

2010

MODEL ANSWERS - Criminal
LAW.

B - Exam

Criminal Law, Class #525_OAC_5101, with Duncan M

1 of 8

START OF EXAM

-->Question -1-

In CL: He should not prevail. In CL, once an attempt has been made, D cannot abandon. However, under a CL jurisdiction, it is harder to make out the initial attempt. Here it seems that the laundry bag and barbed wire fit proximate cause, locus penitentie, or equivocality tests.

In MPC: He most likely will prevail. While attempt occurs after only a substantial step (barb wire/ laundry bag), a complete and voluntary renunciation constitutes abandonment (not going/ telling guards). Prosecution may argue that thinking of family is not voluntary (i.e. rape case with woman w/ child), but D should prevail.

Question 1 Word Count = 100

Character Count = 606

-->End of Question 1

-->Question -2-

Since the MPC allows D to argue a reduction even when killing an innocent third party, the drafters look at EED as a partial excuse. When allowing a reduction in the event that an innocent party is killed takes the "frailty of the human condition into account." This is an excuse (more akin to the insanity defense, than self defense (which would be a justification)). You could still argue that they drafted as partial justification, in the event that D killed his provoker; so perhaps the best answer is the MPC takes both theories into account. Still, excuse appears stronger.

Question 2 Word Count = 100

Character Count = 578

-->End of Question 2

-->Question -3-

In torts we use the reasonable person standard; in criminal law (due to the high price associated with a conviction--stigma; incarceration, etc) we look at the mind of the defendant at the time of crime. Purposes of punishment (deterrence; rehabilitation; and retribution) would not be served if D did not have a culpable mind. In common law, crimes are either general (reckless/negligent) or specific intent. Rape is a specific intent crime, so the act must be committed with D's purpose or knowledge. At common law, ignorance of the law was no excuse; yet, mistake of fact (like mistakenly believing that a woman consented to sex) was an excuse. Like in Morgan, as long as the D honestly believed he had consent he could not be found guilty (although in that case Ds were convicted because their belief was not honest). A jury can decide as to whether a D's beliefs are honest and hopefully reach a just conclusion. Look into the mind of the victim (consent or not) can only be used post-sentencing as a mitigating or aggravating factor (and may serve Durkheim social cohesion theory), but is not party of the common laws jurisprudence.

Question 3 Word Count = 195

Character Count = 1133

-->End of Question 3

-->Question -4-

Mistake of Law: Under the MPC, a mistake of law or fact provides a complete excuse if it negatives the mens rea for a crime. This is best classified as either a mistake as to the nature of the criminal law (as D's attorney assured him he could peaceably demonstrate without violating the statute and the MPC allows reliance on official interpretation) or as a mistake as to

circumstances that justified what would otherwise be a crime (as D thought his first amendment rights justified his entry onto the naval base despite the bar order). In this latter way, this case is similar to US v Barker where the D's were found not guilty who knew they should not search a private office building, but reasonably thought they had express permission. Here, D's lawyer's advice and the 3rd circuits reversal allowed D to reasonably think that his otherwise unlawful conduct was lawful. At that point in time, SCOTUS had not even granted cert. Furthermore, just like the policy consideration in Barker (wanting gov't employees to follow orders); there are strong policy considerations in favor of finding D not guilty as government should encourage the exercise of 1st amendment rights.

Legality: Legality ensures that laws have an objective meaning, so that people can depend on the meaning. First, it is not fair to hold someone liable for a law that did not exist (ex post facto) at the time of the act (like in Keeler, where a fetus had not been included in the definition of a 'human being' for the purposes of the homicide statute). Although §1832 has not been changed; its interpretation has been changed since D demonstrated the second time. Convicting D would frustrate the purposes of punishment, especially retributivism, holding D accountable for a crime that was not yet in existence (due to the courts interpretation in Sanchez I). Laws should not be vague, as it diminishes from the meaning of the law. While we do not have the text of the law here, it does seem there is discrepancy as to what behavior is included/excluded from the criminal prohibition and perhaps leaves too much authority to the police, like many vagrancy statutes. D's situation is

(Hopkins)

somewhat similar to the reverend in Hawkins who depended on the advice of the attorney general to interpret the statute in regards to where he could place his advertisement. Although the reverend was convicted because the AG's interpretation was no excuse (the law should not be subjectively interpreted), the MPC provides that relying on someone in official capacity is an excuse. While a lawyer would not generally qualify, the ruling in Sanchez I supports reversing the conviction.

Question 4 Word Count = 446

Character Count = 2649

-->End of Question 4

-->Question -5-

Courts most likely would not allow felonious assaultive child abuse to serve as a predicate felony in terms of the felony-murder doctrine because of the merger doctrine, which requires the predicate felony to have independent felonious purpose. Similar to in Ireland where assault with a deadly weapon merged with murder (and thus could not serve as a posit for malice aforethought), felonious assaultive child abuse does not have any independent purpose (as opposed to a burglary that does not merge with murder because of larceny being independent). Here there is no other purpose than to cause injury; thus, it merges.

