

INTRODUCTION

This program is designed to provide a review of basic concepts covered in a first-year criminal law class and is based on Kadish & Schulhofer, *Criminal Law: Cases and Materials*. You have accessed the tutorial for Chapter 3, “Elements of Just Punishment.” Prior to doing these exercises you should read the relevant material in Chapter 3.

OVERVIEW





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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.

You may begin the exercise by click on a question number below. Throughout the tutorial three Shortcut Buttons will be located in the bottom right-hand corner of each page. The Return Button  brings you back to this page allowing you jump to questions of your choice if you prefer. The Home Button  takes you to the Criminal Law Tutorial Home Page.

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Question 3-1

Ward and June Cleaver are parents of a 3-month-old, Arnold. Arnold fell and broke his arm. Ward and June were told that Arnold's arm was broken, but they wanted to see if vitamin therapy would cure his condition. After two months they finally took Arnold in to see a doctor, and by that time the bones had begun to fuse in such a way that it was impossible to set the bone properly and Arnold had a permanent injury. If Ward and June were prosecuted for aggravated assault on their child ("A person is guilty of aggravated assault if he: 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"), which of the following is correct:

- (A) Both could be convicted, since they knowingly failed to obtain treatment that would have prevented serious bodily injury;
- (B) Neither could be convicted, because they committed no voluntary act;
- (C) Neither could be convicted, because their conduct did not cause Arnold's injury;
- (D) Ward could be convicted, or June could be convicted, but not both;



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(a) is correct. Ward and June were under a legal duty to protect their child, and their failure to seek medical care resulted in their knowingly causing serious bodily injury



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(b) is incorrect. Because they were his parents, they were under a legal duty of care.



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(c) is incorrect. Their failure to seek care caused his injury, and so long as there is a legal duty to engage in positive action, the failure to do so can be said to have caused the harm.



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(d) is incorrect; there is no reason they could not both be convicted.



Question 3-2

Mona has been asked by her boss to take a barrel of liquid from the plant where she works and dispose of it in her backyard, which is in a rural area. She does so. Mona is later charged with violating a statute that states: "A person commits a third degree felony when he knowingly disposes of toxic waste." Which of the following is true?

- (A) Mona could not be convicted if she didn't actually know the contents of the barrel;
- (B) Mona could not be convicted if she knew the contents of the barrel but reasonably believed that disposal would not harm the environment;
- (C) Mona could be convicted, but only if her boss was held vicariously liable;
- (D) Mona could be convicted if she was aware of a "high probability" that the contents of the barrel were toxic.



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(A) is incorrect, because under MPC § 2.02(7) actual knowledge is not required



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(B) is potentially correct if the statute were interpreted to extend "knowingly" to the fact that the waste was toxic, but it could be incorrect if the statute is not so interpreted



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(C) is incorrect, because the boss's liability is irrelevant to her culpability



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(D) is correct, because MPC § 2.02(7) treats awareness of a “high probability” of the existence of a fact or result as satisfying the standard of “knowing.”



Question 3-3

Motorist, an epileptic, had a seizure while driving and lost control of the car. The car crossed the center dividing line and struck a car occupied by a driver and two passengers. One of the passengers was killed. Would this evidence support a conviction for negligent homicide?

- (A) Yes, because epileptics are negligent if they drive a car.
- (B) Yes, but only if Motorist's behavior was a gross deviation from the behavior of a reasonable person.
- (C) No, because the seizure was not voluntary behavior on his part.
- (D) No, unless he was actually aware of the risk that his behavior would cause injury.



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(A) Sorry, that's incorrect. An epileptic may be acting reasonably if the seizure disorder is controlled by medication.



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(B) That's correct. The answer correctly states the description of negligence in the MPC.



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(C) 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.



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(D) 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.



Question 3-4

George left work at 6 pm and began driving to visit his mother who was in a hospital on the other side of the state. At 4 am he fell asleep at the wheel and his car started to drift off the pavement. When the sound of his tires leaving the roadway woke him up, he turned the wheel sharply and wound up crossing onto the other side of the road, where he struck another car. If George were charged with negligent driving, which of the following would be a plausible defense?

