PACE UNIVERSITY SCHOOL OF LAW

CRIMINAL LAW
PROFESSOR HUMBACH May 11, 2016
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 Relentless Collections, Inc. often sues to collect consumer debts that are barred by the statute of limitations. It does so because consumers, ignorant of their rights, often settle the debts even when they are no longer legally liable. District Attorney Gavin Burns obtained an indictment charging Relentless with "suing to collect consumer debts known to be time-barred." There is, however, no statute that prescribes criminal punishment for suing to collect time-barred debts. The court would probably:

a. Hold that the harms caused by Relentless are sufficient to justify creating a new common-law crime.

b. Petition the legislature to create a new statutory crime of suing to collect time-barred debts.

c. Leave it to the jury to decide whether, in light of the harm involved, Relentless should be punished for suing to collect time-barred consumer debts.

d. Hold for defendant (dismiss the indictment) due to the absence of an applicable statute.

Facts for Lindsay Roscoe questions. Lindsay Roscoe is charged under a statute that forbids "child abuse by providing a controlled substance to a person under age 18." The charge is based on the fact that Lindsay used heroin while she was 2 months pregnant. Her lawyer contends that Lindsay's 2-month old fetus should not be considered a "person" within the meaning of the child-abuse statute.

2 In deciding whether the fetus should be considered a "person" under the statute, the court:

a. Would normally be bound by Lindsay's honest understanding that a fetus does not become a "person" until it's born.

b. Can properly be guided by the intention of the legislature at the time the statute was enacted.

c. May not consider the usual meaning of "person " at the time the statute was enacted because the meanings of words change and the laws have to stay up to date.

d. Should use its own judgment and use whatever meaning of "person" that it believes would best meet the needs of society today.

3 Suppose that no court had previously ever held that the child-abuse statute applies to drug use by women who are pregnant. There had, however, been two cases in recent years holding that unborn children should be treated as "persons" for purposes of liability for wrongful death and for pre-birth injuries sustained in car accidents. In interpreting the statute under which Lindsay Roscoe is charged, the two cases:

a. Would be entirely irrelevant since they deal with different topics, and the court should not consider them.

b. Would tend to support an argument that treating Lindsay's unborn child as a "person" is not an unforeseeable judicial enlargement of the statute.

c. Could be properly taken into account only if Lindsay had been aware of the two cases and received "fair warning" from them.

d. Could not be used to justify expanding the meaning of "person" in the statute since that would be unconstitutional.

4 In interpreting the statute under which Lindsay Roscoe was charged, the court should consider:

a. The plain meaning of the words "child," "person" and "providing."

b. What the legislature intended to refer to when it used the words "child," "person" and "providing."

c. The purpose of the statute, that is, what the legislature was trying to accomplish with it.

d. All of the above.

5 Suppose that the child-abuse statute under which Lindsay was charged was enacted in 1985. Suppose also that the substance used by Lindsay was not heroin but "E-5," a designer drug similar to Ecstasy. If E-5 did not exist in 1985 (meaning, obviously, that E-5 was not a "controlled substance" at that time):

a. The charge against Lindsay must be dismissed because the legislature could not have intended to include E-5 within the statutory prohibition when it enacted the statute.

b. A court considering the purpose of the statute could properly conclude that E-5 should now be included within the prohibition of the statute.

c. E-5 must be included within the prohibition of the statute since statutes must be interpreted using the current meanings of the words in them.

d. In interpreting the statute, the court must regard the list of controlled substances as fixed as of the date on which the statute was enacted.

6 Dodd Glarehard is charged under a statute that makes gun possession a crime for "any person convicted of a felony or who has been convicted for conduct that constitutes a felony in this state." Dodd was convicted of assault with a non-deadly weapon, which was a misdemeanor at the time of his conviction but is now a felony. It is unclear to the court whether the gun prohibition applies to Dodd. The rule of lenity:

a. Would tend to favor an interpretation under which Dodd is guilty under the gun possession statute.

b. Would tend to favor an interpretation under which Dodd is *not* guilty under the gun possession statute

c. Would have no apparent bearing on the question of whether Dodd is guilty under the gun possession statute.

d. Is an old common law rule that has now been officially abolished.

