PACE UNIVERSITY SCHOOL OF LAW

CRIMINAL LAW
PROFESSOR HUMBACH — December 15, 2017
FINAL EXAMINATION — TIME LIMIT: 4 HOURS

IN TAKING THIS EXAMINATION, YOU ARE REQUIRED TO COMPLY WITH THE SCHOOL OF LAW RULES AND PROCEDURES FOR FINAL EXAMINATIONS. YOU ARE REMINDED TO PLACE YOUR EXAMINATION NUMBER ON EACH EXAMINATION BOOK AND SIGN OUT WITH THE PROCTOR, SUBMITTING TO HIM OR HER YOUR EXAMINATION BOOK(S) AND THE QUESTIONS AT THE CONCLUSION OF THE EXAMINATION.

DO NOT UNDER ANY CIRCUMSTANCES REVEAL YOUR IDENTITY ON YOUR EXAMINATION PAPERS OTHER THAN BY YOUR EXAMINATION NUMBER. ACTIONS BY A STUDENT TO DEFEAT THE ANONYMITY POLICY IS A MATTER OF ACADEMIC DISHONESTY.

LIMITED OPEN-BOOK EXAM: This is a limited open book exam, meaning that you may have and use your copy of the Dressler casebook (with all its normal underlining, highlighting and notations) but you may not bring along or use any other materials. The casebook is allowed so you will have the Model Penal Code, the only statute you will be asked about as such. However, you are, of course, permitted to use any part of your casebook during the exam.

GENERAL INSTRUCTIONS:
This examination consists of 60 multiple-choice questions to be answered on the Scantron.

- Write your examination number on the "name" line of the Scantron. *Write it NOW.*
- Mark "A" in the "Test Form" box on the right side of the Scantron. *Mark it NOW.*
- Also, write your examination number in the boxes where it says "I.D. Number" on the right side of the Scantron. Use **only** the first 4 columns and *do not skip columns*. Then carefully mark your exam number in the vertically striped columns. You should mark only one number in each of the first four columns. Do it carefully. *This is part of the test.*

Answer each multiple-choice question selecting the *best* answer. Mark your choice on the Scantron with the special pencil provided. *Select only one answer per question.* **If you change an answer, be sure to *fully* erase your original answer** or the question may be marked *wrong.* You may lose points if you do not mark **darkly** enough or if you write at the top, sides, etc. of the answer sheet.

When you complete the examination, turn in the answers together with this question booklet.

Unless the context otherwise requires (such as where the question specifically says to apply the Model Penal Code), base your answers on general principles and rules of criminal law found in the case law and statutes of American common law jurisdictions. Do not assume the existence of any facts not set forth in the questions. When there are differences among the states (for example, on the meaning of "premeditated" murder), there should be something in the question that makes clear which approach you should use. If in doubt, use the majority rule. In those situations where the Model Penal Code is different from the traditional or "common law" approach, do not use the MPC rule unless the question calls for it (*e.g.*, "[MPC]").

1 Devin Yates is a lawyer who sues to collect debts that are no longer collectable because the statute of limitations has run out. Sometimes, due to the debtor's ignorance, he succeeds. There is no criminal statute that forbids such conduct, but the prosecutor has sought and obtained an indictment for what he calls "a new common-law crime of abusing legal process to collect debts under false pretenses." In most jurisdictions:

a. Yates could properly be convicted of this alleged crime.

b. The court could properly recognize a new crime based on this indictment if it determines that Yates directly injured or tended to injure the public.

c. Both of the above.

d. The indictment would be dismissed because it lacks a statutory basis.

2 Marilyn Saunders is charged under a statute that prohibits supplying non-prescribed opiates to a "child." The basis of the charge is that she used heroin while she was pregnant. No case in the state has ever indicated that the statutory meaning of "child" is anything other than what it meant at common law at the time the statute was enacted: a person who has been born and is under the age of majority. Which of the following would be a plausible argument in Marilyn's favor?

a. The legislature presumptively intended to use the meaning that the word "child" had under the common law at the time of the statute's enactment.

b. It is not within the court's jurisdiction to extend the reach of criminal statutes beyond what the legislature intended.

c. Interpreting the statutory meaning of "child" to include unborn persons would be an unforeseeable judicial enlargement of the statute's prohibition.

d. All of the above.

3 Jacob Arnholt has been indicted under a city ordinance that makes it a crime to operate an "unduly loud" sound system in an automobile. Jacob's lawyer has moved to dismiss the indictment on the ground that the statute is unconstitutionally vague. In dealing with the vagueness issue:

a. The court should consider whether the statute's wording would give a person of ordinary intelligence fair warning of what the statute does (and does not) prohibit.

b. The court should consider whether the statute's wording provides enforcement authorities with a reasonably ascertainable standard of guilt.

c. Both of the above.

d. If the statute's wording is found to be too vague, the court must strike it down and cannot properly try to "save" the statute by defining "unduly loud" more narrowly.

