

Sample Answer to Practice Exam

QUESTION 1

1. Sorry, that's incorrect; since the statute allows conviction for *negligence*, awareness of the risk is not required if he should have been aware of the risk. See the culpability rules prescribed in MPC.
2. That's correct. Acting reasonably would negative the mens rea requirement--that the employee should have known that his conduct posed an unreasonable risk.
3. Sorry, that's incorrect; the statute might have been made a regulatory offense, requiring no mens rea, but here the statute specifically requires negligence.
4. Sorry, that's incorrect. There is no reason to make the two convictions mutually exclusive.

QUESTION 2

1. Sorry, that's incorrect; not knowing that VIOL was a hazardous chemical goes to the *application* of the statute to specific facts. That is a mistake of penal law (MPC § 2.02(9)), and therefore would be no defense.
2. That's correct, since the statute requires knowledge on the part of the person charged with the crime. Vicarious liability doesn't apply here, although the legislature *could have* applied it if it so chose.
3. Sorry, that's incorrect, because under MPC § 2.02(4) the phrase "knowingly" applies to all material elements.
4. Sorry, that's incorrect; Ron's mistake goes to the interpretation of the statute. A mistake of interpretation is a mistake of law (MPC § 2.02(9)), and provides no excuse except under the limited circumstances stated in § 2.04(3). None of those are present here.

QUESTION 3

1. Sorry, that's incorrect. An epileptic may be acting reasonably if the seizure disorder is controlled by medication.
2. That's correct. The answer correctly states the description of negligence in the MPC.
3. Sorry, that's incorrect. The seizure was not voluntary, but the decision to drive was voluntary. So long as part of the behavior of the defendant was voluntary, criminal liability may be imposed.
4. Sorry, that's incorrect. Awareness of the risk must be shown if the definition of the crime requires *recklessness*. But here the minimum culpability is negligence.

ESSAY QUESTION

There are two basic issues in this problem: (1) whether or not Mark owed a duty to act to protect Debbie; and (2) whether he acted negligently in failing to do so.

(1) *Duty to Act*. Ordinarily there is no criminal liability for failing to help someone, even if it would be a moral obligation. There are four bases for imposing a duty to act: (1) if imposed by statute; (2) if it arises from a status relationship; (3) if agreed to by contract; or (4) if voluntarily assumed. In this case, either (2) or (4) could be argued. A parent owes a duty to a child, and Mark had become something like a father to Debbie. However, it seems dubious that the relationship between Mark and Linda was so strong that a court would impose a parent-like duty. Even if Mark

had gone so far as to encourage Debbie to call him "Dad," and even if Mark and Linda were more like husband and wife than just "dating," the bright line between a parent and a non-parent would likely be maintained.

On the other hand, Mark may have voluntarily assumed a duty. He denies that Linda told him to watch Debbie, but the jury may believe that she did. On the other hand, there is no description of Mark acknowledging or accepting the duty. It would not be enough for Linda simply to tell Mark to watch Debbie; Mark must have voluntarily *accepted* the duty to care for her.

(2) *Criminal Negligence*. If there is a duty to act, then the question is whether Mark acted negligently in failing to summon help. Negligence is defined as a "gross deviation from the standard of the reasonable person." On the one hand, Mark was up on the ladder. He also thought that Linda was inside. A jury might find that Mark's behavior was reasonable, but it seems likely that they would find that a reasonable person would have at least checked out whether Debbie was okay. It would be up to a jury to determine whether Mark's failure either to shout at Linda or to use his cell phone to summon help was a "gross deviation" from what a reasonable person would do.

CHECKLIST

- o Overview
- o Duty to Act?
- o Ordinarily, no duty to be "Good Samaritan"
- o Four exceptions to general rule
- o Status relationship
- o Was Mark a "parent"?
- o Doubtful in light of tenuous relationship

- o Did Mark voluntarily assume a duty?
- o Whose facts are believed?
- o Did Mark ever *accept* a duty to act?

- o Negligence
- o Definition under the MPC as "gross deviation"
- o What would a reasonable person have done?
- o Did Mark think that Linda was inside?
- o Would jury find failure was a *gross* deviation?