7 In the preceding question, Dodd's lawyer decided to check out the legislative history, which is:

a. A generally reliable way to determine the actual intention of the legislature as a whole.

b. A permanent written product of the legislative process and, as such, is as much "law" as the final statutory wording itself.

c. Often misleading and, although potentially helpful, must be used with care in the interpretation of statutes.

d. Generally rejected as a legitimate consideration in the interpretation of statutes.

8 Strictly speaking, the primary aim of imposing punishment as retribution is to:

a. Protect society from dangerous individuals by making them think twice before acting.

b. Prevent crimes from occurring.

c. Achieve justice by making sure those who commit crimes get what's coming to them.

d. Reform persons who are predisposed to committing criminal acts.

9 Concerned about the effects of a growing homeless population on the "quality" of village life, the village board adopted an ordinance that makes it an offense to "habitually sleep in a public place." Figbert, a retiree who lives in a house that he owns in the village, was arrested after dozing off several times on a park bench during warm spring afternoons:

a. The court must declare the ordinance unconstitutionally overbroad since it punishes innocent as well as criminal behavior.

b. The court may try to find a narrowing construction of the ordinance to exclude conduct that the village board almost surely did not mean to include.

c. The court would have little choice but to enforce the ordinance according to its plain meaning and convict Figbert.

d. The court should leave it to law enforcement to determine which cases of sleeping in public require police intervention.

10 The ordinance in the preceding question might properly be considered to be unconstitutionally vague (as written) if the court concludes that:

a. A person of ordinary or common intelligence could not determine what it does and does not prohibit.

b. The ordinance leaves too much discretion to law enforcement officials.

c. Both of the above.

d. The wording of the ordinance does not provide fair warning.

e. All of the above.

11 Showing off for his girlfriend, Skipper recklessly operated his motorboat at high speed across a crowded stretch of river last Fourth of July. He unintentionally ran the boat over a water-skier who'd fallen into the water, causing his death. The prosecutor argues that Skipper deserves to go to prison for a substantial term because he

recklessly caused the death of another. Which rationale for punishment does the prosecutor appear to have in mind?

a. Retribution.

b. Retaliation.

c. Restitution.

d. Deterrence.

12 Suppose in the preceding question the prosecutor had argued instead that too many people are careless in operating recreational watercraft and Skipper must be required to serve some jail time as a warning and example to others. The rationale for punishment that the prosecutor appears to have in mind is:

a. Retribution.

b. Incapacitation.

c. Reform

d. Deterrence.

13 Jennifer was convicted of attempting to shoplift a can of hair styling cream from a drug store. The prosecutor argued that she should serve some time in jail so she will be less likely to commit such acts in the future after she gets out again. The rationale for punishment that the prosecutor appears to have in mind is:

a. Retribution.

b. Incapacitation.

c. General deterrence.

d. Special (or individual) deterrence.

14 After Egbert's third conviction for sexual assault, the prosecutor argued that Egbert manifestly cannot control his criminal urges and, for the safety of the public, he should be imprisoned for a lengthy term so he'll be in a place where he can do no more public harm. The rationale for punishment that the prosecutor appears to have in mind is:

a. Incapacitation.

b. Retribution.

c. Incorrigible purgation.

d. Rehabilitation.

15 Responding to a domestic violence complaint, the police found Alfie Combine drunk in his house. Overcoming Alfie's resistance, they took him to their cruiser sitting at the curb. There, standing next to the cruiser, he was arrested and charged under a statute that makes it a crime for any person to "appear in a public place or a public street while in a state of intoxication":

a. Under usual common-law interpretative approach, a *voluntary* appearance would be presupposed and, so, Alfie should not be found guilty.

b. Because Alfie did not intend to go into the public street, he did not have mens rea and no one can be punished without mens rea.

c. The statute is unconstitutional because every crime must include a voluntary act.

d. There is no generally established rationale under which the charge against Alfie could be properly dismissed.

16 Alex Diplock allegedly killed his son (an adult) suddenly and without any apparent reason. Witnesses testify that the son entered Diplock's kitchen and, after yelling "no!," staggered out with a stab wound and died. Diplock claims he acted unconsciously, a conditioned response from previous army commando training. He offers expert testimony on conditioned response. There is no evidence (apart from the above) as to what went on in the room or as to how the son came to be stabbed:

a. The court should reject the expert testimony as irrelevant because, even if Diplock acted unconsciously, that could not be a defense.

b. The court can properly tell the jury to presume that Diplock stabbed his son as a voluntary act.

c. The court should dismiss the charges because mens rea cannot be proved based solely on the defendant's *acts*.

d. The jury should not convict if the prosecution doesn't prove to the jury's satisfaction that the son's death resulted from Diplock's voluntary act.