4 To deal with the problem of hunters unfairly poaching deer by luring them with food, the state enacted a statute that prohibits "using food or other enticements for the purpose of attracting wildlife." Mae Gardiner, who is housebound and likes to watch

songbirds, was charged under this statute because she had a bird feeder in her backyard.

a. The statute would probably be struck down as being unconstitutionally vague.

b. The statute would probably be struck down as unconstitutionally overbroad because its literal wording prohibits innocent conduct.

c. Neither of the above is correct.

d. The charges would probably be dismissed under the plain meaning rule.

5 In deciding whether the statute in the preceding question covers backyard bird feeders,

a. The court should endeavor to determine legislative intent and may consider the statute's purpose.

b. The court is bound by the standard dictionary definitions of the words.

c. The court should interpret the statute to mean what Mae Gardner understood it to mean (provided her interpretation was reasonable).

d. The court must apply the rule of lenity and interpret the statute as favorably as possible to the defendant.

6 According to the utilitarian justification of punishment:

a. Punishment is considered a good thing in itself because it gives wrongdoers what they deserve.

b. Punishment is justifiable because it rectifies an unequal advantage that criminals obtain by injuring their victims.

c. Punishment is considered to be an evil but is justifiable in order to prevent a greater evil.

d. Wrongdoers should be punished even if no useful purpose is served in doing so.

7 Compared with elsewhere in the industrial world, the rates of incarceration per capita in the United States are:

a. Generally higher.

b. Generally about the same.

c. Generally lower.

d. Falling rapidly over the past 10-15 years as crimes rates go down.

8 During a protest march, Delano struck a demonstrator from a rival group with a wood stick, causing serious injury. Delano has been convicted of aggravated assault. The prosecutor argues that Delano deserves to serve time in prison and that his sentence should be sufficiently severe to reflect the harm he caused. The rationale for punishment that the prosecutor appears to have in mind is:

a. Retribution.

b. Deterrence.

c. Incapacitation.

d. Rehabilitation.

9 Kip Traynor was caught breaking into a mobile home to steal items that he could sell to support his drug habit. The prosecutor argues that Traynor should be sentenced to a substantial term of incarceration in order to set an example, protect the public and provide him an incentive and opportunity to learn to live a law-abiding life. The rationale(s) for punishment that the prosecutor appears to have in mind is:

a. Deterrence.

b. Rehabilitation.

c. Incapacitation.

d. All of the above.

10 Susan Freyman was convicted of child abuse. She had left her 7-month old daughter in a locked car near a check-cashing store while she waited in line to cash her disability check. The car got very hot and the child nearly died. Freyman was extremely distraught from the whole episode and has required treatment for serious depression and stress. Her lawyer says she is highly remorseful and argues that she does not deserve to be punished further. The punishment objective that her lawyer appears to have in mind is:

a. Restitution.

b. Retribution.

c. General deterrence.

d. Incapacitation.

11 After being warned twice not to speak out at a city council meeting, Marge Downing emitted a sharp laugh when the mayor said something she thought was absurd. She is charged under a local law that prohibits "any conduct that disrupts a public meeting." She contends that the outburst was a "spontaneous reflex." The prosecutor asserts that, even if it was, that fact is legally irrelevant. Which of the following is true?

a. Under the usual common law approach to interpreting criminal statutes, Marge should not be convicted if her alleged crime did not include a voluntary act.

b. Under the Model Penal Code, Marge should not be convicted if her alleged crime did not include a voluntary act.

c. Both of the above.

d. The prosecutor is right. Even if her outburst was not a voluntary act, that fact should be legally irrelevant.

12 After chasing Worthington with an antique sword, Ralston was convicted under a statute that makes it an offense "to engage in conduct that places another in fear of serious bodily injury or death." This crime would be considered:

a. A result crime.

b. A conduct crime.

c. An inchoate crime.

d. Unconstitutional.

13 Frampton is being tried for shooting a police officer right after Frampton himself had just been shot twice in the abdomen. An expert has testified that, because Frampton was in severe "shock" and delirious as a result of his wounds, he acted unconsciously and essentially as an automaton when he pulled the trigger:

a. Based on this evidence, it would proper to instruct the jury to consider whether Frampton's conduct in pulling the trigger was a voluntary act.

b. There is no basis on this evidence for instructing the jury to consider whether Frampton's conduct in pulling the trigger was a voluntary act.

c. It would generally be considered legally irrelevant whether Frampton's conduct in pulling the trigger was a voluntary act.

d. It would not be constitutional to convict Frampton if his act of shooting was not a voluntary act.

