

Student # \_\_\_\_\_

General Instructions:

1. Do not write your name anywhere on this exam. Write only the number provided to you by the Registrar in the space provided above.
2. This is a closed book/notes/etc. exam. You may not access any materials other than the exam itself while you are taking the exam, except for selected sections of the Model Penal Code that are included with this exam.
3. You should either write your answer on the exam in the provided space, or type it into that same space, or type it on an attached sheet using no more space than is available if you were writing the answer directly on the exam. If you write, please make sure your writing is legible.
4. While the exam will be graded primarily based on the substance of your responses, the conciseness and clarity of your responses will be also considered.
5. This exam, which constitutes 40% of your grade, consists of five questions, each worth the indicated number of points: Question 1 (5 points), question 2 (7 points), question 3 (12 points), question 4 (10 points), and question 5 (6 points).

Good luck!

1. In *The Collapse of American Criminal Justice*, William Stuntz offers a critique of the criminal justice system. (A) List and briefly discuss three factors that, according to Stuntz, have contributed to or exemplify the criminal justice system's current deficiencies. (B) One of the perhaps surprising aspects of Stuntz's critique is his claim that, in some respects, the criminal justice system functioned better in the 19<sup>th</sup> century than it does today. State and briefly discuss one aspect or feature of the criminal justice system that, according to Stuntz, worked better in the 19<sup>th</sup> century than it does today.

2. Growing up, Linda was physically and sexually abused by her stepfather. Now, at age 23, Linda suffers from Post-Traumatic Stress Disorder and Bipolar Disorder. Linda started using drugs as a teenager, and she is now addicted to heroin. Linda has had three children, one of whom was taken away by the Department of Children, Youth, and Families for neglect resulting from her drug use. Linda lives with her other two children, who are both under the age of five. Neither of the two children's father has any involvement with the children.

Linda has the following record of criminal convictions and sentences:

Shoplifting (age 18) -- \$100 fine;

Possession of Marijuana (age 19) -- \$250 fine;

Possession of Heroin (age 20) – 6 months in jail, suspended for one year on condition of good behavior; \$500 fine.

Issuing bad checks (age 21) – 30 days in jail, suspended for one year on condition of good behavior;

Possession of Heroin (age 21) – 10 days in jail, probation for one year including drug treatment;

Probation violation for failing to complete drug treatment (age 22) – 30 days in jail.

Linda owes hundreds of dollars in fines and court fees.

Six months ago, Linda got a job as part of an office building cleaning crew. The office houses several small law firms and other small businesses. Four months ago, Linda was arrested for stealing multiple items from several of the offices in the building. These include computer equipment, petty cash, and decorative items. Linda confessed as soon as she was questioned by the police and explained that she sold all the items to buy heroin. A large number of tenants in the building are now extremely upset. Their primary concern is not the monetary value of the items stolen, which is estimated at about \$5000, but the loss of their trust in the security of their offices.

Linda has entered a guilty plea to all the theft charges relating to the office building. She has remained free on bail and is now before the court for sentencing.

You are the sentencing judge. Assume that no mandatory sentencing laws apply in your jurisdiction, there are no sentencing guidelines, and case law requires you to consider all of the various justifications for punishment we have studied. The maximum possible sentence that may be imposed is any combination of the following: up to 1 year in jail, at least 1 year and up to 20 years in prison; up to five years of probation; a fine of up to \$100,000; and restitution. As a condition of probation, or as a condition of suspending all or a portion of any jail or prison sentence, the judge may impose any conditions that

further the various goals of sentencing we have studied.

What sentence will you impose on Linda? Justify your sentence in a sentencing memorandum.

3. Jose and Al live in the same apartment. One night, as they were sitting around their apartment, trying to come up with a way to get some money to buy drugs, Al said, "I have an idea. My friend Bob works at the bank as a teller. I'll tell him that you're gonna go in there carrying a fake gun and ask him to give you all the money. He'll play along, hand you the money, and I'll be waiting outside to drive you away." Jose agreed to Al's proposal. Al later convinced Bob to go along with their plan.

A week later, after shoplifting a realistic-looking toy gun, Jose walked into the bank, went up to the only male teller, pulled out the toy gun, and said, "Give me all the money or you're dead." Unbeknownst to Jose, however, Bob had been fired earlier that day for being rude to customers, and Frank, a teller from another branch, had been called in to fill in for him. Frightened by the "gun," Frank collapsed and died of a heart attack. Jose ran out of the bank without any money.

(A) In addition to shoplifting the toy gun, Jose is charged based on the incident in the bank with attempted larceny, attempted robbery, and involuntary manslaughter. Assume larceny and robbery have their common law definitions. Assume that the jurisdiction follows the Model Penal Code in defining Attempt and in determining causation. Assume that in this jurisdiction the mental state for involuntary manslaughter is simple negligence. Explain whether or not, aside from shoplifting, Jose is guilty of each of the other three offenses.