17 By phone surveillance, email monitoring and other techniques the bureau of investigation has compiled a list of over 22,000 disaffected people who are suspected of thinking about committing "lone wolf" acts of terrorism. Already these people have been added to the no-fly list, and legislation is under consideration that would subject them to arrest and imprisonment for "secretly planning terrorist acts." Such legislation, if enacted:

a. Would not tend to further or advance any of the usual justifications for punishment.

b. Would be unusual but would not be particularly disfavored or questionable under the common law.

c. Would be unenforceable because mental states can never be proved beyond a reasonable doubt.

d. None of the above statements is correct.

18 For some years Vickery has been subject to occasional unpredictable epileptic seizures. When they occur, he almost totally loses control of his bodily movements for short periods of time. Last week, he had such a seizure while driving and ran into a group of pedestrians, killing one of them. Vickery was indicted for involuntary (reckless) manslaughter.

a. The indictment should be dismissed because Vickery did not cause the death by a voluntary act.

b. Vickery can properly be convicted because he caused death by the reckless act of driving with knowledge he was subject to unpredictable seizures.

c. Vickery cannot properly be convicted because he did not voluntarily become subject to epileptic seizures.

d. Vickery can properly be convicted because involuntary manslaughter is a strict liability offense.

19 Which of the following would be probably considered a voluntary act under the Model Penal Code?

a. Allison, while turning over in her sleep, scratched Evan's cheek.

b. Dave, sitting in the back seat of a car, was propelled forward from the impact of a collision and bonked his head against Ray's without effort or determination.

c. Out of habit, Greg unthinkingly flicked a lighted cigarette butt out the window of his truck that was sitting next to a haystack.

d. None of the above.

20 Under the Model Penal Code, an "act" is defined as:

a. A statutory provision that has been duly adopted by a legislative body.

b. A bodily movement.

c. A willed bodily movement.

d. Any conduct that results in criminally punishable harm to another.

e. The word "act" is not defined in the Model Penal Code.

21 Which of the following persons is guilty of an omission that could properly be punishable as a crime?

a. Linda, who refused to open her front door for a terrified homeless man who ran up and knocked while being chased by a vicious dog.

b. Webb, who did nothing as he passively watched a friend he'd driven to the party sexually assault a highly intoxicated and essentially helpless victim.

c. Pat, who didn't promptly seek help for a dinner guest she found unconscious in her bathroom, apparently after taking illegal drugs.

d. Pam, who didn't promptly seek help for a dinner guest she found unconscious in her bathroom, apparently due to a bad reaction to *legal* drugs.

e. None of the above is guilty of an omission that could properly be punishable as a crime.

22 Mike went out for a Sunday hike. A short distance into the woods he came upon a man lying on the ground moaning deliriously from a snakebite. Mike could have gone back to the road to seek help, which would have saved the man's life. Instead, however, he decided to continue on his way. The man died as a result. Mike could be criminally liable for his omission if:

a. A risk of great harm was reasonably foreseeable by a person in Mike's situation and going to get help would have been only a slight inconvenience.

b. Mike decided not to seek help after he recognized the man and realized he was the person who got him fired from a high-paying tech job two years before.

c. The place where Mike found the man was secluded and other help was unlikely to come along in time to prevent the man's death.

d. More than one of the above.

e. None of the above.

23 Following an operation several weeks ago, Patient entered a vegetative state with minimal brain activity. The doctor in charge determined that Patient was extremely unlikely to recover and that further treatment would be futile. After consulting with the family, the doctor ordered the staff to remove the "life-support" machinery that kept Patient's respiration and heartbeat going. Patient's breathing and heart beat stopped after a few minutes. The doctor has been indicted for murder. According to the case we read in class:

a. The doctor's conduct could be regarded as an omission to continue medical care when further treatment would no longer be beneficial to the patient.

b. The charge should be reduced to manslaughter.

c. The charge should be dismissed because qualified medical professionals are permitted to terminate medical treatment once life has become futile.

d. The doctor should be convicted if he did not seek a court order before taking the patient off life support.

