

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 6, “The Significance of Resulting Harm.” Prior to doing these exercises you should read the relevant material in Chapter 6.

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 6-1

Susan Ostrich went to a drinking establishment where she met William Kennedy Jones. He invited her to accompany him to his house to go swimming. Before reaching the house Jones pulled the car into an isolated area, ripped off all his clothing in a seemingly uncontrolled fashion and said "This is the way I like it!" and lunged for her. Ostrich did not resist him because she was afraid that if she resisted he might kill her.

Suppose Jones undressed Ostrich but could not complete the act of intercourse because he was so drunk he was unable to maintain an erection. In disgust he threw her out of the car and drove home. Which of the following would be true:

- (A) Jones could not be convicted of attempted rape unless it was his purpose to have intercourse and he knew that she did not consent.
- (B) Jones could be convicted of attempted rape even if he was only reckless with respect to her lack of consent.
- (C) Jones couldn't be convicted of attempted rape if his intoxication prevented him from completing the commission of the crime.
- (D) Jones would not be guilty of attempted rape because he voluntarily abandoned his effort to commit the crime.



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(D) Jones would not be guilty of attempted rape because he voluntarily abandoned his effort to commit the crime.

(A) Sorry, that's incorrect. MPC § **5.01** requires acting with the culpability otherwise required to commit the crime. The commentary (see Kadish & Schulhofer, p. 632), provides that there is liability where the defendant would have been liable if the crime were committed (that is the case here) and he purposively engages in the conduct.



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(B) That's correct. MPC § 5.01 requires acting with the culpability otherwise required to commit the crime. The commentary (see text, p. 632), provides that there is liability where the defendant would have been liable if the crime were committed (that is the case here) and he purposively engages in the conduct.



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(C) Sorry, that's incorrect. The reason for his failure to complete the crime is irrelevant unless it constitutes a voluntary renunciation pursuant to MPC § 5.01(4).



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(D) Sorry, that's incorrect. A decision to abandon a criminal attempt is not voluntary if it is motivated by circumstances which make it more difficult to accomplish the criminal purpose. (§ 5.01(4)).



Question 6-2

Jimmy Swinehart, a middle-aged TV evangelist, has a side to his personality that is not usually not highlighted during his TV program. He likes to read (or shall we say look at) magazines that portray or suggest acts that he denounces from the pulpit as immoral. One evening at 10 p.m. he was out on the street looking for female companionship. He went to a part of town where prostitutes are known to ply their trade. He entered a run-down hotel and began talking to a woman who introduced herself as "Sherri."

Suppose Sherri is an undercover police officer, aged 24. Swinehart asks her how old she is and she says "fifteen." Swinehart then takes her to one of the rooms, hands her \$100 and asks her to undress. At that point the officer arrests him. Would Swinehart be guilty of "Attempted Corruption of Minors" under MPC § 213.3? (For purposes of this question, ignore the possible application of § 213.6(3).

- (A) No, because Sherri was not in fact below the age of 16.
- (B) No, because Swinehart did not come "dangerously close" to completing the crime.
- (C) No, because of the doctrine of legal impossibility.
- (D) Yes, if Swinehart had the purpose of engaging in sexual intercourse with her and thought she was fifteen years old.



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(a) is incorrect, assuming that, as a result of what the undercover officer said, Swinehart believed her to be 15. See MPC § 5.01(1)(a).



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(b) is incorrect, for an attempt a "substantial step" is enough for an attempt if it is "strongly corroborative" of the actor's criminal purpose.



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(c) is incorrect because the MPC does not recognize the doctrine of legal impossibility.



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(d) correctly states the application of MPC § 5.01(1)(c).



Question 6-3

Morris's 9-year-old daughter Amy has a passion for Sponge Bob Squarepants, a cartoon character. The Burger King in Morris's town has been running an advertising campaign incorporating a large inflated balloon of Sponge Bob. Morris tells his friend Ron that Amy would think she'd died and gone to heaven if the giant Sponge Bob balloon appeared in his backyard at Amy's birthday party. "Do you mean, like, steal it?" asked Ron. Prior to that point Morris hadn't thought of stealing it, but when Ron mentioned it, he began to take the idea seriously. Still thinking, Morris said, "Well, I'd give it back."