Question 5 Word Count = 100

Character Count = 623

-->End of Question 5

-->Question -6-

Under CL, this verdict is defensible as long as D's intoxication was voluntary

and she acted in a grossly risky way and was aware of the risk when she chose to drive (acting with conscious disregard for human life). Voluntary intoxication only negatives the mens rea for specific intent crimes, not general intent crimes like depraved heart murder. (If someone spiked D's drink and she did not realize it, the verdict is not defensible because involuntary intoxication negatives the mens rea for even general intent crimes.)

The difference between depraved heart murder and involuntary manslaughter (criminal negligence) is one of degree and often goes to the jury. To be found guilty of depraved heart murder, D must engage in unjustifiable high risk behavior and be aware of the risk. Drunk driving cases straddle the line (see Fleming-convicted of DHM when he drove on the wrong side of the median; but see NYC Subway Driver-convicted of involuntary manslaughter after causing numerous deaths.

The stigma associated with a murder conviction has caused the enactment of 'vehicular manslaughter' statutes ('there before the grace of god go I'); yet this verdict is defensible as it deters people from drunk-driving and is retributivist.

Question 6 Word Count = 198

Character Count = 1243

-->End of Question 6

-->Question -7-

The retreat doctrine is needed for perfect self-defense--justifying the use of

deadly force in response to a reasonable belief in unlawful imminent threat of death or great bodily injury. First, it is unclear who the initial aggressor is (the two were arguing all day; is B grabbing a carving fork an escalation, making her the initial aggressor, like the neighbor grabbing a hatchet in Abbott?). This confuses who would have had the duty to retreat. Furthermore, Cardozo's 'Castle Doctrine' says that a man is not required to retreat from his own home ('to take to the fields'). Yet, an exception to the Castle Doctrine applies this case--D has a duty to retreat from his own home if the 'initial aggressor' was a co-inhabitant of the home ("no reenactments of High Noon over the breakfast table.") Likely, B should have retreated if she could do so in complete safety.

Question 7 Word Count = 148

Character Count = 870

-->End of Question 7

-->Question -8-

a. Attempt crimes require specific intent, which D lacked. While her conduct was reckless (likely constituting depraved heart murder), she did not act with the intent to murder, only the intent to show off. Thus, she lacks the mens rea required for an attempted murder conviction.

b. Depraved heart murder does not require specific intent; it only requires acting with reckless disregard for human life (an abandoned heart). Thus, D's recklessness at voluntarily shooting into a building qualifies for a general intent crime. While a failed attempt is still an attempt, D never acted with

the purpose of killing.

Question 8 Word Count = 99

Character Count = 613

-->End of Question 8

-->Question -9-

Norm can be convicted of conspiracy. This presents the 'knowing supplier' problem, like in Lauria, where a guy running an answering service was not convicted even though he knew prostitutes used his service. It is not Norm's mere knowledge that makes him guilty; it's the fact that he is gaining from the furtherance of their crime (by receiving \$3000 over-pay) and doing his job differently to further the crime (flying low to avoid detection). Furthermore, Norm is almost certainly aware (they told him about previous conduct, and then wore disguises). Courts are less willing to convict 'suppliers' for less serious crimes, but drug smuggling is likely considered serious.

Prior trips: While Norm is aware of the other trips the ladies took and knows other people must be involved, this seems different than the chain-link conspiracy in Bruno where all drug-dealing parties were held as one conspiracy. In that case, the individuals knew the success of the drug cartel depended on other people's actions, even though they didn't know their specific identities. Here, it seems Norm's gain is independent of S/K/C so he should not be held liable for prior trips, unless he helped them engage in covering them up.

Question 9 Word Count = 199

Character Count = 1214

-->End of Question 9

-->Question -10-

An accomplice acts to aid or encourage in the furtherance of a crime. The conduct must be intentional and the mens rea required for the intended crime must be met. In Hicks, although a man intended to utter words of encouragement, he was found not guilty of complicity because he did not intend those words to result in the murder. In this case, the mens rea required for vehicular manslaughter is recklessness, and Bob certainly was 'encouraging' the behavior (that's how the game of cat-and-mouse works).

However, if the court does not allow the mens rea for reckless driving to establish complicity; Bob may still be liable for a culpable omission. Since he started the game (created the danger), he had a legal duty to prevent the conduct, and his failure to make the "game" stop would make him liable for its results--Tara's death. This is true, even if his omission was not the but-for cause of Tara's death (like Tally's failure to send the warning letter).

Under CL, Bob would be a P2 since he was constructively present. Under MPC, these characteristics are eliminated.

Question 10 Word Count = 185

Character Count = 1285

-->End of Question 10

-- THE END --

Total Word Count = 1770

Total Character Count = 10814