PACE UNIVERSITY SCHOOL OF LAW

CRIMINAL LAW
PROFESSOR HUMBACH — December 13, 2019
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 45 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 or, if you only know one rule, use it. If 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 "Skip" Bradley has been indicted in the death of Billy Dunn:

a. Bradley can be properly convicted of murder if the prosecution proves (among other things) that he intentionally caused Dunn's death.

b. Bradley can be properly convicted of murder even if the prosecution *can't* prove had an intention to kill Dunn.

c. Both of the above.

d. Bradley cannot be properly convicted of murder if he caused the death unintentionally.

e. Both a. and d. above.

2 In the charge to the jury at Bradley's trial, the judge told the jury that, to convict, it must find that Bradley killed with malice aforethought. That means the jury must find:

a. Bradley killed Dunn with premeditation.

b. Bradley acted with malicious intent toward Dunn.

c. Both of the above.

d. None of the above. Malice aforethought does not require a finding of either premeditation or maliciousness in the ordinary sense.

3 The crime of first degree murder:

a. Is generally the most serious of the homicide offenses.

b. Is essentially synonymous with premeditated murder.

c. Both of the above.

d. Means murder committed directly rather than through an accomplice.

4 While shopping at Wallmark, Ed Jones picked up a pair of pliers that he intended to buy. A few minutes later, he slipped the pliers in a jacket pocket so he could rummage through a large pile of gym pants. When Jones checked out at the register, he forgot he had the pliers. He did not discover them in his jacket until he got home. At that point he decided just to keep them. The statutory definition of larceny is "taking and carrying away property of another with intent to steal."

a. Jones was guilty of larceny when he left the store.

b. Jones did not commit larceny as defined by the statute.

c. Jones was guilty of larceny because of his negligence in dealing with the pliers.

d. Mistake of law would be a valid defense to a charge of larceny in this case.

5 In which of the following cases would D act be considered a but-for cause of the death of V?

a. S stabbed V, who would have died of the wound in 30-40 minutes. Ten minutes later D shot V, who then died within 5 minutes.

b. S stabbed V and then D stabbed V. Neither wound would have been fatal by itself but, given V's weakened state from S's act, he died shortly after D stabbed him.

c. V challenged D to a drag race. D agreed. During the race, V lost control of his car and was killed in the crash.

d. All of the above.

6 Walking through a wooded city park with his pellet gun, Billy took a shot at a squirrel. At the same time, Suzy (who was acting independently) took a shot at the same squirrel. Both pellets hit the squirrel at the same moment. Either pellet alone would have caused its death (a violation of law). Who can be properly convicted of killing the squirrel?

a. Billy.

b. Suzy.

c. Both.

d. Neither, because neither pellet was the but-for cause of the squirrel's death.

7 Randy Hethsmith and his friend were out driving around in Hethsmith's car. As they passed through a forested area, Hethsmith negligently sideswiped a guard rail on a narrow curve. He pulled over to examine the damage. While the car sat on the roadside, a bullet fatally struck his friend (presumably fired by a deer hunter in the woods). The shooter has never been found. Hethsmith is charged in his friend's death:

a. Hethsmith cannot be properly convicted because his negligent conduct was not a but-for cause of the death.

b. Hethsmith's negligent conduct was a but-for cause of the death but it probably would not be considered the proximate cause.

c. Hethsmith's negligent conduct was neither a but-for cause nor a proximate cause of the death.

d. Hethsmith's negligent conduct was both a but-for cause and the proximate cause of the death.

8 Letwick was driving recklessly when he slammed into a cyclist riding down the side of the road. The cyclist was hurt

but her injuries were by no means fatal. An ambulance was called. It crashed into a telephone pole while taking the injured cyclist to the hospital. Everyone in the ambulance was killed. Letwick's conduct can be considered the proximate cause of the cyclist's death:

a. Even if the immediate cause of the crash was the ambulance driver's failure to use ordinary care (ordinary negligence).

b. Even if the ambulance driver was grossly negligent in causing the crash.

c. Both of the above.

d. None of the above.

9 In the preceding question, the prosecutor has also charged Letwick in death of the EMTs in the ambulance, including the ambulance driver, who was deemed to be *not* negligent in the crash. Letwick's lawyer maintains that these charges should be dismissed for lack of legally required causation. Is Letwick's lawyer correct?

a. Yes, because Letwick's conduct was not a but-for cause of the deaths of the EMTs.

b. Yes because, due to intervening acts of others, there is no plausible basis for treating Letwick's conduct as the proximate cause.

c. No, because the EMTs died due to intervening acts that were responsive to Letwick's conduct, so he can be plausibly deemed the proximate cause of their deaths.

d. Yes, because Letwick can't be deemed to be the proximate cause of the EMTs' deaths unless he foresaw that their deaths might result from his conduct.

