

INTRODUCTION

This program is designed to provide an introduction to element analysis under the Model Penal Code. You should review the discussion below as well as the relevant materials beginning in Chapter 3 of KADISH & SCHULHOFER, CRIMINAL LAW: CASES AND MATERIALS. In particular, read MPC § 2.02.

The MPC categorizes statutory elements under three headings: conduct, circumstances, and results. Not every statute contains all three elements, but the reason for dividing them into these categories is to apply general rules. For example, a statute may distinguish between different levels of punishment (third degree, second degree, or first degree) based upon a feature of the way in which the crime is committed. It may be second degree rape if the defendant forces the victim to have sexual intercourse, but it is first degree rape if the victim suffers serious bodily injury. Or a statute may make it petty theft if the value of the object stolen is less than \$500, but grand theft if the stolen item is worth \$500 or more.

The reason it is important to distinguish conduct, circumstance and result elements will emerge later in the course – particularly where we analyze attempt and solicitation (Chapter 6), Complicity and Conspiracy (Chapter 7) and Defenses (Chapter 8). You will see that different rules apply to different elements of the crime. For example, to be an accomplice to manslaughter, the defendant must be shown to have had the *purpose* of facilitating the conduct elements (e.g., driving recklessly), but with respect to the *result* element (in this case, death), the defendant only has to be reckless. Thus, the MPC approach allows different culpability levels to apply to different elements of a crime.

Similarly, in the crime of rape, the MPC requires proof that the defendant was at least reckless with respect to the elements involving sexual intercourse, but applies a lower standard of culpability (in the case of victims below the age of 10, no culpability at all) with respect to the age of the victim.

We will take up these issues when we get to that part of the course. For now you need only to master the process of identifying particular elements of the crime.



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EXERCISE

Each question gives you a fact pattern, and then you must choose an answer that best reflects the law as you understand it. Be careful to read the question and the suggested answers thoroughly. Select your answer by clicking on it. If you give an incorrect answer, you will be given feedback on what was wrong with your answer. By clicking on the feedback you will be taken back to the question to try again. Once a correct answer is selected, click on the feedback to go to the next question.



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Question #1

1. Linden Penal Code § 1111 provides: "It is a misdemeanor to operate a snowmobile in such a way as to run down or harass deer, elk, or any wildlife, or any domestic animal." In this statute, "Operating a snowmobile" is:

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above



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(A) A conduct element

(B) A circumstance element

(C) A result element

(D) None of the above

1. **(A)** is the correct answer. Operating a snowmobile is conduct.

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- (B) A circumstance element**
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Sorry, that is incorrect.

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- (D) None of the above**

Sorry, that is incorrect.

Question #2

2. Use the same statute as in Question 1. ("It is a misdemeanor to operate a snowmobile in such a way as to run down or harass deer, elk, or any wildlife, or any domestic animal.") In this statute, "to run down a deer" would be

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above



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Question #2

2. Use the same statute as in Question 1. ("It is a misdemeanor to operate a snowmobile in such a way as to run down or harass deer, elk, or any wildlife, or any domestic animal.") In this statute, "to run down a deer" would be

(A) A conduct element

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Sorry, that is incorrect.

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- (A) A conduct element
- (B) A circumstance element
- (C) A result element**
- (D) None of the above

2. The correct answer is **(C)**. Although it might sound like a conduct element, the statute focuses on whether a *result* of the operation of a snowmobile is to run down a deer.

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Question #2

2. Use the same statute as in Question 1. ("It is a misdemeanor to operate a snowmobile in such a way as to run down or harass deer, elk, or any wildlife, or any domestic animal.") In this statute, "to run down a deer" would be

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above**

Sorry, that is incorrect.