24 As Clem Harper drove past a building that was being demolished, he saw a pile of old electrical wiring that had been left on the ground. Harper took wiring home to use for crafts projects, which were his hobby. Under the traditional conception of larceny:

a. Harper would not be guilty of larceny if he honestly believed that he had permission to take the wiring or that it was abandoned.

b. Harper *would* be guilty of larceny unless he honestly *and reasonably* believed that he had permission to take the wiring or that it was abandoned.

c. Harper would be guilty of larceny irrespective of what he believed.

d. Harper would not be guilty of larceny because the owner of the wiring was culpably negligent in leaving it out where anyone could take it.

25 On three occasions last month, Elwin cleaned the snow from his walk using Henson's snowblower, which he took from Henson's garage without permission. Each time he returned the snowblower promptly to Henson's garage. Under the traditional conception of larceny:

a. Elwin is guilty of larceny of the snowblower.

b. Elwin is not guilty of larceny of the snowblower.

c. Elwin would be guilty of larceny of the snowblower unless he honestly believed he had permission to use it as he did.

d. Elwin would be guilty of larceny of the snowblower unless he honestly *and reasonably* believed that he had permission to use it as he did.

26 A statute makes it a crime to "unlawfully and maliciously cause serious bodily injury to another." During an impromptu drag race on Main Street, Tyler crashed his car causing serious bodily injury to his passenger, Julie. Under the usual common law approach to interpreting statutes such as this one:.

a. The word "maliciously" would require the state to prove that Julie's injuries were either intended by Tyler or foreseen by him as a highly probable risk.

b. The word "maliciously" would require the state to prove that Julie's injuries resulted from conduct of Tyler that was generally wrongful or wicked.

c. The word "maliciously" would require the state to prove that Julie suffered injuries because Tyler had a desire to cause her harm.

d. The words "unlawfully and maliciously" would be treated as essentially synonymous and redundant.

27 During a bar fight, Colin swung a baseball bat forcefully at Jeffery, breaking his arm. A local statute makes it a crime "to "intentionally or knowingly cause serious bodily harm to another." In order to prove that Colin caused the harm to Jeffrey "intentionally or knowingly," the prosecutor:

a. Essentially would have to get a confession from Colin since there is no other way to read what was in his mind.

b. The prosecutor would be assisted by the ordinary inference that people intend the natural and probable consequences of their actions.

c. The prosecutor would be assisted by the legal presumption that people intend the natural and probable consequences of their actions.

d. The prosecutor would have to rely on things Colin said before, during and after the incident, which would reveal his intentions.

28 Dina Potomack is accused of "negligently causing serious bodily injury." While at a party in a 5th floor apartment she had placed a highball glass on a balcony rail and then she inadvertently knocked it off while making a flamboyant arm gesture. The falling glass hit a passerby who happened to be walking below. Under the MPC conception of negligence, in order to for the state to satisfy the mental requirement for conviction, it would have to prove that (among other things):

a. Dina was aware that it was practically certain that her conduct would lead to serious bodily injury.

b. Dina was aware that there was a substantial and unjustifiable risk that her conduct would lead to serious bodily injury.

c. Dina should have been aware that there was a substantial and unjustifiable risk that her conduct would lead to serious bodily injury.

d. None of the above. It would be enough to prove that Dina did not use ordinary care.

29 Farrell is accused of "knowingly issuing a check on an account with insufficient funds." Farrell admits to writing the check but denies knowing the account had insufficient funds. In order to prove

that Farrell acted knowingly under the MPC mens-rea rules, the prosecutor must prove that Farrell:

a. Was actually aware that the account had insufficient funds.

b. Was aware either that the account had insufficient funds or that there was a high probability that such was the case (unless Farrell actually believed otherwise).

c. Was aware that the account had insufficient funds or, if unaware, that he actively avoided knowing how much money was in the account.

d. None of the above. It is sufficient for the prosecutor to prove that Farrell knew that he wrote a check.