Facts for Rostow-Grinley questions. During a fight outside a bar, Rostow threw a rock at Grinley. When Grinley ducked, the rock broke the window of a car that happened to be passing just behind him. A statute makes it a crime "to unlawfully and *maliciously* destroy property belonging to another" (emphasis added).

10 Following the reasoning of *Regina v. Cunningham* (the gas-meter theft case), the proper interpretation of the statute's word "maliciously" would allow conviction:

a. As long as there's proof that Rostow acted with a generally wicked mental state (for example, intending to hit Grinley with a rock).

b. Only if it's proved that Rostow acted with an unlawful mental state in respect to the car window (for example, an intention to break it).

c. As long as breaking the car window could be considered "malicious," as the word is commonly understood.

d. Only if Rostow had feelings of malice directed specifically toward the car owner.

11 Suppose the jury is persuaded that Rostow did not mean to break the car window. It would still be proper to convict him of violating the statute:

a. If he foresaw there was a substantial risk that the rock would cause other damage if his throw missed Grinley.

b. If he *should have* foreseen there was a substantial risk that the rock would cause other damage if his throw missed Grinley.

c. Both of the above.

d. Only if it was practically certain that throwing the rock would cause serious harm *to Grinley*.

12 Suppose that, after missing the first time, Rostow threw another rock at Grinley. This one hit the Grinley in the head, causing serious injury. Rostow is indicted under a statute that makes it a crime "to knowingly or intentionally cause serious bodily injury to another." It would be proper to convict Rostow:

a. Without proof of his mental state because courts realize that a person's internal mental workings or thoughts can never really be known.

b. Under a legal *presumption* that people are deemed to intend the ordinary and natural consequences of their actions.

c. If the jury *infers* from the facts and circumstances that Rostow intended to cause serious bodily injury to Grinley.

d. Both b. and c. above.

13 Suppose that Grinley, trying to escape from Rostow, ran to his car and sped off. Rostow took out a gun and squeezed off a single shot at the back window of the car, aiming to kill Grinley. The bullet missed Grinley but hit and killed a bystander. Grinley was unharmed.

a. Under proper application of the "transferred intent" doctrine, Rostow is guilty of intentional homicide.

b. Under proper application of the "transferred intent" doctrine, Rostow is guilty of reckless homicide.

c. Rostow cannot properly convicted of any kind of homicide.

d. None of the above.

14 Charlie Havemeier was indicted under a statute that makes it a crime to "break and enter into premises with intent to commit a felony." The crime defined in the statute would normally be said to be one that:

a. Does not require a mens rea..

b. Does not require an actus reus.

c. Requires specific intent.

d. Requires only general intent.

15 Preston Paisley, a karate student, wanted to show friends how well he could control his kicks. Demonstrating his skill on a nearby store window, he unintentionally struck the window with his boot and shattered it. His lawyer persuaded the jury—with testimony of Paisley's karate teacher—that Paisley honestly believed he could control his kick so it would not cause damage. Using MPC mens rea, if Paisley is guilty of any crime at all, it would be one that makes it illegal to:

a. Purposefully destroy property.

b. Willfully destroy property.

c. Recklessly destroy property.

d. Negligently destroy property.

16 Same facts as the preceding question except Paisley was aware of the risk that he might damage the window. But he went ahead and kicked at it anyway, hoping for the best. Paisley would be guilty of a crime that makes it illegal to (MPC mens rea):

a. Purposefully destroy property.

b. Willfully destroy property.

c. Recklessly destroy property.

d. Negligently destroy property.

17 Lucinda's boyfriend asked her to take a package to an address across town. She was aware that her boyfriend sometimes sold illegal narcotics to make a little extra money. Lucinda was apprehended and cocaine was found in the package. She was prosecuted for "knowing possession of a controlled substance." If Lucinda truly did not know what the package contained, she can properly be convicted (*best* answer under MPC):

a. If she knew there was a high probability that the package contained cocaine (no matter what she actually believed).

b. If she knew there was a high probability that the package contained cocaine (unless she actually believed it did not contain a controlled substance).

c. No matter what her actual beliefs might have been because the law imposes a legal duty on people to know the contents of packages in their possession.

d. None of the above. To properly convict Lucinda of "knowing" possession the prosecutor must prove she actually and truly knew what the package contained.