- (A) Falling asleep was an involuntary act;
- (B) He was unaware of the risk that he was so sleepy
- (C) He chose the lesser of evils
- (D) He was under duress
- (E) None of the above



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(E) None of the above

(A) Sorry, falling asleep might be involuntary, but driving when he was sleepy was a voluntary act.



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(B) is incorrect because negligence is based on the fact that the defendant *should* be aware of the risk;



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(C) is incorrect because there was no evil that he was avoiding;



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(D) is incorrect because duress requires a human agent;



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(E) is the best answer because each of the other choices is incorrect. While (a) falling asleep might be an involuntary act, driving while sleepy is not; (b) even if he was unaware of the risk, negligence only requires that he *should* have been aware of the risk; (c) doesn't apply because there was no lesser evil he was avoiding, and (d) duress requires a human agent.



Question 3-5

Penal Code § 1234 states as follows: "Any person, other than an employee of a law enforcement agency, who acquires more than four pounds of C-4 [a type of plastic explosive] commits a second degree felony." John had been employed at a law enforcement agency but the company sent him a letter notifying him that he was being laid off. John didn't read his mail because he was testing a new design of body armor. John called the warehouse to order explosives to continue his testing at his home laboratory. A package containing five pounds of C-4 was delivered to John and he was arrested for violating § 1234. Under the MPC, which of the following would constitute a plausible defense?

- (A) John's order was for three pounds of C-4 and the warehouse mistakenly delivered five pounds.
- (B) John actually believed (albeit negligently) that he was still an employee of a law enforcement agency.
- (C) John ordered five pounds of "the usual" (intending to order nitroglycerine) and the warehouse thought he meant C-4.
- (D) All of the above.



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(A) is partially correct. His mistake of fact would negative the mens rea (recklessness).



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(B) is partially correct; if he made a mistake regarding whether he was still employed (even if it was a mistake regarding employment law) it would be a defense;



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(C) is another mistake of fact; therefore it qualifies as a defense to the charge. However, it is only partially correct.



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- (D) All of the above.**

(D) is the best answer, because all three of the preceding answers would be plausible defenses.



Question 3-6

Linda had a supply of NoPaine, a prescription drug she took for her chronic pain condition. She noticed that she was running out of NoPaine pills before her prescription was due for renewal, and she suspected that her 13-year-old daughter Renee was taking them from her medicine cabinet. Penal Code § 555 provides: "It is a 3rd degree felony to supply any prescription drug to any person to whom such drugs have not been prescribed." Could Linda be convicted of violating § 555?

- (A) Yes, but only if she had the purpose of supplying them to Renee;
- (B) Yes, but only if she knew that Renee was stealing them;
- (C) No, unless Linda was at least reckless in supplying them to Renee;
- (D) No, unless Linda was at least negligent in supplying them to Renee.



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- (C) No, unless Linda was at least reckless in supplying them to Renee;
- (D) No, unless Linda was at least negligent in supplying them to Renee.

(A) is incorrect, because the culpability standard is one of recklessness. Because the statute is silent with respect to culpability, the “default” standard of culpability is recklessness.



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- (D) No, unless Linda was at least negligent in supplying them to Renee.**

(D) is incorrect; because the culpability standard is one of recklessness. Because the statute is silent with respect to culpability, the “default” standard of culpability is recklessness.



Question 3-7

Linda had a supply of NoPaine, a prescription drug she took for her chronic pain condition. She noticed that she was running out of NoPaine pills before her prescription was due for renewal, and she suspected that her 13-year-old daughter Renee was taking them from her medicine cabinet. Penal Code § 555 provides: "It is a 3rd degree felony to supply any prescription drug to any person to whom such drugs have not been prescribed." Assume that Renee was stealing NoPaine pills, and gave one to Joe, who died of a reaction to the drug. Could Linda be convicted of negligent homicide?

- (A) Yes, but only if she had the purpose of supplying the NoPaine to Renee
- (B) Yes, but only if she knew that Renee was stealing her NoPaine pills;
- (C) No, unless Linda was at least reckless in allowing Renee to steal the drugs;
- (D) No, unless Linda was negligent with respect to the risk that Joe might die



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(A) is incorrect; so long as she was negligent with respect to the result (death), she could be found guilty of negligent homicide.