(B) Explain whether it is logically possible for Jose to be guilty of involuntary manslaughter under the laws of this jurisdiction, but not guilty of reckless manslaughter under the Model Penal Code?

(C) Assuming this jurisdiction recognizes *Pinkerton* liability, is Al guilty of shoplifting? Briefly explain.

(D) Assuming the jurisdiction has adopted the law of accomplice liability under the Model Penal Code, is Al guilty of being an accomplice to involuntary manslaughter? Briefly explain. In answering this question, assume that Jose is guilty of involuntary manslaughter.

4. A statute provides, “A person is guilty of Third Degree Assault if he causes serious bodily injury to a person under the age of 13. Third Degree Assault is punishable by a prison sentence of up to five years.”

(A) Assuming the jurisdiction has adopted Section 2.02 of the Model Penal Code, what is the *mens rea* for this crime? Explain your answer.

(B) What is an “attendant circumstance” in the definition of this crime?

(C) David, angry at his 12-year-old brother for taking David’s car and wrecking it, goes to his brother’s school intending to confront him and beat him up, but not severely. When he gets to the school, he sees a person with his back to David that David thinks is David’s brother. David rushes the person from behind, causing the person to trip, fall to the ground, hit his head, and be seriously injured. The person turns out not to be David’s brother, but Victor, age fourteen. Is David guilty of Third Degree Assault? Is David guilty of Attempted Third Degree Assault? Explain your answers.

5. One night, as Deidre is walking home from work, Daniel pulls out a loaded gun, holds it to Deidre's head, pulls Deidre into the bushes, and rapes her. During the rape, Daniel's gun unintentionally goes off, killing Deidre. Assume that the jurisdiction in which this occurred follows the common law with respect to the crime of murder, except that homicide under circumstances evincing "an abandoned and malignant heart" (or "depraved heart" or "depraved mind" or other similar terms) does not fall within the definition of murder in this jurisdiction.

(A) Is Daniel guilty of common law murder? Explain.

(B) Assuming Daniel is convicted of murder on these facts, would his execution necessarily violate the Eighth Amendment? Explain.

## MPC § 2.02. General Requirements of Culpability

(1) **Minimum Requirements of Culpability.** Except as provided in Section 2.05, a person is not guilty of an offense unless he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.

### (2) **Kinds of Culpability Defined.**

(a) **Purposely.** A person acts purposely with respect to a material element of an offense when:

(i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

(b) **Knowingly.** A person acts knowingly with respect to a material element of an offense when:

(i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

(ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(c) **Recklessly.** A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(d) **Negligently.** A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

(3) **Culpability Required Unless Otherwise Provided.** When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly or recklessly with respect thereto.

(4) **Prescribed Culpability Requirement Applies to All Material Elements.** When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(5) **Substitutes for Negligence, Recklessness and Knowledge.** When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

(6) **Requirement of Purpose Satisfied if Purpose Is Conditional.** When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.

(7) **Requirement of Knowledge Satisfied by Knowledge of High Probability.** When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist.

(8) **Requirement of Wilfulness Satisfied by Acting Knowingly.** A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

(9) **Culpability as to Illegality of Conduct.** Neither knowledge nor recklessness or negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such offense, unless the definition of the offense or the Code so provides.

(10) **Culpability as Determinant of Grade of Offense.** When the grade or degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly or negligently, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

## MPC § 2.03. Causal Relationship Between Conduct and Result; Divergence Between Result Designed or Contemplated and Actual Result or Between Probable and Actual Result

(1) Conduct is the cause of a result when:

(a) it is an antecedent but for which the result in question would not have occurred; and

(b) the relationship between the conduct and result satisfies any additional causal requirements imposed by the Code or by the law defining the offense.

(2) When purposely or knowingly causing a particular result is an element of an offense, the element is not established if the actual result is not within the purpose or the contemplation of the actor unless:

(a) the actual result differs from that designed or contemplated, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm designed or contemplated would have been more serious or more extensive than that caused; or

(b) the actual result involves the same kind of injury or harm as that designed or contemplated and is not too remote or accidental in its occurrence to have a [just] bearing on the actor's liability or on the gravity of his offense.

(3) When recklessly or negligently causing a particular result is an element of an offense, the element is not established if the actual result is not within the risk of which the actor is aware or, in the case of negligence, of which he should be aware unless:

(a) the actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or

(b) the actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a [just] bearing on the actor's liability or on the gravity of his offense.

(4) When causing a particular result is a material element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the actor's conduct.

