relevant to discuss his culpability if he didn't actually know that he was in a correctional facility.

The more challenging task for the prosecution would be to show that Eaton committed a voluntary act by possessing the methamphetamine in a correctional facility. Like the defendant in *Martin v. State*, Eaton could argue that his presence in the correctional facility was not voluntary. On the other hand, the principle that courts apply is that not all aspects of the conduct need to be voluntary; the defendant's conduct only needs to *include* a voluntary act. Thus, the prosecution might argue that the possession of methamphetamine was a voluntary act, and the fact that it occurred in a correctional facility is like the epileptic who has a seizure while driving. Moreover,

the prosecution could argue that, unlike Martin, who had no control over being intoxicated when he was dragged into public, Eaton had the power to dispossess himself of the methamphetamine before entering the correctional facility; while his entry was involuntary, his continued possession of methamphetamine was voluntary (he could have asked the correctional officers to remove it, or he could have probably removed it himself), and therefore it satisfies the minimal definition of "voluntary" behavior.

Nonetheless, since dispossessing himself of meth would require Eaton to incriminate himself, the defense might win this argument, and Eaton's punishment would be limited to the 3rd degree felony rather than a second degree felony. The court would have to decide.

### Checklist

- Overview**
- Actus reus + mens rea
- Elements** of the crime
- Possession
- of methamphetamine
- without a **prescription**
- In a **correctional** facility
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- Mens rea** for crime
- Knowingly** is specified
- It applies to **all** material elements
- unless the elements are "**distinguished**"?
- If so, **recklessness** would apply to "correctional facility"
- only difference is he wouldn't have to *know* he was in a correctional facility
- recklessness means *awareness* of risk—seemingly academic point
- Is there any **doubt** that he knew he had meth in his sock?
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- Actus Reus**
- Voluntary** act?
- He was brought **involuntarily**
- Like *Martin* case
- But Eaton had the opportunity to **dispossess**
- was **failure** to dispossess an act?
- How would **court** resolve this issue?
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Exam # \_\_\_\_\_