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Question 3-7

Linda had a supply of NoPaine, a prescription drug she took for her chronic pain condition. She noticed that she was running out of NoPaine pills before her prescription was due for renewal, and she suspected that her 13-year-old daughter Renee was taking them from her medicine cabinet. Penal Code § 555 provides: "It is a 3rd degree felony to supply any prescription drug to any person to whom such drugs have not been prescribed." Assume that Renee was stealing NoPaine pills, and gave one to Joe, who died of a reaction to the drug. Could Linda be convicted of negligent homicide?

- (A) Yes, but only if she had the purpose of supplying the NoPaine to Renee
- (B) Yes, but only if she knew that Renee was stealing her NoPaine pills;**
- (C) No, unless Linda was at least reckless in allowing Renee to steal the drugs;
- (D) No, unless Linda was negligent with respect to the risk that Joe might die

(B) is incorrect; so long as she was negligent with respect to the result (death), she could be found guilty of negligent homicide.



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Question 3-7

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- (C) No, unless Linda was at least reckless in allowing Renee to steal the drugs;**
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(C) is incorrect; so long as she was negligent with respect to the result (death), she could be found guilty of negligent homicide.



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(D) is the correct answer; so long as she was negligent with respect to the result (death), she could be found guilty of negligent homicide.



Question 3-8

Steven has been charged with possession of child pornography. The statute punishes possession of "images of children engaged in sexually explicit conduct," but makes an exception for law enforcement officers while in the course and scope of their duties. Which of the following is true?

- (A) Steven could succeed in challenging the statute for vagueness if he could show that he couldn't understand from the statute what conduct was being prohibited;
- (B) Steven could succeed in challenging the statute for vagueness if he could show that a reasonable person would be unable to understand what was being legally prohibited, even if Steven knew that what he possessed was in violation of the statute;
- (C) Steven could argue a mistake of law if he wasn't aware that the pictures he possessed contained images of children engaged in sexually explicit conduct;
- (D) Steven would be entitled to an acquittal if he were a law enforcement officer.



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(D) Steven would be entitled to an acquittal if he were a law enforcement officer.

(A) is incorrect, because it doesn't matter whether *Steven* understood the law or not; his argument amounts to a form of ignorance of the law, which is almost never an excuse for violating the law.



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- (C) Steven could argue a mistake of law if he wasn't aware that the pictures he possessed contained images of children engaged in sexually explicit conduct;
- (D) Steven would be entitled to an acquittal if he were a law enforcement officer.

(B) is CORRECT, because a vagueness challenge does not focus on the individual defendant, but on whether there is "fair notice" provided by the statute;



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- (C) Steven could argue a mistake of law if he wasn't aware that the pictures he possessed contained images of children engaged in sexually explicit conduct;**
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(C) is incorrect, because mistakes of law are generally not a basis for defense; what is described sounds more like a mistake of fact.



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- (D) Steven would be entitled to an acquittal if he were a law enforcement officer.**

(D) is incorrect, because even a law enforcement officer could be in possession of child pornography unrelated to his official duties.



Question 3-9

John, aged 19, went to a party where punch was being served. After drinking a glass of the punch John suspected that it might contain alcohol. He asked the host, who assured him that the punch did not contain alcohol. John continued drinking the punch, and then got in his car and drove home. He was pulled over by a police officer, who gave him a breathalyzer test and determined that his blood alcohol content (BAC) was .04. A statute in this jurisdiction makes it illegal for a person under the age of 21 to drive with a blood alcohol content above .02. In the trial of the case the defense argued that John reasonably believed the punch contained no alcohol. In response, the prosecuting attorney argued that the statute contains no mens rea requirement with regard to the BAC level. Which of the following is the most likely response from the judge?

- (A) It is unconstitutional to remove the mens rea requirement for a material element of the crime;
- (B) The constitution requires interpreting a statute in a way favorable to the defendant;
- (C) If John was neither reckless nor negligent in assuming that his host was telling the truth, he is not guilty of the crime;
- (D) Guilty as charged.



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- (C) If John was neither reckless nor negligent in assuming that his host was telling the truth, he is not guilty of the crime;
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(A) is incorrect, because the constitution doesn't require mens rea, at least with respect to *some* elements of the crime;



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- (D) Guilty as charged.

(B) is incorrect, because the rule of lenity is not a constitutional doctrine, and besides it is not adopted by the MPC.