Question #3

3. Linden Penal Code § 333 provides: "It is a misdemeanor for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, teacher, classified employee, or student of any common school who is in the peaceful discharge or conduct of his or her duties or studies." In this statute, "intimidate by threat of force" is:

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above



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- (A) A conduct element**
- (B) A circumstance element
- (C) A result element
- (D) None of the above

3. **(A)** is correct. The statute focuses on the behavior of the defendant in intimidating someone. It doesn't require any particular result to occur.

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3. Linden Penal Code § 333 provides: "It is a misdemeanor for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, teacher, classified employee, or student of any common school who is in the peaceful discharge or conduct of his or her duties or studies." In this statute, "intimidate by threat of force" is:

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- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above**

Sorry, that is incorrect.

Question #4

4. Use the same statute as in Question 3 (: "It is a misdemeanor for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, teacher, classified employee, or student of any common school who is in the peaceful discharge or conduct of his or her duties or studies."). In this statute, "who is in the peaceful discharge or conduct of his or her duties or studies" is

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above



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Question #4

4. Use the same statute as in Question 3 (: "It is a misdemeanor for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, teacher, classified employee, or student of any common school who is in the peaceful discharge or conduct of his or her duties or studies."). In this statute, "who is in the peaceful discharge or conduct of his or her duties or studies" is

(A) A conduct element

(B) A circumstance element

(C) A result element

(D) None of the above

Sorry that is incorrect.

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- (A) A conduct element
- (B) A circumstance element**
- (C) A result element
- (D) None of the above

4. **(B)** is correct. It describes a circumstance in which the victim is engaged. (C) is incorrect. The statute focuses on the behavior of the defendant in intimidating someone. It doesn't require any particular result to occur.

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4. Use the same statute as in Question 3 (: "It is a misdemeanor for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, teacher, classified employee, or student of any common school who is in the peaceful discharge or conduct of his or her duties or studies."). In this statute, "who is in the peaceful discharge or conduct of his or her duties or studies" is

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- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above**

Sorry, that is incorrect.

Question #5

5a. A statute provides: “A person is guilty of burglary in the second degree when he knowingly enters or remains unlawfully in a building with intent to commit a crime therein, and when the building is a dwelling.” In this statute “entering or remaining” in a building is:

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above



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Question #5

5a. A statute provides: “A person is guilty of burglary in the second degree when he knowingly enters or remains unlawfully in a building with intent to commit a crime therein, and when the building is a dwelling.” In this statute “entering or remaining” in a building is:

(A) A conduct element

(B) A circumstance element

(C) A result element

(D) None of the above

5a. (A) is the correct answer. The activity of entering or remaining in a building is a conduct element.

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- (D) None of the above

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Sorry, that is incorrect.

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- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above**

Sorry, that is incorrect.

Question #6

Consider the same statute, “A person is guilty of burglary in the second degree when he knowingly enters or remains unlawfully in a building with intent to commit a crime therein, and when the building is a dwelling.” The element of whether the building is a dwelling is:

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above



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- (A) A conduct element**
- (B) A circumstance element
- (C) A result element
- (D) None of the above

Sorry, that is incorrect.

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- (A) A conduct element
- (B) A circumstance element**
- (C) A result element
- (D) None of the above

(B) is the correct answer. Whether or not the building is a dwelling or not is a circumstance element.

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Consider the same statute, “A person is guilty of burglary in the second degree when he knowingly enters or remains unlawfully in a building with intent to commit a crime therein, and when the building is a dwelling.” The element of whether the building is a dwelling is:

- (A) A conduct element
- (B) A circumstance element
- (C) A result element**
- (D) None of the above

Sorry, that is incorrect.

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Consider the same statute, “A person is guilty of burglary in the second degree when he knowingly enters or remains unlawfully in a building with intent to commit a crime therein, and when the building is a dwelling.” The element of whether the building is a dwelling is:

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above**

Sorry, that is incorrect.

Question #7

Consider this statute: “Whoever maliciously injures or breaks or destroys, or attempts to injure or break or destroy, by fire or otherwise, any public or private property, whether real or personal, not his or her own, of the value of \$200 or more, shall be fined not more than \$5,000.”