30 In hopes of cashing in on Fiona's life insurance policy, Morris cut the brake line of her car just before she drove down the mountain. Because he knew it was practically certain that their son, Jimmy Joe, would be in the car with Fiona, Morris lit five votive candles arranged in a pentagram pattern—which he honestly believed would prevent any harm to Jimmy Joe. Fiona's brakes failed due to Morris's actions, and both she and Jimmy Joe were killed. Under the MPC, Morris would be guilty of killing Jimmy Joe:

a. Purposely, because he knew it was practically certain that Jimmy Joe would be in the car.

b. Recklessly, because he should have been aware there was a high probability that Jimmy Joe would be killed.

c. Negligently, because he should have been aware of the risk that Jimmy Joe would be killed.

d. Knowingly, because he knew that Jimmy Joe would be in the car.

31 Clifford took and carried home for personal use 12 rolls of bathroom tissue from public facilities at a picnic area in Lascott State Park. He is charged under a statute that makes it a crime "for any person to steal property belonging to the state." The statute makes no reference to mens rea:

a. Following the common law tradition, the court would probably interpret the statute to include an implied requirement of mens rea.

b. Under the Constitution, the court would generally be required to interpret the statute to include an implied requirement of mens rea.

c. There is no reason to think the prosecution would be required to prove mens rea in order to obtain a conviction under this statute.

d. It would be improper and nearly unprecedented for the court to overrule the legislature's wording and imply a requirement of mens rea into the statute.

32 Hammond, a gun collector, owns a semi-automatic rifle that has been modified so it is fully automatic. A Federal law, which was referred to in a case we read in class, requires the owners of such weapons to register them. Hammond has not registered it and is being prosecuted under the statute:

a. He should not be convicted unless it can be proved that he knew the weapon was fully automatic.

b. Even if he knew the weapon was fully automatic, he could not be convicted if he didn't know there was a law requiring such weapons to be registered.

c. Both of the above.

d. None of the above. He probably could be convicted irrespective of what he knew.

33 Ronald Pierce, age 18, had sexual intercourse with Kathy G., who was age 13. Ronald is seriously mentally disabled (which is readily apparent), while Kathy is of normal intelligence. Both of the teens 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 Ronald and Kathy.

b. Ronald, but not Kathy.

c. Kathy but not Ronald.

d. Neither Ronald nor Kathy because both teens participated and cooperated in the act

34 Three nights in a row, Gabe Gifford took a shot at Don Barton's car as Don drove down Shippenborough Pike on his way home from work. His intent was to kill Don in order to settle an old grudge. The fourth night Don decided it was safer to take an alternate route home, and he used Route 58 instead. As it happened, a small plane went out of control that night and crashed into Don's car as he drove down Route 58. Don was killed instantly. In order to convict Gifford of murdering Don, the prosecutor must show that:

a. Gifford's acts were a but-for cause of Don's death.

b. Gifford's acts were the proximate cause of Don's death.

c. Both of the above.

d. Gifford's acts were the intervening cause of Don's death.

e. All of the above.

35 With ample evidence of all of the facts set out in the preceding question, the prosecutor is likely to have the greatest difficulty establishing which of the following?

a. Gifford's acts were a but-for cause of Don's death.

b. Gifford's acts were the proximate cause of Don's death.

c. Both a. and b. above are likely to be extremely difficult for the prosecutor to establish.

d. Both a. and b. above should be relatively easy for the prosecutor to establish.

36 Rosemary wanted to kill her brother, Howard, so she would not have to share her inheritance. She secretly removed the drain plug from his small boat, which he used nearly every weekend. However, because the drain plug was located high on the side of the boat, the open hole let in almost no water as long as the boat was upright. The next weekend while Howard was out in his boat, a passing jet-ski created a high wave that knocked Howard into the cold water, where he drowned. Rosemary is probably guilty of:

a. Premeditated murder.

b. Intentional but not premeditated murder (if the state makes the distinction).

c. Manslaughter.

d. Attempted murder, at most.

37 Jester and Gribbs got into a knife fight. Gribbs left Jester lying in the street mortally wounded. A minute later, Phyllis came by, texting while driving. She ran over Jester, whom she did not notice lying there. Phyllis stopped immediately and called an ambulance. Experts later determined that Jester would have died from the knife wounds within about 30 minutes no matter what but, because Phyllis ran over him, he died sooner, before the ambulance even got there. Who was the cause (cause in fact) of Jester's death?

a. Gribbs

b. Phyllis.

c. Both Gribbs and Phyllis.

d. The ambulance driver.