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(C) is incorrect, because it doesn't answer the argument that the statute doesn't require any mens rea.



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- (D) Guilty as charged.**

(D) Is the **CORRECT** answer, because each of the other answers contains a serious flaw; (A) is incorrect, because the constitution doesn't require mens rea, at least with respect to *some* elements of the crime; (B) is incorrect, because the rule of lenity is not a constitutional doctrine, and besides it is not adopted by the MPC; and (C) is incorrect, because it doesn't answer the argument that the statute doesn't require any mens rea.



Question 3-10

Sam, the owner of a restaurant, is counting the money from the cash register when he finds a \$100 bill that looks suspicious to him. He calls his lawyer to find out what his responsibility is in depositing money that might be counterfeit. The lawyer then looked in an obsolete statute book that incorrectly identified the standard for passing counterfeit currency as "Anyone who intentionally passes counterfeit coin or currency" In fact, the statute in force as of the time of the offense provided, "Whoever knowingly passes, or attempts to pass, counterfeit coin or currency shall be fined not more than \$2,000,000 or imprisoned not more than 10 years, or both." Sam then deposits the \$100 bill at his bank. The bill is rejected by the bank as counterfeit. Can Sam be convicted of passing counterfeit currency?

- (A) Yes, if Sam thought it highly probable that the bill was counterfeit, even if he thought it might be genuine;
- (B) Yes, even if Sam reasonably relied on the lawyer's advice;
- (C) Both (A) and (B) are correct;
- (D) Neither (A) nor (B) is correct.



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(A) is only partially correct; when the actor believes that something is highly probable, that is the same as knowledge;



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(B) is only partially correct; reliance in order to be a basis for a mistake of law defense must be *official* reliance; a lawyer doesn't count;



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(C) is CORRECT, because both (a) and (b) are correct.



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(D) is incorrect; at least one of the answers is correct.



Question 3-11

A statute provides, "A person who purposely aids or solicits another to commit suicide is guilty of a felony of the second degree if his conduct causes such suicide or an attempted suicide, and otherwise of a misdemeanor." Carl was depressed and wanted to end his life. He asked Bill to pick up a prescription he had for barbiturates. Bill took the prescription to a pharmacy and had it filled. Has Bill committed a crime under the statute?

- (A) Yes, if the quantity of barbiturates was sufficient to cause Carl's death;
- (B) Yes, if Bill was at least reckless with regard to the risk that Carl would use the barbiturates to commit suicide;
- (C) No, unless Bill intended to give the barbiturates to Carl to help him commit suicide;
- (D) No, unless Bill actually gave the barbiturates to Carl with the intent to help him commit suicide;



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- (D) No, unless Bill actually gave the barbiturates to Carl with the intent to help him commit suicide;

(A) is incorrect, because it omits any mens rea requirement;



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(B) is incorrect, because the statute (or an attempt charge under the statute) requires purpose, and the answer gives only a recklessness standard;



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(C) is CORRECT;



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- (C) No, unless Bill intended to give the barbiturates to Carl to help him commit suicide;
- (D) No, unless Bill actually gave the barbiturates to Carl with the intent to help him commit suicide;**

(D) is incorrect, because the statute specifically recognizes (as a misdemeanor) an effort to aid the suicide even if the effort falls short.



Question 3-12

Ron owns a local trucking company. On one trip an employee named Harry picked up a barrel of VIOL, a hazardous chemical, when the barrel ruptured, spilling its contents into the town's source of drinking water. A statute provides, "Any person who negligently causes a hazardous chemical to be released in or near a source of drinking water shall be guilty of a misdemeanor." Which of the following would be true:

- (A) Ron could not be convicted of violating the statute unless he himself was aware of the fact that Harry was transporting VIOL.
- (B) Harry could not be convicted of violating the statute if he reasonably believed that the barrel was empty.
- (C) Since this would be described as a "regulatory" offense, there is no mens rea requirement for conviction of either person.
- (D) Either Ron or Harry could be convicted of violating the statute, but not both.



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- (B) Harry could not be convicted of violating the statute if he reasonably believed that the barrel was empty.
- (C) Since this would be described as a "regulatory" offense, there is no mens rea requirement for conviction of either person.
- (D) Either Ron or Harry could be convicted of violating the statute, but not both.