As of this point, which of the following is correct:

- (A) Morris has solicited Ron to commit theft.
- (B) Morris has attempted to commit theft.
- (C) Both (A) and (B) are correct.
- (D) Neither (A) nor (B) is correct.



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(A) is incorrect; Morris' original suggestion was not with the purpose of having Ron commit theft.



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(B) is incorrect; Morris has not taken a substantial step.



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(C) is incorrect, since both answers are incorrect.



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(D) Is **correct** (A) is incorrect, because Morris' original suggestion was not with the purpose of having Ron commit theft, and (B) is incorrect because Morris has not taken a substantial step.



Question 6-4

Quentin wanted to murder his wife Maude. He prepared her favorite dessert, ice cream, but added a fatal dose of poison. Quentin brought it to Maude's bedroom while she is in the bathroom. He hollered to her, "I brought you some ice cream! Don't let it melt!" Maude hurried to finish drying her hair. In her excitement, she dropped the hair dryer in the bathtub and was fatally electrocuted. If Quentin is prosecuted for murder, which of the following is true:

- (A) Quentin is guilty of murder so long as he had the purpose of killing his wife and he believed that death would result without further conduct on his part.
- (B) Quentin is guilty of murder if his conduct was a cause without which Maude's death would not have occurred.
- (C) Quentin is NOT guilty of murder if Maude's death resulted in part from her own conduct.
- (D) None of the above.



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(A) is incorrect; it would suffice for attempted murder, but not murder; murder requires causation.



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- (C) Quentin is NOT guilty of murder if Maude's death resulted in part from her own conduct.
- (D) None of the above.

(B) is incorrect; in addition to being a but-for cause, the relationship has to be one that is not too indirect, and arguably there is no causal relation between hurrying to get ice cream and being electrocuted;



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(C) is incorrect; Maude's role does not necessarily break the chain of causation



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- (D) None of the above.**

(D) Is **correct**, because none of the answers is correct. (a) is incorrect; it would suffice for attempted murder, but not murder; murder requires causation. (b) is incorrect; in addition to being a but-for cause, the relationship has to be one that is not too indirect, and arguably there is no causal relation between hurrying to get ice cream and being electrocuted; (c) is incorrect; Maude's role does not necessarily break the chain of causation.



Question 6-5

Tom agreed with Sarah to host a "blog" on the topic of Italian cooking. Tom knew nothing about cooking, but knew about computers. Sarah knew nothing about computers, but she knew about cooking. She also knew that Tom had previously been convicted of felony child sexual abuse, but Tom assured her that he had reformed. Sarah didn't know that it was a condition of Tom's parole that he refrain from using the Internet. After Tom read an email from "Heather," who said that she lived in an apartment that only had a hot-plate, Tom emailed "Heather," offering to let her practice cooking at Tom's house. "Heather" said she didn't have a way to get there, so Tom offered to pick her up. When Tom arrived at the address that "Heather" gave him, he was arrested by a police officer.

A statute reads as follows: *"A person is guilty of child molestation in the first degree (a second-degree felony) when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old."*

Could Tom could be found guilty of attempted 1st degree child molestation?

- (A) Yes, if Tom actually believed "Heather" was ten years old and hoped to engage in sexual contact with her;
- (B) Yes, but only if Tom came "dangerously close" to committing child molestation;
- (C) No, because Tom did nothing that was "strongly corroborative" of an intent to commit child molestation;
- (D) No, if "Heather" was actually a police officer.



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A statute reads as follows: *"A person is guilty of child molestation in the first degree (a second-degree felony) when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old."*

Could Tom be found guilty of attempted 1st degree child molestation?

(A) Yes, if Tom actually believed "Heather" was ten years old and hoped to engage in sexual contact with her;

(B) Yes, but only if Tom came "dangerously close" to committing child molestation;

(C) No, because Tom did nothing that was "strongly corroborative" of an intent to commit child molestation;

(D) No, if "Heather" was actually a police officer.