14 Larson and his buddy were out drinking. Both thoroughly intoxicated, they went back to Larson's place where his buddy lost his footing and fell down a flight of stairs. Although his buddy was bleeding and unresponsive, Larson felt very tired and decided to deal with the problem in the morning. Suppose Larson's buddy died as a result of not receiving prompt medical care:

a. Larson would be guilty of a homicide offense because he breached a moral duty to take care of a guest in his home.

b. Larson would be guilty of a homicide offense because his buddy was in a secluded location at the time of the accident.

c. Larson would be guilty of a homicide offense only if he had a legal duty to obtain or provide help for his buddy, and he apparently had no such duty.

d. Larson could not be considered guilty of a homicide offense because his buddy was voluntarily intoxicated.

15 Six months ago Roscoe was in a serious motorcycle accident. He has been unconscious on life support ever since. Although Roscoe has some brain activity, the doctors' medical judgment is that he will never recover consciousness. His insurance has run out and the cost of keeping him on life-support is borne entirely by the hospital, a charitable institution.

a. If there is nobody to pay Roscoe's bills, the hospital would be legally allowed to terminate the life-support for economic reasons.

b. If Roscoe's family agrees, the doctors would be legally permitted to terminate his vegetative state with death-inducing injections.

c. Under these circumstances, Roscoe would be considered legally dead under modern rule.

d. If Roscoe's doctors disconnect the life-support, causing his heart to stop, there is authority under which their conduct would be regarded as an omission rather than an act.

16 Watching a sailboat race from a dock, Jeremiah Bosch lost his balance and knocked a stranger, Cara Petersen, into the lake. As Cara struggled in the water Jeremiah could have easily thrown her a nearby lifebuoy (floatation device), but he did not. Assuming Jeremiah was deemed entirely without fault in accidentally knocking Cara off the dock:

a. There is no recognized basis on which Jeremiah could be considered criminally responsible for failing to assist to Cara.

b. Jeremiah could probably be considered guilty of homicide if Cara drowned because he did not throw her a lifebuoy after putting her in peril.

c. Jeremiah could not have had a legal duty to throw the lifebuoy to Cara because there was no legal relationship between them.

d. Jeremiah could not have any legal duty to assist Cara as long as there were other people on the dock (so Jeremiah did not "seclude" Cara).

17 Arnie Hopewell, a beachcomber, found a small rowboat that had been washed up into the bushes near the shore. Thinking the boat was abandoned and nobody owned it, he dragged it to the water and rowed it back to his shanty, a couple of miles away. About a week later the owner of the boat saw it tied to Hopewell's shanty and called the police. Hopewell was charged with larceny for theft of the boat.

a. Hopewell would not be guilty of larceny as long as he honestly thought the boat was abandoned and nobody owned it.

b. Hopewell *would* be guilty of larceny unless he honestly *and reasonably* thought the boat was abandoned and nobody owned it.

c. Hopewell would not be guilty of larceny if the owner of the boat was legally negligent in letting the boat get loose in the sea.

d. Hopewell *would* be guilty of larceny because he took somebody else's property without permission.

18 Cass Corbin bought 5 gallons of gasoline to fuel his camp stove so he could cook illegal meth in the woods behind his house. He carelessly left the gas can in the driveway overnight. Corbin's brother-in-law was seriously injured when he drove over the can causing it to explode. Corbin is charged under a statute that makes it a crime to "maliciously and unlawfully cause serious bodily injury to another person." Under the modern interpretational preference for statutes such as this:

a. Corbin should be considered guilty as charged because, acting with an intention to commit an unlawful act, he caused serious bodily injury to another.

b. Corbin should be considered guilty as charged only if he intentionally, knowingly or recklessly (foreseeing the risk) caused serious bodily injury to another.

c. Corbin should be considered guilty as charged only if he intentionally or knowingly caused serious bodily injury to another.

d. Corbin should be considered guilty as charged because his criminal activity resulted in serious bodily injury that would not have otherwise occurred.

19 Esther Watson got into a parking dispute with Selmer Litt in her apartment building garage. After Selmer called her a decidedly uncomplimentary name (which cannot be repeated here), Esther furiously got into her car and started to back out in order to drive away. Selmer jumped behind her car and demanded an apology. Esther hit the gas and backed over him. She is charged with criminal battery with intent to cause serious bodily injury.

a. The jury may properly infer from Esther's conduct of backing over Selmer that she intended to cause serious bodily injury.

b. The court could properly charge the jury that Esther is presumed to have intended serious bodily injury if it was a natural and probable consequence of her conduct.

c. Both of the above.

d. Without a confession, it will be very unlikely that the prosecution can prove that Esther intended to cause serious bodily injury.