(A) 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 § 2.02.



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(B) That's correct. Acting reasonably would negative the mens rea requirement-- that the employee should have known that his conduct posed an unreasonable risk.



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- (C) Since this would be described as a "regulatory" offense, there is no mens rea requirement for conviction of either person.**
- (D) Either Ron or Harry could be convicted of violating the statute, but not both.

(C) Sorry, that's incorrect; the statute might have been made a regulatory offense, requiring no mens rea, but here the statute specifically requires negligence.



Question 3-12

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Which of the following would be true:

- (A) Ron could not be convicted of violating the statute unless he himself was aware of the fact that Harry was transporting VIOL.
- (B) Harry could not be convicted of violating the statute if he reasonably believed that the barrel was empty.
- (C) Since this would be described as a "regulatory" offense, there is no mens rea requirement for conviction of either person.
- (D) Either Ron or Harry could be convicted of violating the statute, but not both.**

(D) Sorry, that's incorrect. There is no reason to make the two convictions mutually exclusive.



Question 3-13

Ron owns a local trucking company. On one trip an employee named Harry picked up a barrel of VIOL, a hazardous chemical, when the barrel ruptured, spilling its contents into the town's source of drinking water. A statute provides, "Any person who negligently causes a hazardous chemical to be released in or near a source of drinking water shall be guilty of a misdemeanor." Suppose further that there is another providing as follows: "Any person who knowingly transports any hazardous chemical without first obtaining a Class H license shall be guilty of a misdemeanor."

If Ron is prosecuted for violating this statute, which of the following would be true:

- (A) Ron could NOT be convicted if he honestly believed that VIOL was not a hazardous chemical.
- (B) Ron could NOT be convicted if he did not know that Harry was transporting VIOL, even if Harry knew.
- (C) Ron could be convicted if he knew he didn't have a license, and was reckless with respect to whether his employees were transporting hazardous chemicals.
- (D) Ron could NOT be convicted if he reasonably believed that he was exempt from the coverage of this statute.



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(A) Ron could NOT be convicted if he honestly believed that VIOL was not a hazardous chemical.

(B) Ron could NOT be convicted if he did not know that Harry was transporting VIOL, even if Harry knew.

(C) Ron could be convicted if he knew he didn't have a license, and was reckless with respect to whether his employees were transporting hazardous chemicals.

(D) Ron could NOT be convicted if he reasonably believed that he was exempt from the coverage of this statute.

(A) 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.



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Question 3-13

Ron owns a local trucking company. On one trip an employee named Harry picked up a barrel of VIOL, a hazardous chemical, when the barrel ruptured, spilling its contents into the town's source of drinking water. A statute provides, "Any person who negligently causes a hazardous chemical to be released in or near a source of drinking water shall be guilty of a misdemeanor."

Suppose further that there is another providing as follows: "Any person who knowingly transports any hazardous chemical without first obtaining a Class H license shall be guilty of a misdemeanor." If Ron is prosecuted for violating this statute, which of the following would be true:

- (A) Ron could NOT be convicted if he honestly believed that VIOL was not a hazardous chemical.
- (B) Ron could NOT be convicted if he did not know that Harry was transporting VIOL, even if Harry knew.**
- (C) Ron could be convicted if he knew he didn't have a license, and was reckless with respect to whether his employees were transporting hazardous chemicals.
- (D) Ron could NOT be convicted if he reasonably believed that he was exempt from the coverage of this statute.

(B) 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.



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Question 3-13

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(C) 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.



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- (D) Ron could NOT be convicted if he reasonably believed that he was exempt from the coverage of this statute.**

(D) 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.



Question 3-15

Paul, a plumber, has a long pipe in the back of his truck to transport it to a repair job. It sticks out approximately 6 feet past the rear bumper. After stopping at a red light on a slight incline he attempts to move forward, but the car stalls and slips backward. The pipe goes through the windshield of a car immediately behind him, seriously injuring the driver.

Paul could be convicted of simple assault (MPC § **211.0**) if:

- (A) His conduct violates a specific section of the motor vehicle code.
- (B) His placement of the pipe is found to be reckless.
- (C) A person of ordinary prudence would have avoided the conduct.
- (D) He lacked any valid excuse for carrying the pipe.