(A) is the best answer, because each of the other answers contains an incorrect statement of law. (B) is incorrect, because the MPC doesn't include the "dangerously close" requirement; (C) is incorrect because the behavior of going to her apartment could be found to be strongly corroborative of his criminal intent; (D) is incorrect, because the MPC looks at "the circumstances as [Tom] believes them to be."



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(B) is incorrect, because the MPC doesn't include the "dangerously close" requirement;



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- (B) Yes, but only if Tom came "dangerously close" to committing child molestation;
- (C) No, because Tom did nothing that was "strongly corroborative" of an intent to commit child molestation;
- (D) No, if "Heather" was actually a police officer.**

(D) is incorrect, because the MPC looks at "the circumstances as [Tom] believes them to be."



Question 6-6

Tom agreed with Sarah to host a "blog" on the topic of Italian cooking. Tom knew nothing about cooking, but knew about computers. Sarah knew nothing about computers, but she knew about cooking. She also knew that Tom had previously been convicted of felony child sexual abuse, but Tom assured her that he had reformed. Sarah didn't know that it was a condition of Tom's parole that he refrain from using the Internet. After Tom read an email from "Heather," who said that she lived in an apartment that only had a hot-plate, Tom emailed "Heather," offering to let her practice cooking at Tom's house. "Heather" said she didn't have a way to get there, so Tom offered to pick her up. When Tom arrived at the address that "Heather" gave him, he was arrested by a police officer.

A statute reads as follows: *“A person is guilty of child molestation in the first degree (a second-degree felony) when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old.”*

Could Sarah be convicted of attempted child molestation?

- (A) Yes, if Sarah was at least reckless in facilitating Tom's contact with "Heather";
- (B) Yes, if Sarah actually knew that Tom would use the Internet to contact children;
- (C) No, because Sarah never took a substantial step toward completing the offense;
- (D) No, unless Sarah had the purpose of facilitating Tom's efforts to have sexual contact with children.



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Question 6-6

Tom agreed with Sarah to host a "blog" on the topic of Italian cooking. Tom knew nothing about cooking, but knew about computers. Sarah knew nothing about computers, but she knew about cooking. She also knew that Tom had previously been convicted of felony child sexual abuse, but Tom assured her that he had reformed. Sarah didn't know that it was a condition of Tom's parole that he refrain from using the Internet. After Tom read an email from "Heather," who said that she lived in an apartment that only had a hot-plate, Tom emailed "Heather," offering to let her practice cooking at Tom's house. "Heather" said she didn't have a way to get there, so Tom offered to pick her up. When Tom arrived at the address that "Heather" gave him, he was arrested by a police officer.

A statute reads as follows: "A person is guilty of child molestation in the first degree (a second-degree felony) when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old."

Could Sarah be convicted of attempted child molestation?

- (A) Yes, if Sarah was at least reckless in facilitating Tom's contact with "Heather";**
- (B) Yes, if Sarah actually knew that Tom would use the Internet to contact children;
- (C) No, because Sarah never took a substantial step toward completing the offense;
- (D) No, unless Sarah had the purpose of facilitating Tom's efforts to have sexual contact with children.

(A) is incorrect, because recklessness is insufficient for the mens rea for attempt, or for complicity in an attempt;



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Question 6-6

Tom agreed with Sarah to host a "blog" on the topic of Italian cooking. Tom knew nothing about cooking, but knew about computers. Sarah knew nothing about computers, but she knew about cooking. She also knew that Tom had previously been convicted of felony child sexual abuse, but Tom assured her that he had reformed. Sarah didn't know that it was a condition of Tom's parole that he refrain from using the Internet. After Tom read an email from "Heather," who said that she lived in an apartment that only had a hot-plate, Tom emailed "Heather," offering to let her practice cooking at Tom's house. "Heather" said she didn't have a way to get there, so Tom offered to pick her up. When Tom arrived at the address that "Heather" gave him, he was arrested by a police officer.

A statute reads as follows: "A person is guilty of child molestation in the first degree (a second-degree felony) when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old."

Could Sarah be convicted of attempted child molestation?