20 Henry Thorpe, age 20, bought a fake driver's license from a guy down the hall in his dorm. The name and other info on the license were of a former student at the college. When Henry tried to order a beer using the license, he was caught and charged with "knowingly using a means of identification of another person without legal authorization." He should *not* be convicted if (MPC approach):

a. He honestly believed that the name and other info on the license were totally made up.

b. He had no clue whether the name and other info on the license were made up and never gave any thought to the possibility that they were of a real person.

c. He figured there was a high probability that the name and other info on the license were of a real person but he honestly believed the seller, who told him they were fake.

d. All of the above.

21 Renata Bettelmann was charged under a statute that makes it a crime, with a 2-year penalty, "to possess a knife that can be opened with a flick of the wrist." The statute is not considered a public welfare statute. Renata was found to have such a knife but she insists that she never even suspected that her knife could be opened with a wrist flick. If the jury believes her:

a. She should be convicted anyway because no mens rea is expressly mentioned in the statute and, therefore, none is required (MPC).

b. Under the judicially preferred construction of criminal statutes, she should *not* be convicted.

c. Under the Constitution, she should *not* be convicted because she did not know that her knife was illegal.

d. The fact that the legislature did not mention a mens rea means this statute preferably should be interpreted as a strict liability statute.

22 Danny, age 16, and Wilma, age 15, think they're in love. They had sexual relations and Wilma became pregnant. Danny was charged under a statute that prohibits "sexual relations with a person under 16 years of age." Danny honestly believed that Wilma was 16 because he had attended her "Sweet 16" party.

a. Under the usual construction of statutes such as this, Danny should not be convicted.

b. Whether or not Danny knew Wilma's actual age, he could be considered to have acted with mens rea under the "moral wrong" doctrine.

c. It would generally be considered impermissible to convict Danny if he honestly and reasonably believed that Wilma was 16,

d. Danny should be convicted because mental states are relevant only if the statute specifies that some particular state of mind is required.

23 Bippy McGuire is an antiques dealer. He was indicted under a statute that makes it a crime "to knowingly possess works of art that have been transported across a state line after being stolen." Bippy says he got the artworks in question (marble statuettes) from a person who came into his shop and said he had just brought them in from another state. Bippy insists, however, that he did not know they were stolen. In determining Bippy's guilt, it would be irrelevant whether he knew the statuettes were stolen (true or false):

a. True, under the Model Penal Code rules of interpretation.

b. True, under the Supreme Court's favored way of interpreting mens rea requirements in statutes like this one.

c. False, at least in some courts.

d. All of the above.

24 Ulysses Norton installed built-in cabinets in his apartment. Under the local law of property, they became "fixtures" belonging to the landlord. Norton did not know this and believed that the cabinets remained his because he built them himself using his own materials. Norton removed the cabinets and took them away at the end of his lease. For this, he was indicted for larceny.

a. Norton's misunderstanding of the law is irrelevant because ignorance of the law is no excuse.

b. Norton's misunderstanding of the law ought to result in a dismissal of the charges in this situation

c. Norton's misunderstanding of the law ought to result in a dismissal of the charges because any mistake of law, if reasonable, is generally a defense.

d. An honest mistake of law, whether or not reasonable, is generally a defense.

25 In Carillon Park, Andrew Audupoint recklessly discharged a firearm hitting Bic Vebrow and causing instant death. Audupoint's conduct would be considered a but-for cause of Vebrow's death:

a. Even if Vebrow would have died anyway within a few minutes from a previous, separate criminal act by another person.

b. Even if Vebrow would have died anyway within a few minutes from a previously self-administered drug overdose

c. Both of the above.

d. None of the above,.

26 X stabbed a rival gang member, V, inflicting a wound that would cause V to die in 15 minutes. D then came along in his car and, because he was texting, did not notice V lying in the street. D ran over V, killing him instantly. Whose act would be treated as a but-for cause of V's death?

a. X's only.

b. D's only.

c. Both X's and D's.

d. Neither X's nor D's..

27 X stabbed a rival gang member, V, inflicting a wound that would cause V to die in 15 minutes. D came by, lifted V into his car and rushed toward a nearby hospital. On the way, D ran a red light and crashed into another car, killing V instantly. Should D's conduct (which constituted non-criminal negligence) be considered the proximate cause of V's death?

a. No, because of the de minimis doctrine.

b. No, because of the omissions doctrine.

c. Yes, because of the omissions doctrine.

d. Yes, because of the apparent safety doctrine (the events that X put in motion had come to rest).

28 X stabbed a rival gang member, V, inflicting a non-fatal wound. S came by, lifted V into his car and rushed V to a nearby hospital. The emergency-room doctor who treated V was very sleepy and mistakenly hooked up the wrong IV, injecting V with a powerful heart stimulant. If V died as a result of the doctor's mistake, whose conduct would be considered the proximate cause of the death?

a. X's conduct if the doctor's conduct was deemed to be ordinary negligence.

b. X's conduct if the doctor's conduct was deemed to be gross negligence.

c. Both of the above.

d. S's conduct.