Question 3-15

Paul, a plumber, has a long pipe in the back of his truck to transport it to a repair job. It sticks out approximately 6 feet past the rear bumper. After stopping at a red light on a slight incline he attempts to move forward, but the car stalls and slips backward. The pipe goes through the windshield of a car immediately behind him, seriously injuring the driver.

Paul could be convicted of simple assault (MPC § 211.0) if:

(A) His conduct violates a specific section of the motor vehicle code.

(B) His placement of the pipe is found to be reckless.

(C) A person of ordinary prudence would have avoided the conduct.

(D) He lacked any valid excuse for carrying the pipe.

(A) Sorry, that's incorrect. The violation would make it negligent per se, but that isn't enough to establish assault. Try again.



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Question 3-15

Paul, a plumber, has a long pipe in the back of his truck to transport it to a repair job. It sticks out approximately 6 feet past the rear bumper. After stopping at a red light on a slight incline he attempts to move forward, but the car stalls and slips backward. The pipe goes through the windshield of a car immediately behind him, seriously injuring the driver.

Paul could be convicted of simple assault (MPC § 211.0) if:

- (A) His conduct violates a specific section of the motor vehicle code.
- (B) His placement of the pipe is found to be reckless.**
- (C) A person of ordinary prudence would have avoided the conduct.
- (D) He lacked any valid excuse for carrying the pipe.

(B) That's correct. Simple assault occurs where one recklessly causes bodily injury to another (MPC § 211.0). His behavior in this case would qualify for that category.



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Question 3-15

Paul, a plumber, has a long pipe in the back of his truck to transport it to a repair job. It sticks out approximately 6 feet past the rear bumper. After stopping at a red light on a slight incline he attempts to move forward, but the car stalls and slips backward. The pipe goes through the windshield of a car immediately behind him, seriously injuring the driver.

Paul could be convicted of simple assault (MPC § 211.0) if:

- (A) His conduct violates a specific section of the motor vehicle code.
- (B) His placement of the pipe is found to be reckless.
- (C) A person of ordinary prudence would have avoided the conduct.**
- (D) He lacked any valid excuse for carrying the pipe.

(C) Sorry, that's incorrect. Failure to use ordinary prudence would constitute civil negligence, but here the standard is higher.



Question 3-15

Paul, a plumber, has a long pipe in the back of his truck to transport it to a repair job. It sticks out approximately 6 feet past the rear bumper. After stopping at a red light on a slight incline he attempts to move forward, but the car stalls and slips backward. The pipe goes through the windshield of a car immediately behind him, seriously injuring the driver.

Paul could be convicted of simple assault (MPC § 211.0) if:

- (A) His conduct violates a specific section of the motor vehicle code.
- (B) His placement of the pipe is found to be reckless.
- (C) A person of ordinary prudence would have avoided the conduct.
- (D) He lacked any valid excuse for carrying the pipe.**

(D) Sorry, that's incorrect. He might be negligent for carrying the pipe in this way without an excuse, but more must be proven to establish simple assault.



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Question 3-16

Barbara is an employee in an adult bookstore in the State of North York (which follows the Model Penal Code), and she has been charged with violating one section of the North York Criminal Code, which reads as follows:

Any person is guilty of obscenity involving a minor, a third degree felony, if he knowingly sells or delivers, by any means including by computer or mails, or knowingly receives or distributes, any visual depiction, if (1) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and (2) such visual depiction is of such conduct.

Barbara sold a videotape to an undercover police officer that contained a visual depiction of a minor engaging in sexually explicit conduct. Barbara admits that she was aware of the risk that some of the tapes that she sold might contain such depictions, but she did not know the contents of any of the tapes that she sold. Which of the following is correct?

- (A) Barbara cannot be convicted because the statute requires that she know the contents of that which she is selling.
- (B) Barbara can be convicted because the statute only requires that she was at least reckless with respect to the contents.
- (C) A good argument can be made for either (a) or (b).
- (D) Barbara can be convicted if she was at least negligent with respect to the age of the victims portrayed in the videotape.



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- (C) A good argument can be made for either (a) or (b).
- (D) Barbara can be convicted if she was at least negligent with respect to the age of the victims portrayed in the videotape.