- (A) Yes, if Sarah was at least reckless in facilitating Tom's contact with "Heather";
- (B) Yes, if Sarah actually knew that Tom would use the Internet to contact children;**
- (C) No, because Sarah never took a substantial step toward completing the offense;
- (D) No, unless Sarah had the purpose of facilitating Tom's efforts to have sexual contact with children.

(B) is incorrect, because the mens rea for attempt is purpose, not knowledge;



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Question 6-6

Tom agreed with Sarah to host a "blog" on the topic of Italian cooking. Tom knew nothing about cooking, but knew about computers. Sarah knew nothing about computers, but she knew about cooking. She also knew that Tom had previously been convicted of felony child sexual abuse, but Tom assured her that he had reformed. Sarah didn't know that it was a condition of Tom's parole that he refrain from using the Internet. After Tom read an email from "Heather," who said that she lived in an apartment that only had a hot-plate, Tom emailed "Heather," offering to let her practice cooking at Tom's house. "Heather" said she didn't have a way to get there, so Tom offered to pick her up. When Tom arrived at the address that "Heather" gave him, he was arrested by a police officer.

A statute reads as follows: "A person is guilty of child molestation in the first degree (a second-degree felony) when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old."

Could Sarah be convicted of attempted child molestation?

- (A) Yes, if Sarah was at least reckless in facilitating Tom's contact with "Heather";
- (B) Yes, if Sarah actually knew that Tom would use the Internet to contact children;
- (C) No, because Sarah never took a substantial step toward completing the offense;**
- (D) No, unless Sarah had the purpose of facilitating Tom's efforts to have sexual contact with children.

(C) is incorrect; to be convicted as an accomplice, it is sufficient to have the purpose of facilitating another's commission of the crime, and to aid, attempt to aid, or agree to aid another in the commission of the offense. So long as Tom took a substantial step, Sarah could be convicted.



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Question 6-6

Tom agreed with Sarah to host a "blog" on the topic of Italian cooking. Tom knew nothing about cooking, but knew about computers. Sarah knew nothing about computers, but she knew about cooking. She also knew that Tom had previously been convicted of felony child sexual abuse, but Tom assured her that he had reformed. Sarah didn't know that it was a condition of Tom's parole that he refrain from using the Internet. After Tom read an email from "Heather," who said that she lived in an apartment that only had a hot-plate, Tom emailed "Heather," offering to let her practice cooking at Tom's house. "Heather" said she didn't have a way to get there, so Tom offered to pick her up. When Tom arrived at the address that "Heather" gave him, he was arrested by a police officer.

A statute reads as follows: "A person is guilty of child molestation in the first degree (a second-degree felony) when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old."

Could Sarah be convicted of attempted child molestation?

- (A) Yes, if Sarah was at least reckless in facilitating Tom's contact with "Heather";
- (B) Yes, if Sarah actually knew that Tom would use the Internet to contact children;
- (C) No, because Sarah never took a substantial step toward completing the offense;
- (D) No, unless Sarah had the purpose of facilitating Tom's efforts to have sexual contact with children.**

(D) is correct, because if she did have the purpose of facilitating his contact with children for the purpose of sexual contact, it would establish her liability for attempt.



Question 6-7

Tom agreed with Sarah to host a "blog" on the topic of Italian cooking. Tom knew nothing about cooking, but knew about computers. Sarah knew nothing about computers, but she knew about cooking. She also knew that Tom had previously been convicted of felony child sexual abuse, but Tom assured her that he had reformed. Sarah didn't know that it was a condition of Tom's parole that he refrain from using the Internet. After Tom read an email from "Heather," who said that she lived in an apartment that only had a hot-plate, Tom emailed "Heather," offering to let her practice cooking at Tom's house. "Heather" said she didn't have a way to get there, so Tom offered to pick her up. When Tom arrived at the address that "Heather" gave him, he was arrested by a police officer.

A statute reads as follows: *"A person is guilty of child molestation in the first degree (a second-degree felony) when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old."*

An additional statute provides that "A person is guilty of aggravated child molestation (a first-degree felony) when the person has, or knowingly causes a minor to have, sexual contact with another who is less than twelve years old, and such person has previously been convicted of an offense involving sexual contact with a minor." Can Tom be convicted of violating this statute?