In this statute, the element of “value of \$200 or more” is:

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above



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In this statute, the element of “value of \$200 or more” is:

(A) A conduct element

(B) A circumstance element

(C) A result element

(D) None of the above

Sorry, that is incorrect.

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In this statute, the element of “value of \$200 or more” is:

- (A) A conduct element
- (B) A circumstance element**
- (C) A result element
- (D) None of the above

(B) is the correct answer. Whether the value of the property exceeds \$200 is a circumstance element.

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Consider this statute: “Whoever maliciously injures or breaks or destroys, or attempts to injure or break or destroy, by fire or otherwise, any public or private property, whether real or personal, not his or her own, of the value of \$200 or more, shall be fined not more than \$5,000.”

In this statute, the element of “value of \$200 or more” is:

- (A) A conduct element
- (B) A circumstance element
- (C) A result element**
- (D) None of the above

Sorry, that is incorrect.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

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In this statute, the element of “value of \$200 or more” is:

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above**

Sorry, that is incorrect.

Question #8

Consider the same statute: “Whoever maliciously injures or breaks or destroys, or attempts to injure or break or destroy, by fire or otherwise, any public or private property, whether real or personal, not his or her own, of the value of \$200 or more, shall be fined not more than \$5,000.”

The element of “maliciously injures or breaks or destroys” is:

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above



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The element of “maliciously injures or breaks or destroys” is:

(A) A conduct element

(B) A circumstance element

(C) A result element

(D) None of the above

(A) is the correct answer. Injuring, breaking or destroying is a conduct element.

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Consider the same statute: “Whoever maliciously injures or breaks or destroys, or attempts to injure or break or destroy, by fire or otherwise, any public or private property, whether real or personal, not his or her own, of the value of \$200 or more, shall be fined not more than \$5,000.”

The element of “maliciously injures or breaks or destroys” is:

- (A) A conduct element
- (B) A circumstance element**
- (C) A result element
- (D) None of the above

Sorry, that is incorrect.

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The element of “maliciously injures or breaks or destroys” is:

- (A) A conduct element
- (B) A circumstance element
- (C) A result element**
- (D) None of the above

Sorry, that is incorrect.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

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The element of “maliciously injures or breaks or destroys” is:

- (A) A conduct element
- (B) A circumstance element
- (C) A result element
- (D) None of the above**

Sorry, that is incorrect.

The next part of this exercise requires you to review the rules for interpreting statutes that are laid out in MPC § 2.02. Here are some of the highlights:

If the statute specifies a culpability level for one element of the crime, and there is no distinction among the elements, it applies to all of the elements, unless a contrary purpose appears. (§ 2.02(4))

If no culpability is specified for an element of the crime, the minimum culpability is that of recklessness. (§ 2.02(3))

A higher level of culpability may satisfy a lower level of culpability. For example, one who acts knowingly with respect to an element of the crime may be convicted if that element requires only recklessness. (§ 2.02(5))

Although culpability is required with respect to the elements of the crime, there is no culpability required for knowledge *of the law* governing the crime. To put it another way, ignorance of the law – of the existence, or of the correct application, or interpretation of the law – is no excuse. (§ 2.02(9))



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Question #9

D shot V above the left knee in the early morning hours 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.

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



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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

Sorry, that is incorrect.

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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

Sorry, that is incorrect.

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

(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.

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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

Sorry, that is incorrect.

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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**

Sorry, that is incorrect.

Question #10

Use the same scenario:

D shot V above the left knee in the early morning hours 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.

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



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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

Sorry, that is incorrect.

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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

Sorry, that is incorrect.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

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

Sorry, that is incorrect.

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

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

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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**

Sorry, that is incorrect.

Question #11

Using the same scenario as the previous question, 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.