18 A statute makes it a crime "to knowingly use a means of identification belonging to another person to buy alcoholic beverages." Freddie bought a phony driver's license from a college dormmate who knew how to make them. Freddie believed it to be a totally bogus fake that the seller had fabricated. In fact, the license was a real one, which had been stolen. Freddie used the license to buy beer and was charged under the statute.

a. Freddie could not properly be found guilty as long as he did not know the license actually belonged to another person (MPC).

b. Under the interpretive approach of some non-MPC cases, Freddie could be found guilty even if he did not know the license belonged to another person.

c. Both of the above.

d. None of the above.

19 Arthur Staymore has been charged under a public welfare statute that prohibits photographing plainclothes agents. The statute does not specify any particular mens rea. He was arrested while taking a picture of a bird in the park and did not realize there was a plainclothes agent in the background.

a. The court must interpret the statute to require proof that Staymore photographed the agent intentionally, knowingly, recklessly or, at least, negligently.

b. The court must interpret the statute to require proof that Staymore acted with a wicked disposition or, at least, blameworthy state of mind.

c. Statutes imposing punishment without fault or mental culpability are generally not constitutional, so Staymore probably cannot be convicted.

d. None of the above. No rule prevents the court from interpreting the statute to permit conviction even if Staymore tried his best to stay within the law.

20 Wilbur has a client charged under a statute that makes it a crime to "knowingly interfere with a police officer in the performance of his or her duty." The client was arrested after coming to the aid of a woman he saw being wrestled to the ground by a man in a brown leather jacket, just off Main Street. The man turned out to be an undercover police officer who was effectuating a lawful arrest. The charges against the client should be dismissed (MPC):

a. If Wilbur can prove the client didn't know that the man in the leather jacket was a police officer.

b. If Wilbur can prove the client didn't know that interfering with a police officer was a crime.

c. If Wilbur can prove the client didn't know either one of the above

d. None of the above. The word "intentionally" applies only to the word "interfering" and Wilbur's client clearly knew he was interfering.

21 While at a street fair, Allison Lindenwald walked past a table displaying cups of appetizing ice cream. Thinking they were free samples, Allison took one and walked off. In fact, the ice cream was intended for sale. Allison was charged with petty larceny. She should be acquitted:

a. Only if she honestly and reasonably believed that they were free samples.

b. As long as she honestly believed that they were free samples.

c. As long as it was reasonable to believe that they were free samples, no matter what Allison's private beliefs may have been.

d. None of the above. A thief cannot escape punishment just because she didn't "know" she was stealing.

22 Federal law makes it a crime for any person "to possess a firearm that is not registered to him" as prescribed by the law. "Firearm" is defined as a weapon that can shoot multiple shots automatically with one pull of the trigger. The statute does not specify any mental-state element. Benny Pritch was charged under this statute after he was found to have an unregistered firearm. As this statute has been interpreted:

a. Pritch cannot properly be convicted if he did not know that his weapon had automatic (multiple shot) shooting capability.

b. Even if Pritch knew his weapon had automatic (multiple shot) shooting capability, he cannot properly be convicted if he did not know it was unregistered.

c. Both of the above.

d. It doesn't matter what Pritch knew or didn't know, he can be properly convicted because the statute doesn't specify any mental-state element for this offense.

23 It is said that statutes permitting conviction without proof of mens rea typically include those that are enacted:

a. Primarily for the purpose of punishing wrongdoers.

b. To forbid *malum in se* rather than *mala prohibita*.

c. For the purpose of social betterment rather than punishment.

d. More than one of the above.

24 Denise Mellom, a high school math teacher, is charged under a statute that prohibits "sexual relations with any person under 16 years of age." Denise honestly (but erroneously) believed that the student she'd had an "affair" with was 17, the age erroneously shown in the school records. Under the majority (and traditional) rule for such a case:

a. Denise's honest mistake as to her student's age would normally be a defense.

b. Denise's honest mistake as to her student's age would be a defense only if her belief was a reasonable one.

c. A mistake as to the age of the student, no matter how genuine or reasonable, would not be accepted as a defense in most states.

d. Denise's honest mistake as to the age of the student could be a defense as long as the student had freely consented to the sexual encounter.

e. Denise's honest mistake as to the age of the student could be a defense as long as the student had initiated the sexual encounter.