- (A) Yes, even if Tom reasonably believed that his previous conviction was invalid;
- (B) Yes, even if Tom reasonably believed that "Heather" was above the age of 12;
- (C) No, because Tom never had sexual contact with "Heather";
- (D) No, because sexual contact with "Heather" would constitute a "legal impossibility."



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Question 6-7

Tom agreed with Sarah to host a "blog" on the topic of Italian cooking. Tom knew nothing about cooking, but knew about computers. Sarah knew nothing about computers, but she knew about cooking. She also knew that Tom had previously been convicted of felony child sexual abuse, but Tom assured her that he had reformed. Sarah didn't know that it was a condition of Tom's parole that he refrain from using the Internet. After Tom read an email from "Heather," who said that she lived in an apartment that only had a hot-plate, Tom emailed "Heather," offering to let her practice cooking at Tom's house. "Heather" said she didn't have a way to get there, so Tom offered to pick her up. When Tom arrived at the address that "Heather" gave him, he was arrested by a police officer.

A statute reads as follows: *"A person is guilty of child molestation in the first degree (a second-degree felony) when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old."*

An additional statute provides that "A person is guilty of aggravated child molestation (a first-degree felony) when the person has, or knowingly causes a minor to have, sexual contact with another who is less than twelve years old, and such person has previously been convicted of an offense involving sexual contact with a minor." Can Tom be convicted of violating this statute?

- (A) Yes, even if Tom reasonably believed that his previous conviction was invalid;
- (B) Yes, even if Tom reasonably believed that "Heather" was above the age of 12;
- (C) No, because Tom never had sexual contact with "Heather";
- (D) No, because sexual contact with "Heather" would constitute a "legal impossibility."

(A) is incorrect, because the statute requires having sexual contact with a minor, and Tom never did so.



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Question 6-7

Tom agreed with Sarah to host a "blog" on the topic of Italian cooking. Tom knew nothing about cooking, but knew about computers. Sarah knew nothing about computers, but she knew about cooking. She also knew that Tom had previously been convicted of felony child sexual abuse, but Tom assured her that he had reformed. Sarah didn't know that it was a condition of Tom's parole that he refrain from using the Internet. After Tom read an email from "Heather," who said that she lived in an apartment that only had a hot-plate, Tom emailed "Heather," offering to let her practice cooking at Tom's house. "Heather" said she didn't have a way to get there, so Tom offered to pick her up. When Tom arrived at the address that "Heather" gave him, he was arrested by a police officer.

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- (A) Yes, even if Tom reasonably believed that his previous conviction was invalid;
- (B) Yes, even if Tom reasonably believed that "Heather" was above the age of 12;**
- (C) No, because Tom never had sexual contact with "Heather";
- (D) No, because sexual contact with "Heather" would constitute a "legal impossibility."

(B) is incorrect, because the statute requires having sexual contact with a minor, and Tom never did so.



DeWolf, Criminal Law Tutorial, Chapter 6 – Significance of Resulting Harm

Question 6-7

Tom agreed with Sarah to host a "blog" on the topic of Italian cooking. Tom knew nothing about cooking, but knew about computers. Sarah knew nothing about computers, but she knew about cooking. She also knew that Tom had previously been convicted of felony child sexual abuse, but Tom assured her that he had reformed. Sarah didn't know that it was a condition of Tom's parole that he refrain from using the Internet. After Tom read an email from "Heather," who said that she lived in an apartment that only had a hot-plate, Tom emailed "Heather," offering to let her practice cooking at Tom's house. "Heather" said she didn't have a way to get there, so Tom offered to pick her up. When Tom arrived at the address that "Heather" gave him, he was arrested by a police officer.

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- (A) Yes, even if Tom reasonably believed that his previous conviction was invalid;
- (B) Yes, even if Tom reasonably believed that "Heather" was above the age of 12;
- (C) No, because Tom never had sexual contact with "Heather";**
- (D) No, because sexual contact with "Heather" would constitute a "legal impossibility."