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Using the same scenario as the previous question, 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.

(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.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Using the same scenario as the previous question, 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.

(B) is the **correct** answer, because he wouldn't be guilty under either 2(a) or 2(b) unless he was at least reckless.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Using the same scenario as the previous question, 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.

(C) is incorrect, because it assumes a fact that is debatable.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Using the same scenario as the previous question, 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.**

(D) is incorrect, because it fails to address the mens rea requirement.

Question #12

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.



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DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

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.

(A) is incorrect, because it assumes too low a culpability (negligence), whereas 2(b) requires at least knowledge.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

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.

(B) is incorrect, for the same reason.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

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.

(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.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

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.**

Thus, **(D)** is the **correct** answer.

Question #13

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.



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DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Question #13

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?

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- (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.

(A) is incorrect, because willful is not a term used in the MPC to determine culpability.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Question #13

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.

(B) is incorrect, because she had a duty based upon having caused the accident.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Question #13

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.

(C) is incorrect, because she has no status relationship with the victim.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Question #13

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.

(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.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Question #13

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.**

Thus, **(E)** is the **correct** answer.

Question #14

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



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DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

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

A. Sorry, that's incorrect; possession is a *conduct* element

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

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

B. This answer is only partially correct;

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

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

C. This answer is only partially correct;

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

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

D. **Correct.** Both B and C are circumstance elements

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

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**

E. Sorry, there is a correct answer.

Question #15

Using the same statute as in question #14 ("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?), 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.



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Question #15

Using the same statute as in question #1 ("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?), 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.

A. Sorry, that's incorrect. The statute doesn't distinguish among the material elements, and thus knowledge applies to all of the elements.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Question #15

Using the same statute as in question #1 ("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?), 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.

B. Sorry, that's incorrect; it states the recklessness standard, whereas the statute requires knowledge.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Question #15

Using the same statute as in question #1 ("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?), 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.

C. Sorry, that's incorrect; negligence is insufficient to sustain the conviction;

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Question #15

Using the same statute as in question #1 ("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?), 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.**

D. Correct.

Question #16

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) 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.



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DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Using the same statute as in question #1 ("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?), 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.

A. **Correct.** The default standard is recklessness, and this answer correctly states the MPC definition of recklessness.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Using the same statute as in question #1 ("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?), 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.

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.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Using the same statute as in question #1 ("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?), 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.

C. Sorry, that's incorrect. Nothing in the fact pattern suggests that there is any basis for vicarious liability.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

Using the same statute as in question #1 ("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?), 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.**

D. Sorry, that's incorrect; it requires that Frank bear the burden of showing lack of intent.

Question #17

Linden 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) None of the above.



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Question #17

Linden 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) None of the above.

A. Sorry, that's incorrect. It's a results element.

Question #17

Linden 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) None of the above.

B. Sorry, that's incorrect.

Question #17

Linden 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) None of the above.

C. Correct.

Question #17

Linden 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) None of the above.**

D. Sorry, that's incorrect.

Question #18

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)



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Question #18

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)

- 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.

Question #18

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)

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.

Question #18

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)

C. Correct.

Question #18

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)**

D. Sorry, that's incorrect.

Question #19

FACTS FOR QUESTIONS 19 and 20

Roger Steele grew up in the state of Evergreen. He moved to West Dakota for a job, but he still had family in Evergreen. Evergreen instituted a lottery for hunting trophy animals that permitted Evergreen residents to apply on line. Steele states that he read the conditions “very carefully” and concluded that he qualified as an Evergreen resident. He listed his wife’s parents’ address as his for purposes of his application. He won the lottery, and was then granted a “once in a lifetime” permit. He succeeded in taking a coveted trophy male mule deer. Authorities then learned of his residence in West Dakota and charged him with violating Evergreen Penal Code § 23-20-3, which declares as follows:

A person is guilty of wanton destruction of protected wildlife, a third degree felony, if that person takes protected wildlife unaccompanied by a valid license, permit, tag, certificate of registration, bill of sale, or invoice

In order to convict Steele of violating § 23-20-3, the prosecution would have to prove:

- (a) Steele was reckless in forming his belief that he was an Evergreen resident
- (b) Steele knew that he was not an Evergreen resident
- (c) Steele knew that he did not have a valid permit
- (d) Steele’s permit was not valid, regardless of what Steele believed.