38 Suppose in the preceding question that Jester was wounded but not mortally in the knife fight. The ambulance got him to a hospital alive. However, he passed away shortly thereafter due to a mistake made by a hospital staffer.

a. Gribbs would probably not be considered the *proximate* cause of Jester's death if the hospital staffer's mistake was due to gross negligence.

b. Gribbs would probably not be considered the *proximate* cause of Jester's death if the hospital staffer's mistake was due to ordinary negligence.

c. Both of the above.

d. None of the above. Gribbs would probably be considered the proximate cause of Jester's death in any case because Gribbs' act put him in the hospital.

39 While guiding a group of tourists on a rafting trip, Cauley recklessly chose a detour down a known dangerous stretch of water in order to impress his new girlfriend. The raft tipped over and everybody fell out. All made it safely to shore except one tourist who landed on a tiny island—safe but separated from shore by about 50 feet of very swift current. Impatient at the slowness of Cauley's rescue efforts (which surely would have succeeded), the tourist decided to try to swim for it and was swept away. Charged with manslaughter, Cauley might plausibly argue for exoneration on proximate-cause grounds asserting which of the following:

(1) The apparent-safety doctrine.
(2) The free, voluntary intervening human act doctrine.
(3) The intended consequences doctrine.

a. 1,2, and 3 above.
b. 1 and 2 above.
c. 1 and 3 above.
d. 2 and 3 above.

40 In a hurry, Frisby made a risky illegal left turn and collided head-on with a car coming the other way, seriously injuring its driver. After several days in a coma, the other driver was medically declared brain dead even though his heart kept beating due to life support. It stopped when the doctors removed the life-support just before taking his organs for transplant. Frisby is now is charged with manslaughter for recklessly causing the other driver's death.

a. Under more recent cases, Frisby did not cause the other driver's death. The doctors did, by removing the life-support machinery.

b. Under the traditional common-law rule, the other driver would not have been considered legally dead as long as his heart continued beating.

c. In some states, the other driver could be considered legally dead at the time of brain death.

d. Both b. and c. above.

Facts for Larry Grayson questions. Arriving at his apartment parking lot, Larry 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 Larry a brainless idiot and, using his key, he scratched the word "pig" in the side of Larry's shiny new car. Larry, in a blind rage, then swung a large bottle he was carrying so it hit full force against the side of other driver's head, causing his death.

41 *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 Larry 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 purposeful murders.

d. All of the above.

42 Now assume that Larry Grayson's defense lawyer thinks he might be able to get Larry a better outcome by making the argument that Larry acted impulsively while in a highly charged and volatile emotional state due to the provoking conduct by the victim.

a. Under the MPC, it would be appropriate to charge the jury on the "extreme emotional disturbance" defense given the circumstances of Larry's act.

b. In states following the traditional approach, the provocation in this case would probably be considered 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, "mere words" could not be adequate provocation, but the malicious scratching of the car would clearly be enough.

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

a. Larry 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. Larry had an exceptionally excitable and aggressive personality and it was very hard for him not to react explosively to insults.

c. Larry was unusually self-centered with an elevated sense of personal honor making him unusually quick to get seriously angry when others got in his face.

d. All of the above

44 Corbett pointed his gun at the wall of his apartment and pulled the trigger. The evidence shows convincingly that he was certain, at the time, 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 a person in the next apartment. Under the Model Penal Code:

a. Corbett could properly be found guilty of extreme indifference murder.

b. Corbett could properly be found guilty of manslaughter.

c. Corbett could properly be found guilty of criminally negligent homicide.

d. Corbett could not properly be found guilty of any homicide at all.

45 Late for an important job interview, Luella drove at over 100 m.p.h. on a busy expressway, dodging and swerving among the other cars. Finally, she unintentionally slammed into another car killing the other driver. The jury is persuaded that Luella's conduct created a very high probability of loss of life. However, it is also persuaded that she was not actually aware of that risk because she honestly thought she was a skillful enough driver to avoid a collision. Assume the state does not recognize "felony murder":

a. Under the traditional common-law approach to unintentional murder, the jury could properly convict Luella of murder.

b. It would be proper for the jury to convict Luella of murder under the MPC.

c. It would not be proper for the jury to convict Luella of murder at all since (apart from felony murder) there is no such thing as "unintentional murder."

d. The most that Luella could be properly convicted of is manslaughter if she honestly thought she had a legal justification for her high-speed driving.