25 Jake Twimbly, age 20, had sexual intercourse with Laura K., who was age 13. Jake is seriously mentally disabled (which is readily apparent). Laura is a girl of normal intelligence. Both Jake and Laura participated and cooperated in the act. According to the plain meaning of a statute like the one we saw in *Garnett v. State* (and disregarding a possible defense of infancy), who is guilty of rape?

a. Both Jake and Laura.

b. Jake, but not Laura.

c. Laura but not Jake.

d. Neither Jake nor Laura because both participated and cooperated in the act.

Facts for Harvey Hornstein questions. Arriving at his apartment parking lot, Harvey Hornstein made a bee-line for one of the few empty spaces. Another driver also had his eye on the same space and a heated argument ensued. The other driver called Harvey a brainless idiot and, using his key, he scratched the word "pig" in the side of Harvey's shiny new car. Harvey, in a blind rage, jumped in his car, put it reverse and backed over the other driver, causing his death.

26 *Disregarding*, for a moment, the possibility that a "provocation"-type defense might apply on these facts:

a. In some states, it would be appropriate to convict Harvey of premeditated murder as long as he acted with a specific intent to kill.

b. In some states, a specific intent to kill would not be enough in itself to satisfy the mens rea requirement for premeditated murder.

c. Under the MPC, there is no special significance given to premeditated as opposed to other murders.

d. All of the above.

27 Now assume that Harvey Hornstein's defense lawyer thinks he might be able to get Harvey a better outcome by arguing that Harvey acted impulsively while in a highly charged and volatile emotional state due to the provoking conduct by the victim.

a. Under the MPC, the provoking events here would probably be deemed adequate to charge the jury on the "extreme emotional disturbance" defense.

b. Under the traditional approach to provocation, the provoking events here would probably be deemed adequate to mitigate from murder to manslaughter.

c. Under the traditional approach, the "mere words" would not be adequate provocation, but the malicious scratching of the car would clearly be enough.

d. Under the MPC, the "mere words" could not justify the "extreme emotional disturbance" defense but the malicious scratching of the car clearly could.

28 In applying the "reasonable person" standard to decide whether Harvey Hornstein should be convicted of murder or manslaughter, which of the following of Harvey's attributes should be taken into account:

a. Harvey has a notably pig-like nose and is extremely sensitive to being called "pig" (a point affecting the gravity of the provoker's words and acts).

b. Harvey has always had an exceptionally excitable and aggressive personality and he finds it hard not to react explosively to insults.

c. Harvey is an unusually self-important guy with an elevated sense of personal honor who's very quick to get enraged when other people get in his face.

d. All of the above

29 Gary Gosch pointed his gun at the wall of his apartment and pulled the trigger just to hear it "click." Gosch was certain that the gun was unloaded and he honestly believed there was no risk. He was, however, wrong. The bullet from the gun pierced the wall and killed his neighbor who was watching TV in the next apartment. Under the Model Penal Code:

a. The jury could properly find Gosch guilty of extreme indifference murder.

b. The jury could properly find Gosch guilty of manslaughter.

c. The jury could properly find Gosch guilty of criminally negligent homicide.

d. The jury could not properly find Gosch guilty of any homicide at all.

30 Victor fell asleep while smoking in bed and the bed caught fire. Victor escaped the blaze, but the fire spread to a neighboring apartment occupied by an elderly tenant who died of smoke inhalation. Victor is on trial. In the charge to the jury, the judge should explain that, in order to convict Victor of criminally negligent homicide, it must find that the death was proximately caused by:

a. A failure by Victor to use the ordinary care that a reasonable person would have used under the circumstances.

b. Gross negligence on the part of Victor.

c. Either of the above would suffice to support a conviction for criminally negligent homicide.

d. Extreme recklessness on the part of Victor.

31 After robbing a jewelry store, Sanborne ran down the street chased by the jeweler. In the excitement, the jeweler ran in front of a bus and was killed instantly. In most states,

a. Sanborne is guilty of murder.

b. Sanborne is guilty of voluntary manslaughter.

c. Sanborne us guilty of involuntary manslaughter but not murder.

d. Sanborne is guilty only of robbery since that is all he intended.

