

## Sample Answer to MIDTERM Exam

Multiple Choice

## MC 1

- A. Sorry, that's incorrect; possession is a *conduct* element
- B. This answer is only partially correct;
- C. This answer is only partially correct;
- D. **Correct.** Both B and C are circumstance elements
- E. Sorry, there is a correct answer.

## MC 2

- A. Sorry, that's incorrect. The statute
- B. Sorry, that's incorrect; it states the recklessness standard, whereas the statute requires knowledge.
- C. Sorry, that's incorrect; it requires only a negligence standard;
- D. **Correct.**

## MC 3

- A. **Correct.** The default standard is recklessness, and this answer correctly states the MPC definition of recklessness.
- B. Sorry, that's incorrect. Culpability with respect to awareness of the *illegality* of the conduct is not required, and therefore its lack is not a defense.
- C. Sorry, that's incorrect. Nothing in the fact pattern suggests that there is any basis for vicarious liability.
- D. Sorry, that's incorrect; it requires that Frank bear the burden of showing lack of intent.

## MC 4

- A. Sorry, that's incorrect. It's a results element.
- B. Sorry, that's incorrect.
- C. **Correct.**
- D. Sorry, that's incorrect.

## MC 5

- A. This answer is only **partially correct**. The "knowingly" standard applies to all of the material elements, and the circumstance of the child being under the age of 16 would be governed by a culpability standard of knowledge. Thus, if Bill reasonably believed that George was 17, it would "negative" the required knowledge.
- B. This answer is not the best answer. It is another way of expressing the previous answer, although it is conceivable that even though George appeared to be 35, Bill actually knew that he was 15. Either "C" or "A" is a better answer.
- C. **Correct.**
- D. Sorry, that's incorrect.

## ESSAY QUESTION

Marion can be convicted of violating Penal Code § 2008 if, acting with the culpability that is required under the statute, she committed the acts that define the offense.

There are four elements of this crime:

- (1) operating a motor vehicle;
- (2) gross vehicle weight exceeding 10,000 pounds;
- (3) not equipped with a brake system failure indicator light; and
- (4) causing substantial bodily injury.

Because no culpability is specified with respect to any element, the minimum culpability required is recklessness (MPC § 2.02(3)). With respect to circumstance elements, Marion must be found to have consciously disregarded a substantial and unjustifiable risk that the circumstance exists, and her disregard of that risk constitutes a gross deviation from the standard of conduct of a law-abiding person. (MPC § 2.02(2)(c)) With respect to a result element, Marion must have consciously disregarded a substantial and unjustifiable risk that the result would occur.

*Element #1.* There is no question that Marion intended to operate a motor vehicle, so therefore element #1 is satisfied.

*Element #2.* (Gross vehicle weight in excess of 10,000 pounds). This is a circumstance element. From the facts it appears that Marion was aware of the risk that the vehicle weight was in excess of 10,000 pounds, because she asked Jim if the truck was safe to drive. Even if she believed that it was safe to drive, it could still be found that her choice was a gross deviation from the standard of a law-abiding person.

*Element #3.* (lack of brake system failure indicator light). From the facts it appears that there was an indicator light, but it wasn't working. The first question would be a statutory interpretation of what "equipped" means. Marion could argue that in fact the truck *was* equipped with a brake failure indicator light; it simply wasn't functional. However, the prosecutor would argue that "equipped" means that it is functioning. Some courts follow a "rule of lenity," construing ambiguities in favor of the defendant; others treat such ambiguities simply as an assignment for the courts to decide based upon sound interpretive principles.

If the court finds that Marion's interpretation is correct, then she is not guilty of the crime. On the other hand, even if the court interprets the statute in the prosecutor's fashion, then it would still be necessary for the prosecutor to show that Marion was conscious of a substantial and unjustifiable risk that the light was not working. Apparently she could see some kind of indicator light on the dashboard, but it didn't go off when she was descending the hill. Marion might insist that she was unaware of the fact that there *was* an indicator light on the car, or that it wasn't working. It isn't enough for the prosecution to show that she *should* have been aware of the lack of a light; they must show that she was *conscious* of the fact that there was no indicator light. If Marion argues that she made a mistake of fact, the MPC treats a mistake of fact as "negating" the required mental state. Thus, if she were unaware even of the existence of the light, or of the fact that it wasn't working, that would be relevant to whether she *consciously* disregarded the risk of driving without a working light. On the other hand, if she knew that there was no brake failure indicator light, or she was aware of the fact that the one on the truck wasn't working, then the prosecution doesn't need to show that she should have been aware of the *need* for an indicator light, or that it was illegal to drive a vehicle without one. That would be a mistake of law. The prosecution might show that when Marion noticed her poorly performing brakes, but saw no

reflection on the "brake failure indicator light," then she was conscious of the circumstance. In addition, however, the jury would have to find that her continuing to drive the truck was a gross deviation from the standard of a law-abiding person. They might find that on the basis of having trouble stopping a truck that she had reason to think was overloaded.

*Element #4.* (causing substantial bodily injury) Here the prosecution would have to show that Marion was conscious of a risk that she her truck didn't have adequate brakes, and that she was therefore aware of a risk that she could cause substantial bodily injury in a way similar to what actually happened. So long as Marion was aware of this risk, and her continuing to drive the truck was a gross deviation from the standard of a law-abiding person, she could be found guilty.

#### CHECKLIST

MC Score \_\_\_\_\_

#### Overview

Actus **Reus** / **Mens Rea**

**Elements** of the Crime

**Operating** a motor vehicle

Over **10,000 pounds** Gross Vehicle Weight

Not Equipped with **Brake Failure Light**

Causing **Substantial Bodily Injury**

No **culpability prescribed** by statute

Default Standard is **Recklessness** (MPC § 2.02(3))

**Consciousness** of substantial and unjustifiable risk

**Gross deviation** from standard of law-abiding person

**Element #1: Admitted**

**Element #2 (GVW):** Was Marion **aware** of Risk?

**Element #2:** Was driving vehicle a **gross deviation** from L/A person?

**Element #3:** What **does statute mean** by "equipped"?

If "Equipped" is satisfied by **non-working**, then Marion is not guilty

Rule of **lenity**?

**Element #3:** Was Marion aware of **non-working light**?

Marion's ignorance of **statutory**

**requirement** is irrelevant

Was Marion's driving truck without non-working light a **gross deviation**?

**Element #4:** Was Marion **aware of risk** of substantial bodily injury?

Was her continued driving a **gross deviation** from standard of L/A person?

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