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

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

b. Gross negligence on the part of Vincent.

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

d. Extreme recklessness on the part of Vincent.

47 After robbing a jewelry store, LeGrande 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. LeGrande is guilty of murder.

b. LeGrande is guilty of voluntary manslaughter.

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

d. LeGrande is guilty of robbery only, since the jeweler's death was not reasonably foreseeable.

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

a. Walters would be almost inarguably considered guilty of felony murder.

b. Walters probably would not be considered guilty of felony murder.

c. Walters would be considered guilty of felony murder only if he made his explosives in an inherently dangerous way.

d. Walters could be considered guilty of felony murder only if his mode of making explosive was inherently dangerous in the abstract.

49 While robbing a convenience store at gunpoint, Rhonda accidentally stumbled and dropped her gun. It went off when it hit the floor, fatally injuring a customer coming in the door. Rhonda is being prosecuted for murder in the customer's death:

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

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

c. The totally accidental circumstance of the killing itself would exclude any possibility that a murder conviction would be proper.

d. The prosecutor should be able to support a conviction for murder without proof the Rhonda intended any bodily harm to anybody.

50 An exchange of gunfire broke out during an armored truck robbery. Morty was one of the robbers and his accomplice, Silas, was hit by a bullet fired by one of the guards in self-defense. Silas later died of the wound. Morty can properly be convicted of murder in the accomplice'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. The courts have never gone so far as to hold an accomplice for murder in the death of another accomplice killed by an antagonistic party.

51 Gisborne is accused of murder after he shot and killed Semel, accidentally he claims, during a hunting expedition. The local statute defines murder as "intentionally causing the death of another person" but creates a presumption of intention if the death was proximately caused by the defendant's act. However, the law also creates an affirmative defense of "accident," The burden on the defendant to show, by a preponderance of evidence, that there was no homicidal intent. The local murder statute is probably:

a. Unconstitutional because it permits the state to obtain a conviction without proving every element of the crime beyond a reasonable doubt.

b. Unconstitutional because it uses a a preponderance of evidence standard instead of the usual "beyond a reasonable doubt."

c. Constitutional because the state is generally free to modify and re-define the elements of crimes so they differ from their common-law originals.

d. Unconstitutional because it eliminates all trace of malice aforethought as part of the concept of murder.

52 Janie Roe operates a convenience store. One day as she stood behind the counter, she saw a man stuffing merchandise into a backpack. She yelled at him to stop but he only stuffed items faster and looked like he was preparing to run. She pulled out a loaded gun from under the counter, pointed it at the man and said: "Stop what you're doing right now or I'll shoot!"

a. The law is settled that Janie's acts constitute the use of deadly force.

b. There is some authority according to which Janie has not actually used (but at most only threatened to use) deadly force.

c. There is some authority that acts like Janie's would make her the "aggressor" depriving her of the right to kill in self-defense.

d. Both b. and c. above

e. The law is settled that Janie's acts would not constitute the use of deadly force.

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53 In the preceding question, assume that Janie was a small woman of slight build and the man was 6'4" and had the build of a football

linebacker. If Janie did use deadly force to stop the man from stuffing the bag with her merchandise:

a. It would be permissible as long as she did so as a last resort in order to protect her property rights in the merchandise.

b. It would be permissible as long as she did so as a last resort in order to defend the store premises, which were also her property.

c. It would be permissible in order to stop a felony that was being committed on her property.

d. None of the above.

54 Dr. Theodore Duprey was an intern at a hospital in a high-crime neighborhood. Nervously walking to his car in the dark hospital parking lot late at night, Dr. Duprey clutched the gun that he kept in his overcoat pocket for protection. Just as he got to his car, a large man popped up behind the other side of the car holding a shiny metallic object. Having been robbed once before in that same lot, Dr. Duprey did not hesitate, and he shot the man once, killing him. It turned out the man was changing a flat tire on his own car, parked next to Duprey's, and the shiny object was a small flashlight. Charged with murder, Dr. Duprey:

a. Should be acquitted based on self-defense if he honestly believed the object was a gun and that deadly force was immediately necessary.

b. Should be acquitted based on self-defense if he honestly and reasonably believed the object was a gun and that deadly force was immediately necessary.

c. Should be convicted of murder because the law of self-defense is based on necessity and, in this case, the use of deadly force was unnecessary.

d. Should not be convicted of murder as long as his motive was self-defense.

