

Exam # _____

Professor DeWolf
Summer 2009

Criminal Law
July 17, 2009

MID-TERM EXAM

Instructions

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

THIS EXAM WILL LAST 75 minutes.

If you are using Examssoft, follow the proctor's instructions. If you are using bluebooks, please make sure your exam number is on each of the bluebooks. Start a NEW BLUEBOOK for each question.

The MODEL PENAL CODE applies to all multiple choice questions and Question 2.

(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 letter of the correct answer in your bluebook, or for users of Softest, in answer to Question 1.

(2) ESSAY. You should analyze the problem assuming that the Model Penal Code is in force in the jurisdiction where the facts take place.

MULTIPLE CHOICE

FACTS FOR QUESTIONS 1 through 4

D shot V above the left knee in the early morning hours of January 1, 2009 after an argument concerning D's girlfriend. Witnesses testified that, before D got a rifle from his car, he threatened to blow V's brains out. The witnesses also testified that, after the gun discharged, D said "I'm sorry, it was an accident. I didn't mean to hurt anybody."

D was charged with aggravated assault, which provides as follows:

(2) Aggravated Assault. A person is guilty of aggravated assault if he:

(a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or

(b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon.

Aggravated assault under paragraph (a) is a felony of the second degree; aggravated assault under paragraph (b) is a felony of the third degree.

1. The minimum culpability required for a conviction for aggravated assault under § 2(a) would be

- (A) Negligence
- (B) Recklessness
- (C) Recklessness manifesting extreme indifference to the value of human life
- (D) Knowledge
- (E) Purpose

2. The minimum culpability required for a conviction for aggravated assault under § 2(b) would be

- (A) Negligence
- (B) Recklessness
- (C) Recklessness manifesting extreme indifference to the value of human life
- (D) Knowledge
- (E) Purpose

3. If D claimed that he didn't know the gun was loaded, which of the following is true?

- (A) The jury should acquit, but only if they found his belief to be reasonable
- (B) The jury should acquit, if he was unaware of the risk that the gun might be loaded
- (C) The jury should convict, because he was reckless in pointing the gun at V
- (D) The jury should convict, because he caused serious bodily harm.

4. If D admitted that he knew the gun was loaded, but claimed he was aiming the gun away from V, which of the following would be true?

- (A) D could be convicted of aggravated assault under § 2(b) if he was negligent in pointing the gun in V's direction
- (B) D could be convicted of aggravated assault under § 2(b) if he acted recklessly in

pointing the gun in V's direction

(C) D could be convicted of aggravated assault under 2(b) if his purpose was to cause V to be frightened

(D) None of the above.

5. Julie was driving late at night on a deserted highway when she came across a car on the edge of the roadway. She tried to avoid it, but sideswiped the other car. She thought of stopping but was afraid to. The occupant of the other car didn't get timely medical care and Julie was later charged with assault. Which of the following would be true?

(A) Julie could defend by showing that her failure to stop wasn't willful.

(B) Julie could defend by showing that she had no duty to stop.

(C) Julie would owe a duty based upon a status relationship.

(D) Julie would owe no duty to stop unless the state had a Good Samaritan statute.

(E) None of the above.

ESSAY QUESTION

Kenneth Wickliff, along with Evans, and Grohman, were bail collection agents who were trying to apprehend a fugitive, Keith Allen, who had jumped bail. They were employed by Ameritech, Inc., an independent company that performs fugitive recovery services for several bail bond agencies and insurance firms. The trio were assigned Allen's file, which consisted of a December 6, 2001 bail bond application to Northwestern National Casualty Company, listing as "indemnitor" Allen's mother, Stephanie Jones, who also signed the form. Jones lived at 179 Bellow Drive, Mt. Royal, with her fiancé, Sterling Spence, his son and Jones' fourteen-year-old cousin. On the bail application form, Jones listed her Mt. Royal address as Allen's home address, and his actual residence, 904 Broad Street, Pleasantville, as his mailing address.

Two days prior to the incident in question, Wickliff went to the Jones' home in search of Allen. He was informed by Jones and Spence that Allen did not live there. Jones, however, called Allen, and, as a result of a conversation with Wickliff, Allen arranged to voluntarily surrender at a set time and place. However, Allen sent a decoy instead. Consequently, on September 7, 2002, at about 3:00 a.m., Wickliff and his two associates arrived at the Jones' home in search of Allen. Before their arrival they contacted the county dispatcher to inform the authorities of their presence in the Mt. Royal area looking for the fugitive. They identified themselves, their purpose, their vehicles and their cell phone numbers.

Wickliff approached and knocked on the front door of Jones' residence, backed up by Grohman, who was standing a few feet behind Wickliff, and Evans, who secured the backyard area. When Jones and Spence answered, Wickliff and Grohman announced that they had been sent by the bail bond agency in search of Allen. They were advised that Allen was not present and did not reside there. Nevertheless, Wickliff and Grohman asserted their "right" to enter the residence in search of the fugitive, but Jones and Spence resisted. After a heated conversation, as Spence went to shut the front door, Wickliff stuck his foot in the door, preventing Spence from pushing the door shut. When Spence asked him to remove his foot, Wickliff said "No, you're messing with the law. You don't understand, we have a right to come in and search." Spence responded, "No, you do not. I told you [Allen] does not live here. You can't come in."

During the standoff, Jones called the police. When the officer arrived, he observed Wickliff

and Grohman in the threshold of the front door with their bodies partially into the home, "exerting pressure on the door trying to get into the house ..." The police officer drew his weapon, ordered Wickliff and Grohman off the porch, and arrested all three men after Evans appeared from the back of the house.

Wickliff has been charged with violating Penal Code § 2C:18-3, "Criminal trespass." It provides:

Unlicensed entry of structures. A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any structure, or separately secured or occupied portion thereof. An offense under this subsection is a third degree felony if it is committed in a school or on school property. The offense is a third degree felony if it is committed in a dwelling. Otherwise it is a misdemeanor.

A recent state supreme court case rejected the claim of a "bounty hunter" that by agreeing to the conditions of the bail bond, the fugitive had authorized the bounty hunter to use any reasonable means to recapture him. Please analyze the likelihood that Wickliff will be convicted of violating § 2C:18-3.

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.