

MID-TERM EXAM

Instructions

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

THIS EXAM WILL LAST 90 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! HAPPY INDEPENDENCE DAY!

MULTIPLE CHOICE

1. Penal Code § 99 provides, "It is a third degree felony for any person knowingly to possess a firearm within fifty feet of an elementary school while children are present."

Which of the elements of this crime are a *circumstance* element?

- (A) Possessing a firearm
- (B) within 50 feet of the elementary school
- (C) while children are present
- (D) both (b) and (c)
- (E) None of the above

2. Using the same statute as in question #1, suppose a defendant knew that he possessed a firearm, but didn't know that he was within fifty feet of an elementary school, would he be guilty of the crime?

- (A) Yes.
- (B) Yes, if he was aware of the risk that he was near an elementary school
- (C) No, unless a reasonable person would have known that it was an elementary school
- (D) No.

3. Penal Code § 1234 provides, "It is a gross misdemeanor for any person to deposit nonrecyclable material into a container designated for recycling."

Frank saw a recycling container labeled "clear glass." Regulations promulgated by the Department of Ecology stated that "clear glass only includes glass used in food storage and shipment." Frank's roommate had given him a container that contained glass bottles, and Frank deposited the contents into the "clear glass" container. However, the glass also included the remains of a broken window that the roommate had cleaned up. If Frank were arrested for violating § 1234, which of the following would be correct?

- (A) Frank could be convicted if he was aware of the risk that some of the glass contained non-recyclable material, and his conduct was a gross deviation from the standard of a law-abiding person;
- (B) Frank could not be convicted if a reasonable person would have interpreted "clear glass" to include any type of clear glass;
- (C) Frank's roommate could be held vicariously liable for Frank's violation of the statute;
- (D) Frank would be guilty unless he could show that he did not intend to violate the statute.

4. Penal Code § 5678 provides, "It is a second degree felony for any person to start a fire with the purpose of collecting insurance proceeds. It is a first degree felony if the fire causes bodily injury to any person."

Which of the following is true?

- (A) the "bodily injury" element is a conduct element
- (B) the "bodily injury" element is a circumstance element

- (C) the "bodily injury" element is a results element
- (D) the "bodily injury" element is a strict liability element.

5. Penal Code § 445 provides, "Any person who knowingly furnishes alcohol to a child under the age of 16 is guilty of a third degree felony." Suppose that Bill sold George, a 15-year-old, a six-pack of beer. Which of the following would prevent Bill from being convicted of a violation of § 445?

- (A) Bill reasonably believed that George was 17.
- (B) George went to a friend who specialized in theatrical makeup and the friend made George appear to be 35.
- (C) Both (A) and (B)
- (D) Neither (A) nor (B)

ESSAY QUESTION

Jim Martin asked his sister Marion to help him with a construction project that had fallen behind schedule. He needed Marion to take a trip to the county dump with waste material. The truck had a sign on the side of it that said, "Gross Vehicle Weight 10,000 pounds." Penal Code § 2008 provided, "It is a third degree felony to cause substantial bodily injury while operating a vehicle with a gross vehicle weight exceeding 10,000 pounds if the vehicle is not equipped with a brake system failure indicator light." Marion noticed that the truck was piled high with waste material, and she asked Jim if it was safe to drive. He said that there was a lot of light insulation material in the truck, and not to worry. While Marion was descending a steep hill she noticed that her brakes weren't working very well, but she was able to pump the brakes and make it safely around the corner. Five minutes later, however, a child darted out in front of her truck and when she applied the brakes, they failed. The child sustained substantial bodily injury. It turns out that the vehicle weighed 12,000 pounds and Jim had disconnected the wiring that led to the brake failure indicator light.

Please analyze Marion's potential exposure if she were charged with violating Penal Code § 2008.

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.