29 Garner and Thompson were out drinking on a cold and stormy winter night. Driving home they got in an argument. Garner made Thompson get out of the car in the middle of nowhere. Thompson walked several miles to a heated bus-stop shelter where he could have survived the night. However, after he warmed up a bit, he set out again, trying to get home, two miles away. On the way he slipped and fell in a ditch and froze to death. Would Garner's conduct be considered the proximate cause of Thompson's death?

a. Definitely yes, because Thompson had no obligation to spend the whole night in the bus shelter.

b. Definitely yes, because Thompson would never have frozen to death if Garner had not forced him out of the car.

c. Not necessarily, because Thompson made a voluntary decision to walk home after reaching the apparent safety of the bus shelter.

d. No, because Thompson died of the cold not because of Garner's conduct.

30 Dixon was in an automobile accident where he was criminally at fault. A passenger in the other car, Leslie Borg, was severely injured and taken to the hospital where she is on life support. The doctors have determined that several of her organs would be suitable for transplant and could save the lives of at least three other persons:

a. If the life support is disconnected over Dixon's objection, he could not properly be held criminally responsible for the homicide.

b. If Borg is medically determined to be brain dead and the doctors remove life support, Dixon still *could* be held guilty of homicide in some states.

c. If Borg is brain dead but still has a heartbeat when the doctors remove life support, Dixon could *not* properly held guilty of homicide under any recognized rule.

d. If Borg's organs are transplanted and save three other lives, Dixon could not properly be held guilty of homicide.

31 After Mitchell Gabor's business associate died under suspicious circumstances, Gabor was indicted in the death. The prosecutor alleges that Gabor acted with malice aforethought. To prove this "malice aforethought" the prosecutor must show that:

a. Gabor intentionally killed the victim with premeditation.
.

b. Gabor killed unintentionally but with extreme indifference to life or with a malignant and abandoned heart.

c. Gabor killed unintentionally but intended to cause grievous bodily harm.

d. Malice aforethought could be proved by showing any of the above.

32 Suppose Gabor intentionally and unlawfully caused the death of his business associate in order to collect insurance money. The prosecutor charges him with premeditated murder. What does the prosecutor have to prove to support this charge?

a. That Gabor weighed or pre-reflected on his actions before killing the victim.

b. Only that Gabor caused the victim's death with a specific intent to kill.

c. In some states a. is true and in some states b. is true.

d. Any kind of malice aforethought .

33 Toby Heller is accused of murder after fatally stabbing Nonce at the Wayside Saloon. The stabbing occurred right after Nonce had dumped an ashtray into Heller's pitcher of beer. This act had sent Heller into a blind rage and caused him to act out of passion and

rather than reason. The question is whether there is a recognized legal basis for convicting Heller of manslaughter rather than murder.

a. There is no recognized legal basis for convicting Heller of manslaughter rather than murder on these facts.

b. In some states there may be enough on these facts to support a jury verdict convicting Heller of manslaughter rather than murder.

c. Under the traditional rule, these facts would generally support a jury verdict convicting Heller of manslaughter rather than murder.

d. On these facts it would be held just about everywhere that Heller is guilty of only manslaughter, not murder.

34 Suppose in the preceding question that Nonce had poured a glass of beer over Heller's head, to the great amusement of all present except Heller. In a blind rage, Heller fatally stabbed Nonce.

a. Nonce was the proximate cause of his own death because he was the initial aggressor who brought the whole situation about.

b. Evidence that Heller was a hothead with a short temper would support an argument for convicting him of manslaughter rather than murder.

c. Evidence that Heller was a hothead with a short temper would *not* support an argument for convicting him of manslaughter rather than murder.

d. Heller should be able to avoid conviction entirely by pleading self-defense.

35 Suppose that Nonce poured a glass of beer over Heller's head and Heller was enraged but he waited until the next day to get back at Nonce, stabbing him in a parking lot outside his apartment. Which of the following arguments would *not* be considered legally relevant to the question of whether Heller is guilty of manslaughter or murder?

a. Pouring beer over a person's head is the kind of thing that would make a reasonable person lose self-control.

b. Heller had time to cool off and a reasonable person would have regained his temper and reason in that time.

c. Heller was exceptionally sensitive to insults because, in Heller's home country, affronts to honor are taken extremely seriously.

d. All of the above should probably be relevant.

36 Trying to escape the police, Carver drove at high speed through moderate traffic on city streets, running red lights, dodging cars and pedestrians, and often veering into oncoming traffic. The chase ended when Carver inadvertently rammed another car, killing an innocent person. On these facts:

a. Carver can be properly found guilty of murder.

b. Carver is guilty of, at most, manslaughter.

c. Carver is guilty of, at most, criminally negligent homicide.

.

d. Carver is probably not guilty of, any homicide offense since the death was inadvertent.