## MPC § 2.04. Ignorance or Mistake.

(1) Ignorance or mistake as to a matter of fact or law is a defense if:

(a) the ignorance or mistake negatives the purpose, knowledge, belief, recklessness or negligence required to establish a material element of the offense; or

(b) the law provides that the state of mind established by such ignorance or mistake constitutes a defense.

(2) Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense had the situation been as he supposed. In such case, however, the ignorance or mistake of the defendant shall reduce the grade and degree of the offense of which he may be convicted to those of the offense of which he would be guilty had the situation been as he supposed.

(3) A belief that conduct does not legally constitute an offense is a defense to a prosecution for that offense based upon such conduct when:

(a) the statute or other enactment defining the offense is not known to the actor and has not been published or otherwise reasonably made available prior to the conduct alleged; or

(b) he acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in (i) a statute or other enactment; (ii) a judicial decision, opinion or judgment; (iii) an administrative order or grant of permission; or (iv) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense.

(4) The defendant must prove a defense arising under Subsection (3) of this Section by a preponderance of evidence.

**MPC § 2.05. When Culpability Requirements Are Inapplicable to Violations and to Offenses Defined by Other Statutes; Effect of Absolute Liability in Reducing Grade of Offense to Violation.**

(1) The requirements of culpability prescribed by Sections 2.01 and 2.02 do not apply to:

(a) offenses that constitute violations, unless the requirement involved is included in the definition of the offense or the Court determines that its application is consistent with effective enforcement of the law defining the offense; or

(b) offenses defined by statutes other than the Code, insofar as a legislative purpose to impose absolute liability for such offenses or with respect to any material element thereof plainly appears.

(2) Notwithstanding any other provision of existing law and unless a subsequent statute otherwise provides:

(a) when absolute liability is imposed with respect to any material element of an offense defined by a statute other than the Code and a conviction is based upon such liability, the offense constitutes a violation; and

(b) although absolute liability is imposed by law with respect to one or more of the material elements of an offense defined by a statute other than the Code, the culpable commission of the offense may be charged and proved, in which event negligence with respect to such elements constitutes sufficient culpability and the classification of the offense and the sentence that may be imposed therefor upon conviction are determined by Section 1.04 and Article 6 of the Code.

## MPC § 2.06. Liability for Conduct of Another; Complicity

(1) A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

(2) A person is legally accountable for the conduct of another person when:

(a) acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or

(b) he is made accountable for the conduct of such other person by the Code or by the law defining the offense; or

(c) he is an accomplice of such other person in the commission of the offense.

(3) A person is an accomplice of another person in the commission of an offense if:

(a) with the purpose of promoting or facilitating the commission of the offense, he

(i) solicits such other person to commit it, or

(ii) aids or agrees or attempts to aid such other person in planning or committing it, or

(iii) having a legal duty to prevent the commission of the offense, fails to make proper effort so to do; or

(b) his conduct is expressly declared by law to establish his complicity.

(4) When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

(5) A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.

(6) Unless otherwise provided by the Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

(a) he is a victim of that offense; or

(b) the offense is so defined that his conduct is inevitably incident to its commission; or

(c) he terminates his complicity prior to the commission of the offense and

(i) wholly deprives it of effectiveness in the commission of the offense; or

(ii) gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

(7) An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

## MPC § 5.01. Criminal Attempt

(1) **Definition of Attempt.** A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

- (a) purposely engages in conduct that would constitute the crime if the attendant circumstances were as he believes them to be; or
- (b) when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or
- (c) purposely does or omits to do anything that, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

(2) **Conduct That May Be Held Substantial Step Under Subsection (1)(c).** Conduct shall not be held to constitute a substantial step under Subsection (1)(c) of this Section unless it is strongly corroborative of the actor's criminal purpose. Without negating the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purpose, shall not be held insufficient as a matter of law:

- (a) lying in wait, searching for or following the contemplated victim of the crime;
- (b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;
- (c) reconnoitering the place contemplated for the commission of the crime;
- (d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;
- (e) possession of materials to be employed in the commission of the crime, that are specially designed for such unlawful use or that can serve no lawful purpose of the actor under the circumstances;
- (f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, if such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;
- (g) soliciting an innocent agent to engage in conduct constituting an element of the crime.

(3) **Conduct Designed to Aid Another in Commission of a Crime.** A person who engages in conduct designed to aid another to commit a crime that would establish his complicity under Section 2.06 if the crime were committed by such other person, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by such other person.

(4) **Renunciation of Criminal Purpose.** When the actor's conduct would otherwise constitute an attempt under Subsection (1)(b) or (1)(c) of this Section, it is an affirmative defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of such defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

Within the meaning of this Article, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, that increase the probability of detection or apprehension or that make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.