(A) is potentially correct, because the statute is ambiguous. "Knowingly" certainly applies to the sale or delivery of a visual depiction. But the other element of the statute, that it contain a depiction of a minor engaged in sexually explicit conduct, is distinguished by being separately laid out



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- (D) Barbara can be convicted if she was at least negligent with respect to the age of the victims portrayed in the videotape.

(B) is potentially correct, because the statute is ambiguous. "Knowingly" certainly applies to the sale or delivery of a visual depiction. But the other element of the statute, that it contain a depiction of a minor engaged in sexually explicit conduct, is distinguished by being separately laid out, and therefore a standard of recklessness might be applied.



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- (D) Barbara can be convicted if she was at least negligent with respect to the age of the victims portrayed in the videotape.

(C) Is the best answer, because both (A) and (B) are plausible readings of the statute.



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- (D) Barbara can be convicted if she was at least negligent with respect to the age of the victims portrayed in the videotape.**

(D) is incorrect, because the standard is at least recklessness; the issue is whether knowledge or recklessness is the standard. See *U.S. v. X-Citement Video*, 1994 WL 662620.



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Suppose (for purposes of this question only) that another section of the Code defines a minor as anyone under the age of 21, and Barbara knew that the person portrayed in the videotape was 19, but mistakenly thought that a minor was anyone under the age of 18. Which of the following is correct?

- (A) Her mistake was one of fact, so therefore it would negative the requirement that she knowingly sold a depiction of a minor.
- (B) Her mistake was one of law, and therefore would not provide a defense.
- (C) If, but only if, she was at least reckless with respect to the definition of “minor,” then she would have no defense.
- (D) She would have a defense if her mistake regarding age was a reasonable one.



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- (D) She would have a defense if her mistake regarding age was a reasonable one.

(a) is incorrect, because her mistake relates to the existence or interpretation of the law defining the criminality of her conduct (it says that the definition of age is found in the criminal code itself).



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(c) is incorrect, because no culpability is required for a mistake of law.



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- (D) She would have a defense if her mistake regarding age was a reasonable one.**

(d) Is incorrect, because no culpability is required for awareness of the criminality of the conduct. MPC § 2.02(9).



Question 3-18

An omission or a failure to act can create criminal culpability if

- (A) A statute or other law creates a duty to act.
- (B) The defendant had a duty under contract.
- (C) The defendant created the risk to the victim.
- (D) All of the above.



Question 3-18

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- (B) The defendant had a duty under contract.
- (C) The defendant created the risk to the victim.
- (D) All of the above.

(A) is only partially correct, because all of these situations create a duty to act.



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- (A) A statute or other law creates a duty to act.
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(B) is only partially correct, because all of these situations create a duty to act.



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- (A) A statute or other law creates a duty to act.
- (B) The defendant had a duty under contract.
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- (D) All of the above.

(C) is incorrect because all of these situations create a duty to act.



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- (A) A statute or other law creates a duty to act.
- (B) The defendant had a duty under contract.
- (C) The defendant created the risk to the victim.
- (D) All of the above.**

(D) is **correct**. All of these situations create a duty to act.



Question 3-19

If a crime is one of strict liability, proof of intent to commit the crime

- (A) Must be beyond a reasonable doubt.
- (B) Is not required.
- (C) Must be proved by a preponderance of evidence.
- (D) Is impossible to procure.



Question 3-19

If a crime is one of strict liability, proof of intent to commit the crime

- (A) Must be beyond a reasonable doubt.**
- (B) Is not required.
- (C) Must be proved by a preponderance of evidence.
- (D) Is impossible to procure.

(A) is incorrect because proof of intent to commit the crime is not required under strict liability.



Question 3-19

If a crime is one of strict liability, proof of intent to commit the crime

- (A) Must be beyond a reasonable doubt.
- (B) Is not required.**
- (C) Must be proved by a preponderance of evidence.
- (D) Is impossible to procure.

(B) is **correct**. Strict liability means the defendant is guilty regardless of his state of mind.



Question 3-19

If a crime is one of strict liability, proof of intent to commit the crime

- (A) Must be beyond a reasonable doubt.
- (B) Is not required.
- (C) Must be proved by a preponderance of evidence.**
- (D) Is impossible to procure.

(C) is incorrect because proof of intent to commit the crime is not required under strict liability.