37 In the preceding question, if Carver convinces the jury that he did not intend to harm anybody:

a. He could not be considered to have acted with malice aforethought.

b. He could only be held guilty of a homicide offense less serious than murder; there is no such thing as unintentional murder.

c. He could still be guilty of implied murder.

d. He could still properly be held guilty of murder.

38 Suppose in the preceding question that Carver did not intend to harm anybody and it did not even occur to him that he might lose control of his car and cause death. However, he is charged with "escape by automobile," a felony defined as "intentionally evading arrest by driving in a way that poses an extreme risk to persons or property." In most states that have the felony murder doctrine. Carver probably:

a. Would he guilty of felony murder.

b. Could *not* properly he found guilty of felony murder because the predicate felony was not inherently dangerous in the abstract.

c. Could *not* properly he found guilty of felony murder because the predicate felony was not dangerous under the particular facts of the case.

d. Could *not* properly he found guilty of felony murder because the death was unintended.

39 The felony murder doctrine:

a. Is still widely accepted but some courts view it with disfavor and say they apply it narrowly.

b. Is generally in disrepute and only a few states still recognize it.

c. Generally applies if a death occurs during commission of or flight from a felony, no matter what the felony.

d. Is now indistinguishable from "abandoned heart" murder.

40 Two drivers got into an argument after their cars collided on the parkway. A shoving match ensued. One of the drivers tripped over a piece of concrete and fell into the roadway. He was hit and killed by an oncoming truck. The surviving driver is charged with felony murder based on the assault. Assuming the assault is considered an inherently dangerous felony:

a. Courts agree that any felony assault can be used as a predicate felony for a murder conviction.

b. These facts could not present a proper case for a felony murder conviction because the death was accidental.

c. In some states felony assault cannot be considered a predicate felony for felony murder because the assault merges into the homicide.

d. As a general matter, any death caused by an assault is considered felony murder.

41 Several teenagers tied a long thick "swinging" rope to a high tree at the edge of a bluff so they could swing out and enjoy the thrill of soaring high above the drop-off below. One day, a boy lost his grip and fell nearly 100 feet to his death. The teenagers have been indicted for involuntary manslaughter. Given the magnitude of the risk, they should have been aware of it, but the state cannot prove they were *actually* aware of the risk they created:

a. They might still be considered "reckless" as recklessness was traditionally understood at common law.

b. They should not be considered reckless under the more modern understanding of recklessness and the MPC.

c. Both of the above.

d. They could be considered reckless under both the traditional common law approach or the more modern understanding of recklessness

42 Late for a Wednesday afternoon golf game, Dr. Wendell Waddel hurried through the last phases of an operation and overlooked two clamps and a sponge that had been left inside the patient. The patient died as a result. He could properly be found guilty of criminally negligent homicide:

a. If the jury finds that his conduct constituted ordinary (civil) negligence.

b. Only if the jury finds that his fault was more serious than ordinary negligence, e.g., "gross" negligence.

c. Only if the jury finds that he was aware of the risk and consciously disregarded it.

d. Only if his conduct evinced indifference to human life.

43 Mel Wilson has been charged as an accomplice in a robbery. He has introduced substantial evidence that he acted under duress, an affirmative defense under local law. Under the usual modern rule:

a. The burden would be on the prosecution to prove beyond a reasonable doubt that Wilson did not act under duress.

b. The Constitution requires the prosecution to prove beyond a reasonable doubt that the defense of duress does not apply.

c. Both of the above.

d. Wilson must bear the burden of proving that he acted under duress.

44 Ricky went to the Mike's apartment of to buy some drugs. When he got there, Mike was in a bad mood. The two sat in the kitchen and argued. Mike pulled out an unloaded gun and aimed at Ricky. Ricky managed to grab a kitchen knife and jabbed at Mike, making a serious stab wound. Ricky is accused of attempted murder. The defense of self-defense would apply:

a. Only if the deadly force used by Ricky was in fact immediately necessary to protect Ricky from an imminent threat to his life.

b. As long as Ricky honestly believed that the deadly force he used was immediately necessary to protect him from an imminent threat to his life (even if it was actually not).

c. As long as Ricky honestly and reasonably believed that the deadly force he used was immediately necessary to protect him from an imminent threat to his life.

d. None of the above. The defense of self-defense would *not* apply because Ricky was engaged in illegal activity and brought the need for deadly force on himself.

45 Errol was stealing the wheels from Bossart's car when Bossart walked up and asked what was going on. Errol slowly stood up and started backing away saying "I don't want no trouble." Bossart saw Errol was holding a steel tire tool loosely in his hand. Bossart quickly reached for a gun and pointed it at Errol as Errol continued to retreat. Bossart shot Errol twice. Both Errol and Bossart are accused of attempted murder and both claim self-defense.

a. Bossart's claim of self-defense is probably unfounded because he would be considered the aggressor.

b. Errol's claim of self-defense is probably unfounded because he would be considered the aggressor.

c. Both defendants should have valid claims of self-defense under these circumstances.

d. Neither defendant should have a valid claim of self-defense under these circumstances.