55 On the question of whether to acquit Dr. Duprey on the basis of self-defense in the preceding question, the jury should be instructed that it may properly take into account that:

a. Dr. Duprey had been already been robbed once before in that same lot, a fact which might well have affected his perceptions of the situation.

b. Dr. Duprey was required to fire a warning shot before shooting directly at the victim.

c. Dr. Duprey had a duty to retreat before using deadly force (under the majority rule).

d. No one is ever permitted to use deadly force against another who has, at most, only non-deadly force.

56 Several gunmen burst into a bank where Kyle, Marissa and several other bank employees were counting money. Pointing guns threateningly at the terrified employees, the gunmen ordered Kyle to tie Marissa's hands behind her back. They then scooped up the money and fled, taking Marissa as a hostage. Kyle is charged with

(among other things) criminal unlawful restraint of another and accessory to kidnapping.

a. He should have a defense of duress as it is generally understood at common law.

b. He should have a defense of duress under the Model Penal Code.

c. Both of the above.

d. Most would agree that Kyle's proper defense would be necessity and not duress.

57 Finster became very obnoxious when police took him into custody after a drunken melee at a party where Finster had had far too many beers and shots. He is charged with two offenses: "assault on a peace officer" (a general intent crime), and "threatening an officer of the law with intent to impede the performance of a public duty." His lawyer wants to plead intoxication as a defense.

a. The defense will not be allowed. Voluntary intoxication is never a defense.

b. Evidence of voluntary intoxication may be introduced to disprove specific intent on the "threatening" charge.

c. Evidence of voluntary intoxication may be introduced to disprove criminal intent on both of the charges.

d. Evidence of voluntary intoxication may only be introduced to disprove criminal intent on the "assault" charge.

58 Impatient to get home after a night of drinking, Elmo drove at high speed on a wet and winding road and inadvertently crashed into an oncoming car. He was so drunk that he was guilty of felony DWI. Both occupants of the other car were nearly killed but, due to extremely skillful medical treatment, both ultimately survived. Elmo has been charged with attempted malignant-heart murder and attempted felony murder

a. He cannot properly be convicted of attempted murder because the crime of attempted murder requires a specific intent to kill.

b. While he cannot properly be convicted of attempted malignant-heart murder, he could properly be convicted of attempted felony murder.

c. Elmo can properly be convicted of attempted murder if the jury finds he acted with a sufficient degree of recklessness.

d. Elmo can properly be convicted of attempted murder because it was skillful medical treatment, not Elmo's acts, that prevented the deaths from occurring.

59 Toby planned to cook up a batch of illegal meth. He bought the necessary ingredients along with the needed equipment (all legal products) and took it all to a secluded site hidden deep in a woods. However, before he could get back to actually cook the meth, a fierce thunderstorm soaked and destroyed some of his ingredients. causing him to give up on the plan. If Toby's plan and preparations were later discovered by the authorities and he's charged with attempt to produce illegal meth:

a. He could properly be convicted under the "proximity" or "dangerous" proximity rule.

b. He could not properly be convicted under the modern cases because he never did the "last act" required to complete his attempt.

c. He could properly be convicted under the MPC-type rule for uncompleted attempts that is increasingly recognized in American jurisdictions.

d. He could not properly be convicted because a fortuitous event prevented him from ever even trying to cook meth.

60 Kenny and Wayne have admitted to police that they went into the City hoping to score some cash for a dance the following Saturday night. They also said they brought along their pocketknives (ordinary folding knifes) and admitted to searching for a spot on quiet street where they could wait for a suitable robbery target to come by. Before they found either a suitable spot or a suitable looking victim, however, there was a police call to a domestic quarrel in a building across the street from where they were. They watched the commotion for a while, they said, and then went home.

a. The reason Kenny and Wayne would not be guilty of attempted robbery under any modern rule is simply that they never actually tried to rob anybody.

b. Kenny and Wayne probably could not properly be convicted of attempted robbery under the "proximity" or "dangerous" proximity doctrine.

c. Kenny and Wayne *could* properly be convicted of attempted robbery under the "res ipsa loquitur" (or "unequivocality" test.

d. Both b. and c.

<End of examination>