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DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

A person is guilty of wanton destruction of protected wildlife, a third degree felony, if that person takes protected wildlife unaccompanied by a valid license, permit, tag, certificate of registration, bill of sale, or invoice

In order to convict Steele of violating § 23-20-3, the prosecution would have to prove:

- (a) Steele was reckless in forming his belief that he was an Evergreen resident**
- (b) Steele knew that he was not an Evergreen resident
- (c) Steele knew that he did not have a valid permit
- (d) Steele's permit was not valid, regardless of what Steele believed.

(a) incorrect because his mistake with respect to the invalidity of the permit might be considered a mistake of law.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

A person is guilty of wanton destruction of protected wildlife, a third degree felony, if that person takes protected wildlife unaccompanied by a valid license, permit, tag, certificate of registration, bill of sale, or invoice

In order to convict Steele of violating § 23-20-3, the prosecution would have to prove:

- (a) Steele was reckless in forming his belief that he was an Evergreen resident
- (b) Steele knew that he was not an Evergreen resident**
- (c) Steele knew that he did not have a valid permit
- (d) Steele's permit was not valid, regardless of what Steele believed.

(b) is incorrect because it states too high a culpability standard (knowledge) where the statute is silent and would therefore be a recklessness standard.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

A person is guilty of wanton destruction of protected wildlife, a third degree felony, if that person takes protected wildlife unaccompanied by a valid license, permit, tag, certificate of registration, bill of sale, or invoice

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- (a) Steele was reckless in forming his belief that he was an Evergreen resident
- (b) Steele knew that he was not an Evergreen resident
- (c) Steele knew that he did not have a valid permit**
- (d) Steele's permit was not valid, regardless of what Steele believed.

(c) is similarly flawed.

DeWolf, Criminal Law Tutorial, Element Analysis Under the MPC

A person is guilty of wanton destruction of protected wildlife, a third degree felony, if that person takes protected wildlife unaccompanied by a valid license, permit, tag, certificate of registration, bill of sale, or invoice

In order to convict Steele of violating § 23-20-3, the prosecution would have to prove:

- (a) Steele was reckless in forming his belief that he was an Evergreen resident
- (b) Steele knew that he was not an Evergreen resident
- (c) Steele knew that he did not have a valid permit
- (d) Steele's permit was not valid, regardless of what Steele believed.**

(d) is correct, because it states correctly what the prosecution would have to prove.

Question #20

Roger Steele grew up in the state of Evergreen. He moved to West Dakota for a job, but he still had family in Evergreen. Evergreen instituted a lottery for hunting trophy animals that permitted Evergreen residents to apply on line. Steele states that he read the conditions “very carefully” and concluded that he qualified as an Evergreen resident. He listed his wife’s parents’ address as his for purposes of his application. He won the lottery, and was then granted a “once in a lifetime” permit. He succeeded in taking a coveted trophy male mule deer. Authorities then learned of his residence in West Dakota and charged him with violating Evergreen Penal Code § 23-20-3, which declares as follows:

A person is guilty of wanton destruction of protected wildlife, a third degree felony, if that person takes protected wildlife unaccompanied by a valid license, permit, tag, certificate of registration, bill of sale, or invoice

Steele would be entitled to an acquittal if the jury found:

- (a) A reasonable person would believe that he qualified for a permit
- (b) Steele actually believed that the permit he possessed was valid
- (c) The standard for what constituted a “resident” was impermissibly vague
- (d) None of the above.