32 While making homemade fireworks as a hobby, Gregory accidentally set off a blast that caused the death of a bystander. Gregory is charged with felony murder. The alleged predicate felony is his violation of a statute that makes it a felony to engage in "unlicensed manufacture of explosives in a place of human habitation so as to create a substantial risk of death, serious personal injury or property damage." In a state that applies the inherently dangerous felony rule and considers the predicate felony "in the abstract":

a. Gregory would definitely be guilty of felony murder.

b. Gregory probably would not be considered guilty of felony murder (because of the "or" in the statute).

c. Gregory could properly be found guilty of felony murder if he made his fireworks in an inherently dangerous manner.

d. Gregory could properly be found guilty of felony murder if his recipe for making fireworks was inherently dangerous in the abstract.

33 While robbing a convenience store at gunpoint, Minerva Collins accidentally stumbled and dropped her gun. It hit the floor and went off, fatally injuring a customer coming in the door. Minerva is being prosecuted for murder:

a. The prosecutor needs to prove that Minerva intended to kill or seriously injure the customer.

b. Minerva should be permitted to try to prove as an affirmative defense that she did not intend to kill the customer.

c. Because of the totally accidental circumstance of the killing, a murder conviction would not be proper.

d. The evidence would support a conviction for murder even without proof that Minerva intended any bodily harm to anybody.

34 An exchange of gunfire broke out during an armored truck robbery. Silas, one of the robbers, was hit by a bullet fired by a guard in self-defense. Silas later died of the wound. His accomplice, Jason, can properly be convicted of murder in Silas's death:

a. According to the so-called agency approach to such cases.

b. According to the proximate cause approach to such cases.

c. Both of the above.

d. None of the above.

35 Warren was seriously but not fatally injured when he hit his head after slipping on an ice patch while crossing the street. A passing motorist, Fornier, found Warren bleeding on the street and rushed him to a hospital. Fornier exceeded the speed limit and ran several red lights (after checking for cross traffic). If Fornier is prosecuted for his traffic violations, his most appropriate defense would be:

a. Duress.

b. Necessity.

c. Defense of another person.

d. Res gestae.

36 Each night going home Rupert must walk several dark and dangerous blocks from the bus. After he was mugged the second time, Rupert bought a gun. Recently, Rupert was approached by two teens, both much taller than he. The teens carried baseball bats, blocked his way, and told him to stand still and "do what you're told." Without warning, Rupert pulled out his gun and shot them both, one fatally. On these facts, in order for Rupert to be entitled to acquittal based on self-defense:

a. It is sufficient if the jury finds that he honestly believed that his use of deadly force was necessary to protect himself from death or serious bodily injury.

b. The jury must find that his use of deadly force was actually necessary to protect himself from death or serious bodily injury.

c. The jury must find he honestly *and reasonably* believed his use of deadly force was necessary to protect himself from death or serious bodily injury.

d. It is sufficient if the jury finds he honestly and reasonably believed that deadly force was necessary to protect himself from *any* unlawful use of force.

37 Suppose in the preceding question, Rupert tries to prove that he reasonably believed his use of deadly force was necessary. Which of the following kinds of evidence should be admissible as proof of "reasonableness"?

a. Rupert's relevant personal physical characteristics such as his diminutive height and the fact that he was 63 years old and not very athletic.

b. Rupert's prior experiences, such as the fact that he'd previously been mugged twice by teens in this area.

c. Both of the above.

d. None of the above. The standard of reasonableness is objective and, so, Rupert's personal characteristics and history should not be taken into account.

38 Corry and Kimmler got into a spirited discussion of Corry's new girlfriend (Kimmler's ex-wife). Corry escalated the encounter by grabbing a heavy metal pipe and approaching Kimmler threateningly, an unlawful act that was likely to lead to an affray. Kimmler then pulled out a 7-inch knife and slashed at Corry who responded by slamming Kimmler over the head with the pipe, causing his death. Corry is accused of murder. Could the jury properly acquit Corry on the grounds of self-defense?

a. Yes, as long as Corry had to use deadly force to save his own life.

b. No, because Corry had first threatened Kimmler with the pipe (even if Corry's later use of deadly force was necessary to save his own life).

c. Yes, and it doesn't legally matter whether Corry was first to use or threaten deadly force; the main point is he needed to save his own life.

d. Yes, because the death occurred in mutual combat.

39 Suppose the following additional facts in the preceding question: After Corry threatened Kimmler with the pipe and Kimmler lashed out with the knife, Corry backed off and said, "Look, buddy. Let's just calm down. I don't want no more

trouble." Kimmler slashed at Corry again and Corrie killed him with the pipe, as previously described.

a. These additional facts should not change the outcome.

b. These additional facts would tend to support an acquittal of Corry on the ground of self-defense.

c. These additional facts would be essentially irrelevant to Corry's claim of self-defense.

d. Even with these additional facts, the key point remains that Corry brought his "need" for self-defense on himself.