46 Jessie Harness normally walks her dog down Grove Street. Last week, the dog did its thing on McCracken's lawn. McCracken saw this and became very angry. He told Jessie if he ever saw her walking her dog past his house again she'd "be sorry." Just to be safe, Jessie started carrying a small gun for her dog walks. If McCracken later accosts Jessie with a rifle in front of his house and she shoots him to protect herself:

a. She should not be denied her claim of self-defense just because she could have walked her dog on a different street.

b. She would probably not have a valid claim of self-defense because she walked her dog on Grove Street even though she knew it might lead to trouble.

c. She would probably not have a valid claim of self-defense because she knowingly took the risk.

d. She would probably not have a valid claim of self-defense because she would be considered the saggressor.

47 Suppose in the preceding question that McCracken did not accost Jessie with a rifle but, instead, started to scream and chase her with a large garden rake (the kind with sharp hard teeth). Jessie was scared because she's smaller than McCracken and, due to a sore ankle, could not run very fast. If she shot McCracken and claims self-defense, alleging she reasonably believed that deadly force was necessary to prevent imminent serious bodily injury:

a. The jury should be told that the question to decide is whether an average person would have reasonably believed that deadly force was necessary.

b. The jury should be told to acquit as long as Jessie honestly believed that deadly force was necessary.

c. The jury should be told that the question is whether Jessie's use of deadly force seemed reasonable *to her*.

d. The jury should be told to take into account the two individuals' relative size and ability to run in deciding the reasonableness of her belief.

48 Nat Salzburg saw three boys bullying a fourth boy, who cowered as he was repeatedly hit on the arm. Nat grabbed one of the bullying boys, Fred, and pulled him away. In the process Fred stumbled and hit his head on a bicycle, requiring three stitches. Fred's father called the police. Nat has been charged with assault.

a. It sounds like Nat is guilty of assault and should be advised to seek a favorable plea bargain.

b. Nat may have a defense to the assault charge but only if the boy being bullied had asked him for help.

c. Nat should have a defense to the assault charge if he reasonably believed that the boy being bullied had a right of self-defense.

d. Nat should have minded his own business because the law's policy is to discourage private citizens from trying to do the job of law enforcement.

49 Late one night James Phelps heard some sounds coming from his front porch. He realized there were people out there in the dark. He got his shotgun and yelled through the door "who's out there?" No answer came back. Then he heard the glass break on the outer storm door. If James were to shoot and injure one of the feared intruders, he would have a defense:

a. Only if he waited to shoot until the intruder had crossed the threshold and entered his house.

b. As long as he reasonably believed that shooting was necessary to protect his private property.

c. If he reasonably believed that shooting was necessary to prevent someone from breaking in and committing a violent felony in his home.

d. Both b. and c. above.

e. None of the above. He could not lawfully shoot unless he was personally threatened with imminent death or grievous bodily harm.

50 While driving to the mall, Patricia Whelan swerved into the oncoming lane when a small dog ran in front of her car. A policeman saw her swerve and gave her a ticket for crossing the double yellow line. The policeman says he did not see the animal in the roadway. Patricia decided to contest the ticket in court claiming necessity as a defense:

a. To establish the defense of necessity it would be legally sufficient to prove that she swerved across the double line for the purpose of avoiding a dog.

b. She has to prove, among other things, that she reasonably believed that crossing the double line was necessary to avoid a dog in the road.

c. The court must accept her judgment that the harm of crossing the double line was less than the harm of killing the dog.

d. Both b. and c. above.

51 Edwin Rhodes worked in his company's accounting dept. He became deeply indebted to a street lender. One night, three large men came to Rhodes and said he had to pay up in two days or he'd get a beating that would "put him in the hospital." But, they suggested, he could tell them the passcode to his company's computer instead (which they could use to steal the company's money). Edwin was terrified and he didn't think the police could protect him. Two days later, he gave the men the passcode. If Edwin has the burden of proof on the defense of duress, he must prove (among other things) that:

a. There was a threat to immediately inflict serious bodily injury or death (common law).

b. A person of reasonable firmness could not have resisted the threat (MPC).

c. Both of the above are true.

d. None of the above. Duress must be based on a natural threat not a human one.

52 Following an afternoon of heavy drinking, Willy Parks was on his way home on a crowded subway. A man accidentally stepped on his toe. With a single well-placed punch, Willy knocked the man out and jumped off the train. He was later recognized and arrested. The fact that Willy was drunk at the time of the incident:

a. Would tend to exonerate him by showing that his conduct was not truly a "voluntary act."

b. Could be used to negate recklessness but not to negate intention (MPC).

c. Would be helpful to his defense if it affected his self-control.

d. Would probably not help his defense.