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A person is guilty of wanton destruction of protected wildlife, a third degree felony, if that person takes protected wildlife unaccompanied by a valid license, permit, tag, certificate of registration, bill of sale, or invoice

Steele would be entitled to an acquittal if the jury found:

- (a) **A reasonable person would believe that he qualified for a permit**
- (b) Steele actually believed that the permit he possessed was valid
- (c) The standard for what constituted a “resident” was impermissibly vague
- (d) None of the above.

(a) is incorrect for reasons similar to answer (a) in question 1.

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Steele would be entitled to an acquittal if the jury found:

- (a) A reasonable person would believe that he qualified for a permit
- (b) Steele actually believed that the permit he possessed was valid**
- (c) The standard for what constituted a “resident” was impermissibly vague
- (d) None of the above.

(b) is incorrect for reasons similar to answer (a) in question 1.

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Steele would be entitled to an acquittal if the jury found:

- (a) A reasonable person would believe that he qualified for a permit
- (b) Steele actually believed that the permit he possessed was valid
- (c) The standard for what constituted a “resident” was impermissibly vague**
- (d) None of the above.

(c) is incorrect because juries do not find whether or not statutes are vague - that's a question of law.

A person is guilty of wanton destruction of protected wildlife, a third degree felony, if that person takes protected wildlife unaccompanied by a valid license, permit, tag, certificate of registration, bill of sale, or invoice

Steele would be entitled to an acquittal if the jury found:

- (a) A reasonable person would believe that he qualified for a permit
- (b) Steele actually believed that the permit he possessed was valid
- (c) The standard for what constituted a “resident” was impermissibly vague
- (d) None of the above.**

(d) is the correct answer.

Question #21

QUESTIONS 21-22 are based on the following facts:

Sharan Ann Williams had two daughters, Ujeana and Precious, aged 7 and 8. She went to the home of her boyfriend, Herbert Bowden, and informed him that she wanted to go out with friends. The girls did not want to be left in the dark, so when it was time to go to bed Bowden put a candle in a pie plate and set it on the floor. After Williams left, Bowden periodically checked on the girls but didn't blow the candle out. Bowden fell asleep on the couch in the living room. He was awakened at 1:00 a.m. by loud screams and the sight and smell of a house fire. He attempted to rescue the girls but was unsuccessful. They both perished in the fire.

In a prosecution of Williams for negligent homicide (defined as causing the death of another through negligence), which of the following is true?

- (a) Williams could be held vicariously liable for Bowden's failure to prevent the fire
- (b) Williams could not be convicted if she wasn't present when Bowden failed to extinguish the candle
- (c) Williams could not be convicted if she reasonably entrusted the care of her children to Bowden
- (d) Williams would be guilty of negligent homicide only if she was aware of the risk of leaving her children with Bowden



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In a prosecution of Williams for negligent homicide (defined as causing the death of another through negligence), which of the following is true?

- (a) Williams could be held vicariously liable for Bowden's failure to prevent the fire**
- (b) Williams could not be convicted if she wasn't present when Bowden failed to extinguish the candle
- (c) Williams could not be convicted if she reasonably entrusted the care of her children to Bowden
- (d) Williams would be guilty of negligent homicide only if she was aware of the risk of leaving her children with Bowden

(a) is incorrect because there is no vicarious liability for crimes that are more than violations.

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In a prosecution of Williams for negligent homicide (defined as causing the death of another through negligence), which of the following is true?

- (a) Williams could be held vicariously liable for Bowden's failure to prevent the fire
- (b) Williams could not be convicted if she wasn't present when Bowden failed to extinguish the candle**
- (c) Williams could not be convicted if she reasonably entrusted the care of her children to Bowden
- (d) Williams would be guilty of negligent homicide only if she was aware of the risk of leaving her children with Bowden

(b) is incorrect because she wouldn't need to be present in order to act negligently; leaving the children with Bowden might be considered negligent.