(C) is the correct answer;



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Question 6-7

Tom agreed with Sarah to host a "blog" on the topic of Italian cooking. Tom knew nothing about cooking, but knew about computers. Sarah knew nothing about computers, but she knew about cooking. She also knew that Tom had previously been convicted of felony child sexual abuse, but Tom assured her that he had reformed. Sarah didn't know that it was a condition of Tom's parole that he refrain from using the Internet. After Tom read an email from "Heather," who said that she lived in an apartment that only had a hot-plate, Tom emailed "Heather," offering to let her practice cooking at Tom's house. "Heather" said she didn't have a way to get there, so Tom offered to pick her up. When Tom arrived at the address that "Heather" gave him, he was arrested by a police officer.

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- (A) Yes, even if Tom reasonably believed that his previous conviction was invalid;
- (B) Yes, even if Tom reasonably believed that "Heather" was above the age of 12;
- (C) No, because Tom never had sexual contact with "Heather";
- (D) No, because sexual contact with "Heather" would constitute a "legal impossibility."**

(D) is incorrect because the MPC does not recognize this form of legal impossibility.



Question 6-8

York kidnapped Lisa, and after robbing her, strangled her and left her for dead on a deserted road. Unbeknownst to York, Lisa was still alive, and recovered enough to begin walking back to town. However, she was subsequently discovered by Woods, an escaped prison inmate, who stabbed her fatally with a knife. If York were prosecuted for murder, which of the following is true:

- (A) York could not be convicted because Woods, not York, actually killed her;
- (B) York could not be convicted if his actions did not proximately cause Lisa's death;
- (C) York could be convicted of murder so long as Woods was also convicted of murder;
- (D) York could be convicted if the jury finds that his actions were "an antecedent but for which the death would not have occurred."



Question 6-8

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- (A) **York could not be convicted because Woods, not York, actually killed her;**
- (B) York could not be convicted if his actions did not proximately cause Lisa's death;
- (C) York could be convicted of murder so long as Woods was also convicted of murder;
- (D) York could be convicted if the jury finds that his actions were "an antecedent but for which the death would not have occurred."

(A) is incorrect, because York's actions could still be a proximate cause of Lisa's death;



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- (C) York could be convicted of murder so long as Woods was also convicted of murder;
- (D) York could be convicted if the jury finds that his actions were "an antecedent but for which the death would not have occurred."

(B) is correct, because proximate cause is a requirement of criminal liability under MPC § 2.03(2)(b);



Question 6-8

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- (C) York could be convicted of murder so long as Woods was also convicted of murder;**
- (D) York could be convicted if the jury finds that his actions were "an antecedent but for which the death would not have occurred."

(C) is incorrect, because Woods may be acquitted, for example, by reason of insanity.



Question 6-8

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- (C) York could be convicted of murder so long as Woods was also convicted of murder;
- (D) York could be convicted if the jury finds that his actions were "an antecedent but for which the death would not have occurred."**

(D) is incorrect because it omits the proximate cause requirement.



Question 6-9

Ellen tried to kill her husband with poison. He got into his car and tried to drive himself to the hospital. He had a bad reaction to the poison while he was driving and ran off the road, killing a pedestrian. Could Ellen be convicted of murdering the pedestrian?

- (A) Yes, if the pedestrian would not have died but for the attempt to poison her husband;
- (B) Yes, assuming that she intended to kill her husband and the pedestrian would not have died but for her attempt to commit murder;
- (C) No, because she didn't intend to kill the pedestrian;
- (D) No, because the result is not the same type of harm as that which she intended.



Question 6-9

Ellen tried to kill her husband with poison. He got into his car and tried to drive himself to the hospital. He had a bad reaction to the poison while he was driving and ran off the road, killing a pedestrian. Could Ellen be convicted of murdering the pedestrian?

- (A) **Yes, if the pedestrian would not have died but for the attempt to poison her husband;**
- (B) Yes, assuming that she intended to kill her husband and the pedestrian would not have died but for her attempt to commit murder;
- (C) No, because she didn't intend to kill the pedestrian;
- (D) No, because the result is not the same type of harm as that which she intended.

(A) is incorrect, because but-for cause is only part of the causation test;



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- (B) Yes, assuming that she intended to kill her husband and the pedestrian would not have died but for her attempt to commit murder;**
- (C) No, because she didn't intend to kill the pedestrian;
- (D) No, because the result is not the same type of harm as that which she intended.