53 Mona Eaton suffers from a serious mental illness that causes her to have horrifying delusions. She was indicted for murder in the death of her 4-year old son. She says she did it because he was possessed by a demon. Sometimes, she said, he even took the appearance of the demon, with glowing eyes and a "crooked" smile. Under the traditional common-law approach, Eaton would have a strong argument in defense to the murder charge on these facts:

a. Because she killed in self-defense.

b. If, due to her mental illness, she did not know it was wrong to do what she did.

c. If, due to her mental illness, she had an irresistible impulse to do what she did.

d. All of the above.

54 Doug Reffs deliberately dropped a bicycle from an overpass trying to hit a person passing below on foot. Fortunately he missed.

a. Reffs could properly be charged with attempted aggravated assault ("intentionally causing serious bodily injury").

b. Under the original common-law rules on attempts, Reffs would have committed a misdemeanor.

c. Under the MPC, Reffs would be subject to the same penalty that would apply if he had hit the passerby with the bicycle.

d. All of the above.

55 Todd Warner, a homeless drifter, killed another man in a knife fight under a bridge where the two were sheltering. It has been determined that Warner suffers from anti-social personality disorder, a condition that makes it difficult for him to calibrate his emotions and control his impulses when provoked. During his trial for homicide, expert testimony concerning anti-social personality disorder:

a. Would probably be deemed irrelevant on the question of guilt.

b. Would show he has a mental disease or defect that excuses his conduct.

c. Would show that his conduct was reasonable for purposes of the provocation defense.

d. Both b. and c. above.

56 Sam Delacroix decided to burglarize the pharmacy where he had a part time job. While at work one day he placed a jam in the back-door lock so he could easily open the door from the outside. He also assembled a box of opioid pharmaceuticals so they would be easy to grab and take when he came back that night to complete the theft. Later, however, Sam changed his mind and did not go back to the store at night as he had intended.

a. Sam would probably be guilty of attempted burglary under the proximity doctrine (common law).

b. Sam would probably be guilty of attempted burglary under the MPC.

c. Both of the above.

d. None of the above.

57 Dwyer was very angry with Fribischer. Several times, Dwyer told friends he was going to "get rid of" Fribischer. He bought a gun (legal in his "open carry" state), did some target practice, and parked a couple of times along Fribischer's route to work. Last week, Dwyer happened to see Fribischer playing softball in Webb Park. He got out of his car and walked up to Fribischer with his loaded gun on his hip. A mutual friend of Dwyer and Fribischer took Dwyer aside and spoke with him. Dwyer went back to his car and drove away.

a. There is a plausible argument that Dwyer did not commit attempted murder because his conduct was equivocal.

b. Dwyer could not properly be convicted of attempted murder if the court applies the dangerous proximity doctrine.

c. There is *not* enough evidence here for a jury to convict Dwyer guilty of attempted murder under the MPC.

d. All of the above.

Facts for Dave questions. Dave and his friends (all teens) sometimes hung out in a small freight yard near their homes. One evening, as they were sitting and talking in the freight yard, one of the boys noticed a door ajar on a tool shed a short distance away. All of the boys approached the shed except for Dave, who held back. From where he stood, Dave would have been able to shout a warning to the other boys if anyone came by. The other boys stole some tools from the shed and were later apprehended after one of them bragged at school about what they had done.

58 Suppose there is no evidence that Dave knew at the time of the theft that the other boys were stealing anything. Dave could be properly convicted as an accomplice in the theft:

a. On these facts alone.

b. If, afterwards, when asked if he was acting as a lookout, Dave replied: "You might say that."

c. If Dave thought he saw somebody enter the far end of the yard and yelled to his friends: "Somebody's coming!"

d. All of the above.

e. None of the above.

59 Suppose that Dave *did* know his friends planned to steal from the shed and he did nothing to stop them. Dave could be properly convicted as an accomplice in the theft:

a. On these facts alone.

b. If, afterwards, Dave admitted that he'd privately decided to shout a warning if anyone came by but he did not tell this to his friends and, in any case, nobody came by.

c. If Dave did *not* tell his friends that he would shout a warning but he nonetheless yelled "Somebody's coming!" when he saw someone entering the far end of the yard.

d. All of the above.

e. None of the above.

60 Suppose again that Dave *did* know that his friends planned to steal from the shed and, in addition, he promised them he would shout a warning if anyone came by. Dave could be properly convicted as an accomplice in the theft:

a. Even if his friends would have committed the theft whether or not Dave promised he would shout a warning.

b. If Dave saw someone entering the far end of the yard and shouted "Somebody's coming!" to his friends in the shed.

c. If Dave failed to notice someone entering the far end of the yard and thus failed to shout a warning to his friends in the shed.

d. All of the above.

e. None of the above.

<End of examination.>