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In a prosecution of Williams for negligent homicide (defined as causing the death of another through negligence), which of the following is true?

- (a) Williams could be held vicariously liable for Bowden's failure to prevent the fire
- (b) Williams could not be convicted if she wasn't present when Bowden failed to extinguish the candle
- (c) Williams could not be convicted if she reasonably entrusted the care of her children to Bowden**
- (d) Williams would be guilty of negligent homicide only if she was aware of the risk of leaving her children with Bowden

(c) is correct because it would negate the mens rea that is required by the statute

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In a prosecution of Williams for negligent homicide (defined as causing the death of another through negligence), which of the following is true?

- (a) Williams could be held vicariously liable for Bowden's failure to prevent the fire
- (b) Williams could not be convicted if she wasn't present when Bowden failed to extinguish the candle
- (c) Williams could not be convicted if she reasonably entrusted the care of her children to Bowden
- (d) Williams would be guilty of negligent homicide only if she was aware of the risk of leaving her children with Bowden**

(d) is incorrect because it states what is in effect a standard of recklessness (requiring an awareness of the risk) rather than negligence (which requires that one should be aware of the risk).

Question #22

QUESTIONS 21-22 are based on the following facts:

Sharan Ann Williams had two daughters, Ujeana and Precious, aged 7 and 8. She went to the home of her boyfriend, Herbert Bowden, and informed him that she wanted to go out with friends. The girls did not want to be left in the dark, so when it was time to go to bed Bowden put a candle in a pie plate and set it on the floor. After Williams left, Bowden periodically checked on the girls but didn't blow the candle out. Bowden fell asleep on the couch in the living room. He was awakened at 1:00 a.m. by loud screams and the sight and smell of a house fire. He attempted to rescue the girls but was unsuccessful. They both perished in the fire.

In a prosecution of Bowden for negligent homicide, which of the following would be true?

- (a) Bowden would not be guilty if he did not owe a duty to rescue the children
- (b) Bowden did not owe a duty to rescue the children because he was not legally or biologically related to the children
- (c) Bowden would not be guilty if he made a reasonable effort to rescue the children
- (d) None of the above.



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In a prosecution of Bowden for negligent homicide, which of the following would be true?

- (a) Bowden would not be guilty if he did not owe a duty to rescue the children**
- (b) Bowden did not owe a duty to rescue the children because he was not legally or biologically related to the children
- (c) Bowden would not be guilty if he made a reasonable effort to rescue the children
- (d) None of the above.

(a) is incorrect because Bowden may not have been negligent in failing to rescue them, but rather in causing the fire in the first place.

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In a prosecution of Bowden for negligent homicide, which of the following would be true?

- (a) Bowden would not be guilty if he did not owe a duty to rescue the children
- (b) Bowden did not owe a duty to rescue the children because he was not legally or biologically related to the children**
- (c) Bowden would not be guilty if he made a reasonable effort to rescue the children
- (d) None of the above.

(b) is incorrect because one can owe a duty by voluntarily assuming the duty to use reasonable care.

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In a prosecution of Bowden for negligent homicide, which of the following would be true?

- (a) Bowden would not be guilty if he did not owe a duty to rescue the children
- (b) Bowden did not owe a duty to rescue the children because he was not legally or biologically related to the children
- (c) Bowden would not be guilty if he made a reasonable effort to rescue the children**
- (d) None of the above.

(c) is incorrect because it imposes a standard of recklessness when the standard is negligence.

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In a prosecution of Bowden for negligent homicide, which of the following would be true?

- (a) Bowden would not be guilty if he did not owe a duty to rescue the children
- (b) Bowden did not owe a duty to rescue the children because he was not legally or biologically related to the children
- (c) Bowden would not be guilty if he made a reasonable effort to rescue the children
- (d) None of the above.**

(d) is the correct answer.

END

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