(B) Is incorrect; but-for cause is only part of the causation test;



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- (B) Yes, assuming that she intended to kill her husband and the pedestrian would not have died but for her attempt to commit murder;
- (C) No, because she didn't intend to kill the pedestrian;**
- (D) No, because the result is not the same type of harm as that which she intended.

(C) is incorrect, because at least in theory the intent could transfer from one to another.



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- (A) Yes, if the pedestrian would not have died but for the attempt to poison her husband;
- (B) Yes, assuming that she intended to kill her husband and the pedestrian would not have died but for her attempt to commit murder;
- (C) No, because she didn't intend to kill the pedestrian;
- (D) No, because the result is not the same type of harm as that which she intended.**

(D) is the best answer, because it shows the likely result of the application of the second half of the proximate cause test.



Question 6-10

While in a public restroom, Lucy takes her ring off to wash her hands. Mona, at the adjacent sink, does likewise. The rings are remarkably similar. While Mona is wiping her face with a towel, Lucy switches the rings, puts on Mona's, and leaves.

Assume that the rings were already switched and that Lucy, intending to take Mona's ring, took her own ring by mistake. Lucy could be convicted of attempted theft:

- (A) If she thought she was taking Mona's ring.
- (B) Unless the theft is considered a legal impossibility.
- (C) But only of petty theft (theft of property worth less than \$500), unless Lucy intended to take a ring of greater value.
- (D) Unless Mona is a law enforcement officer.



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- (C) But only of petty theft (theft of property worth less than \$500), unless Lucy intended to take a ring of greater value.
- (D) Unless Mona is a law enforcement officer.

(A) That's correct. If, the defendant, under the circumstances as he believes them to be, would be committing the crime, then that constitutes an attempt to commit the crime. See MPC § **5.01(1)**.



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Question 6-10

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- (B) Unless the theft is considered a legal impossibility.**
- (C) But only of petty theft (theft of property worth less than \$500), unless Lucy intended to take a ring of greater value.
- (D) Unless Mona is a law enforcement officer.

(B) Sorry, that's incorrect. The MPC rejects the doctrine of legal impossibility.



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While in a public restroom, Lucy takes her ring off to wash her hands. Mona, at the adjacent sink, does likewise. The rings are remarkably similar. While Mona is wiping her face with a towel, Lucy switches the rings, puts on Mona's, and leaves.

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- (C) But only of petty theft (theft of property worth less than \$500), unless Lucy intended to take a ring of greater value.**
- (D) Unless Mona is a law enforcement officer.

(C) Sorry, that's incorrect. The commentary to the MPC (see Kadish & Schulhofer, p. 632), provides that there is attempt liability where the defendant would have been liable if the crime were committed (that is the case here) and he purposively engages in the conduct.



DeWolf, Criminal Law Tutorial, Chapter 6 – Significance of Resulting Harm

Question 6-10

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- (A) If she thought she was taking Mona's ring.
- (B) Unless the theft is considered a legal impossibility.
- (C) But only of petty theft (theft of property worth less than \$500), unless Lucy intended to take a ring of greater value.
- (D) Unless Mona is a law enforcement officer.**

(D) Sorry, that's incorrect. Being a law enforcement officer provides no defense in a case like this.



Question 6-11

If a defendant stabs a victim with the intent to kill him, but the victim had already died of a heart attack six hours before, the defendant cannot be found guilty of murder because the prosecution cannot prove

- (A) *Actus reus*.
- (B) *Mens rea*.
- (C) Causation.
- (D) Result.



Question 6-11

If a defendant stabs a victim with the intent to kill him, but the victim had already died of a heart attack six hours before, the defendant cannot be found guilty of murder because the prosecution cannot prove

- (A) *Actus reus*.
- (B) *Mens rea*.
- (C) Causation.
- (D) Result.

(A) is incorrect because the defendant performed the act of stabbing the victim.



Question 6-11

If a defendant stabs a victim with the intent to kill him, but the victim had already died of a heart attack six hours before, the defendant cannot be found guilty of murder because the prosecution cannot prove

- (A) *Actus reus*.
- (B) *Mens rea*.**
- (C) Causation.
- (D) Result.