40 A member of the Ellis Street drug ring was insulted by Archie Cotts, a member of a rival gang. Several Ellis members headed into the rival gang's territory to find Archie and exact revenge. They carried heavy metal chains as they openly roamed up and down the streets looking for Archie. Before they had the faintest idea of where Archie was, however, they were stopped by police. Would the police have a sound legal basis to intervene and charge them with attempted assault?

a. Yes, under the traditional common law "dangerous proximity" approach to deciding cases of attempt.

b. Yes, under the Model Penal Code's approach to the law of attempt.

c. Both of the above.

d. No, the police would have no basis under either of the above approaches because, so far, nothing has been done that unequivocally indicates criminal intent.

41 Merlon Hitchens buys artifacts from local folks who dig up backcountry archeological sites. The Native Artifacts Protection Act makes it a crime to sell or otherwise deal in such items without proper permits, which Merlon does not have. Last week Sagebrush Sam sold Merlon some pottery with native designs and Merlon later offered it as "the genuine article" to an undercover agent. Even though it turns out that the pottery is a recent imitation made in the Far East, Merlon is accused of attempt to violate the Act. Under the approach followed by most courts today (and the MPC), Merlon should be able to avoid conviction on the ground that:

a. It was, under the circumstances, *factually* impossible for him to violate the Act by selling recently made fakes.

b. It was, under the circumstances, *legally* impossible for him to violate the Act by selling recently made fakes.

c. Both of the above.

d. None of the above. Neither factual impossibility nor ordinary legal impossibility would provide Merlon with a defense.

42 Larry, Phil and Dorville agreed they would steal some six-packs of beer from a convenience store where Dorville worked. The plan was that Dorville, while at work, would jam the backdoor lock with chewing gum so it could be opened from the outside. Then, after the store closed for the night (and Dorville was at home), Larry would enter the backdoor and get the beer while Phil waited across the street and acted as lookout. Unfortunately, as the theft was in progress, Larry and Phil were caught and they spilled the beans on Dorville.

a. Larry, Phil and Dorville were all principals in the first degree.

b. Dorville was accessory before the fact.

c. Even if the theft did not happen because Dorville forget to jam to lock, Larry, Phil and Dorville would still have been guilty of the crime of conspiracy.

d. Both b. and c. above

e. Phil and Dorville were both principals in the second degree.

43 Patrick was driving in a car with a couple of his friends. One of his friends suddenly stuck a gun out the window and shot at a nearby car, basically just for the thrill of it. Patrick has been indicted as an accomplice.

a. In general, Patrick's mere presence when his friend did the shooting would be legally sufficient to make him an accomplice.

b. Patrick would not be considered an accomplice unless he had entered into a conspiracy agreement with his friend to shoot at the passing car.

c. Patrick would be guilty as an accomplice if he assisted or encouraged his friend's conduct with the intention that the shooting occur.

d. All of the above.

44 An Internet service known as Gregslist allows people to advertise various consumer services, such as landscaping, plumbing repair, domestic help, handyman work, etc. Lately, also, a considerable number of persons offering sexual services for money have also been using the site. Though styled as "escort" services, Gregslist knows that many of the "escorts" are offering prostitution services. Gregslist is can be properly convicted of aiding and abetting prostitution:

a. If Gregslist charges inflated prices to people who place the "escort" ads, giving Gregslist a stake in their illegal activities.

b. If Gregslist employees advise those who advertise "escort" services on ways to make their ads more appealing to potential customers.

c. Both of the above.

d. Just based on Gregslist's knowledge alone that the escorts provide illegal services, even if Gregslist had no intention to promote or encourage such services.

e. All of the above.

45 In the preceding question, which of the following arguments would, if supported factually, be a recognized argument for not holding Gregslist criminally liable as an accomplice in its customers' prostitution activities?

a. It's unconstitutional to punish legitimate businesses for merely selling ordinary goods and services to buyers who happen to use them in illegal activities.

b. Prostitution is probably not ranked as a "serious" crime for purpose of inferring an intent to aid and abet from proof of knowledge alone.

c. Even if Gregslist has knowledge of its customers' illegal activities, any "assistance" it provides is solely for the purpose of making money itself.

d. To punish Gregslist would make it unpaid law enforcement agency without its concent.

<End of examination.>