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MIDTERM EXAM SAMPLE ANSWER

MULTIPLE CHOICE

1. **(C)** is the **correct** answer, because it is a form of recklessness, but one which requires proof of recklessness under circumstances manifesting an extreme indifference to the value of human life.

2. **(D)** is the **correct** answer, because 2(b) requires either purpose or knowledge, and thus knowledge is the minimum culpability required.

3. (A) is incorrect, because it imposes a requirement that his conduct not be negligent. The minimum culpability for either 2(a) or (2b) is recklessness. If the jury found he was negligent, but not reckless, they should acquit. **(B)** is the **correct** answer, because he wouldn't be guilty under either 2(a) or 2(b) unless he was at least reckless. (C) is incorrect, because it assumes a fact that is debatable. (D) is incorrect, because it fails to address the mens rea requirement.

4. (A) is incorrect, because it assumes too low a culpability (negligence), whereas 2(b) requires at least knowledge. (B) is incorrect, for the same reason. (C) is incorrect because D might be reckless in pointing the gun in V's direction, but the statute requires at least knowledge of causing bodily injury. Thus, **(D)** is the **correct** answer.

5. (A) is incorrect, because willful is not a term used in the MPC to determine culpability. (B) is incorrect, because she had a duty based upon having caused the accident. (C) is incorrect, because she has no status relationship with the victim. (D) is incorrect, because a Good Samaritan statute creates a duty of care for one who has no relationship to the victim, but a Good Samaritan statute in this case is unnecessary because Julie already owes a duty of care. Thus, **(E)** is the **correct** answer.

ESSAY

This case is based on the facts of *State v. Wickliff*, 378 N.J.Super. 328, 875 A.2d 1009 (2005), which reversed the conviction for criminal trespass, holding that Wickliff was entitled to present evidence showing that he reasonably believed he had the right to enter the dwelling, and this could constitute a mistake of non-penal law rather than a mistake regarding the law defining the nature of the crime.

In order to convict Wickliff, a jury would have to find that he committed the *actus reus* of the crime with the requisite *mens rea*. In the crime under discussion,. 2C:18-3, the actus reus consists of entering a structure. Wickliff clearly did that. His actions were voluntary and thus constitute the *actus reus*. The *mens rea* required is "knowing that he is not licensed or privileged to do so." In one sense, Wickliff would clearly not be guilty of knowing that he was not licensed or privileged to be in the structure, because he apparently believed that he had a right to be there if he was recapturing a fugitive who had jumped bail. On the other hand, the prosecution could argue that he knew that the owners of the house objected to his presence, and to the extent he had a belief about his legal rights to be there, he was making a mistake of law that would not be a defense to the crime.

Mistake of Fact. Wickliff could also argue that he believed Allen was present, and although

he was mistaken about Allen's presence in the home, he didn't *know* that Allen wasn't there, and he therefore believed that Allen was there and in effect gave him consent to enter and search the premises. Under the MPC, a mistake of fact is a defense whenever it negatives the mens rea that is required for conviction. Since the statute requires *knowledge* as the mens rea, it would negative the mens rea if Wickliff would have been privileged to enter the building and Wickliff thought that he was there, even if Wickliff was wrong and even reckless in believing that he was (or might be) there. Short of *knowing* that Allen was not there, Wickliff would be able to negative the mens rea required by showing that he thought Allen might be there.

Mistake of Law. On the other hand, given the recent Supreme Court decision that rejects the claim that a fugitive gives consent to search the premises, the prosecutor could argue that Wickliff in effect made a mistake of law, and that mistakes of law, however reasonable, are never a defense to crime. The outcome could turn on whether it is a mistake of *penal law* (the law defining the offense, addressed in 2.02(9))or a mistake of *non-penal law* (for example, the law of bail-jumping). The prosecutor would argue that Wickliff is arguing over the meaning of "privileged" or "licensed" in the statute. That would make it a mistake of penal law, and would not excuse. On the other hand, Wickliff could argue that he made a mistake about the consent that a fugitive gives to entry, similar to the mistake that the tenant made in *Regina v. Smith*, where he destroyed a fixture that he had added to his rented premises, not realizing that the law of property transferred ownership of a fixture to the landlord. W's actions in informing law enforcement in advance suggest that he thought he was within his legal rights, and if it were treated as a mistake of non-penal law, he seems to acted with a sincere (even if mistaken) belief. Because the court could reach either conclusion, it is hard to predict the outcome. Checklist

ESSAY CHECKLIST

- **Overview**
- Actus **Reus + Mens** Rea
- **Actus Reus** easily satisfied
- Wickliff acted **voluntarily**
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- **Mens rea**
- Standard of **knowing**
- Mistake of **Fact** v. Mistake of **Law?**
- Mistake of **Fact**
- **Allen's presence** could be a basis for mistake of fact
- MPC: A defense if it **Negatives** the mens rea
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- Mistake of **Law**
- **Penal** or **non-penal** law?
- Was the mistake regarding the **interpretation** of the statute?
- If so, **no defense**
- Is the question of privilege or license **non-penal law**?
- Analogy to **Regina v. Smith**
- W acted in **good faith** belief that he was acting legally
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