(B) is incorrect because the defendant had the intent to kill.



Question 6-11

If a defendant stabs a victim with the intent to kill him, but the victim had already died of a heart attack six hours before, the defendant cannot be found guilty of murder because the prosecution cannot prove

(A) *Actus reus*.

(B) *Mens rea*.

(C) Causation.

(D) Result.

(C) Since the defendant did not cause the death, he cannot be found guilty of murder. However, he may be found guilty of attempted murder.



Question 6-11

If a defendant stabs a victim with the intent to kill him, but the victim had already died of a heart attack six hours before, the defendant cannot be found guilty of murder because the prosecution cannot prove

- (A) *Actus reus*.
- (B) *Mens rea*.
- (C) Causation.
- (D) Result.**

(D) is not the best answer because although the defendant did not cause it, the result of death has been achieved.



Question 6-12

The criminal law doctrine of “transferred intent” means

- (A) Intent to commit one type of crime transfers to any other type of crime.
- (B) Intent to harm one victim transfers to another victim.
- (C) Intent by one conspirator to commit a crime transfers to all other conspirators.
- (D) Intent to seize certain evidence transfers to other unrelated evidence seized.



Question 6-12

The criminal law doctrine of “transferred intent” means

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- (B) Intent to harm one victim transfers to another victim.
- (C) Intent by one conspirator to commit a crime transfers to all other conspirators.
- (D) Intent to seize certain evidence transfers to other unrelated evidence seized.

(A) is a misstatement of the law; intent transfers only to similar crimes.



Question 6-12

The criminal law doctrine of “transferred intent” means

- (A) Intent to commit one type of crime transfers to any other type of crime.
- (B) Intent to harm one victim transfers to another victim.**
- (C) Intent by one conspirator to commit a crime transfers to all other conspirators.
- (D) Intent to seize certain evidence transfers to other unrelated evidence seized.

(B) This is a correct statement about the doctrine of transferred intent.



Question 6-12

The criminal law doctrine of “transferred intent” means

- (A) Intent to commit one type of crime transfers to any other type of crime.
- (B) Intent to harm one victim transfers to another victim.
- (C) Intent by one conspirator to commit a crime transfers to all other conspirators.**
- (D) Intent to seize certain evidence transfers to other unrelated evidence seized.

(C) describes a different principle of law.



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(D) is nonsensical – “intent” by police to seize evidence is not usually analyzed, only procedure.



Question 6-13

Suppose A shoots B, intending to kill him, and then 20 minutes later, C shoots B also intending to kill him. Neither wound alone would be fatal, but the two combined cause B to bleed to death. According to the substantial factor test

- (A) A is guilty of murder and C of attempted murder.
- (B) C is guilty of murder and A of attempted murder.
- (C) A and C are both guilty of murder.
- (D) Both A and C are guilty of attempted murder.



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(A) is not the best answer because under the substantial factor test, both are guilty of murder.



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(C) The substantial factor test for causation states that if the defendant's actions were not enough by themselves to cause the harm, but combined with other forces do produce the harm, the defendant's actions are considered the cause in fact.



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Question 6-14

If the victim's harm is a natural and probable result of the actions of a defendant, then that defendant's actions are said to be the _____ of the harm.

- (A) Presumed cause.
- (B) Proven cause.
- (C) Actual cause.
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(A) is incorrect because “presumed cause” is not genuine criminal law terminology.



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(C) is incorrect because “actual cause” is the direct cause of the harm, not simply the “natural and probable result.”



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(D) The statement is the definition of proximate cause.



Question 6-15

The *mens rea* which must be proven for attempt is

- (A) The same as the *mens rea* for the underlying crime attempted.
- (B) Specific intent.
- (C) Recklessness.
- (D) None, attempt is a strict liability crime.



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(A) is incorrect because the *mens rea* for attempt is always specific intent, regardless of the *mens rea* for the underlying crime.



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(B) This is the best answer because the *mens rea* for attempt is always specific intent, regardless of the *mens rea* for the underlying crime.



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END

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