Question 3-19

If a crime is one of strict liability, proof of intent to commit the crime

- (A) Must be beyond a reasonable doubt.
- (B) Is not required.
- (C) Must be proved by a preponderance of evidence.
- (D) Is impossible to procure.**

(D) is incorrect because proof of intent to commit the crime is not required under strict liability.



Question 3-20

Under the MPC, mistake of law can exonerate a defendant if

- (A) The statute does not specify that knowledge of the law is presumed.
- (B) The defendant can prove his mistake by a preponderance of the evidence.
- (C) The defendant was acting upon misinformation from a public official.
- (D) The defendant is a non-U.S. citizen and unfamiliar with the legal system.



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- (C) The defendant was acting upon misinformation from a public official.
- (D) The defendant is a non-U.S. citizen and unfamiliar with the legal system.

(A) is incorrect because the *mens rea* specified in a law has no bearing on whether a mistake of law is permitted.



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- (A) The statute does not specify that knowledge of the law is presumed.
- (B) The defendant can prove his mistake by a preponderance of the evidence.**
- (C) The defendant was acting upon misinformation from a public official.
- (D) The defendant is a non-U.S. citizen and unfamiliar with the legal system.

(B) is incorrect because a mistake of law is generally not a defense.



Question 3-20

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- (A) The statute does not specify that knowledge of the law is presumed.
- (B) The defendant can prove his mistake by a preponderance of the evidence.
- (C) The defendant was acting upon misinformation from a public official.**
- (D) The defendant is a non-U.S. citizen and unfamiliar with the legal system.

(C) Misinformation from a public official may exonerate a defendant by negating the *mens rea* of the crime.



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- (C) The defendant was acting upon misinformation from a public official.
- (D) The defendant is a non-U.S. citizen and unfamiliar with the legal system.**

(D) is incorrect because ignorance of the legal system is not usually a defense.



Question 3-21

Entrapment is available as a defense when

- (A) Police create the opportunity for the defendant to commit the crime.
- (B) The defendant has a predisposition to committing the crime.
- (C) The police induce the defendant to commit a crime that he otherwise would not have committed.
- (D) The defendant was predisposed to commit the crime, but did not intend to commit that particular crime prior to encountering the police setup.



Question 3-21

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(A) is incorrect because mere creation of the opportunity to commit a crime is not enough for entrapment.



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(B) is incorrect because a predisposition helps to establish that there was no entrapment.



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- (C) The police induce the defendant to commit a crime that he otherwise would not have committed.**
- (D) The defendant was predisposed to commit the crime, but did not intend to commit that particular crime prior to encountering the police setup.

(C) This is the best answer because it is the only correct scenario for a viable entrapment defense.



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- (D) The defendant was predisposed to commit the crime, but did not intend to commit that particular crime prior to encountering the police setup.**

(D) is incorrect because predisposition to commit the crime negates an entrapment defense.



Question 3-22

Disconnecting the life support of a victim who is still breathing and whose heart is still beating, but who has irreversible cessation of brain function is not murder because

- (A) It is appropriate medical care.
- (B) It is voluntary manslaughter.
- (C) There is no causation.
- (D) It is merciful.



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(A) It is appropriate medical care.

(B) It is voluntary manslaughter.

(C) There is no causation.

(D) It is merciful.

(A) This isn't a great answer, but it's better than the others. Each of the other answers has flaws: Whether something is murder or manslaughter depends upon whether the death is intended or not, and in this case it is clearly intended that the patient die; similarly, the patient dies because of the actions of the physician, and the motive of the defendant is irrelevant.



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(C) There is no causation.

(D) It is merciful.

(B) is incorrect because legal culpability for any death depends first upon the status of the victim as a human being.



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- (C) There is no causation.**
- (D) It is merciful.

(C) is not the best answer because there is causation to the extent that the heart and lungs ceased to function as a result of the action of the defendant.



Question 3-22

Disconnecting the life support of a victim who is still breathing and whose heart is still beating, but who has irreversible cessation of brain function is not murder because

- (A) It is appropriate medical care.
- (B) It is voluntary manslaughter.
- (C) There is no causation.
- (D) It is merciful.**

(D) is not the best answer because it is a moral, not a legal, consideration.



END

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