

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 in the provided space, or type it with Electronic Blue Book, using no more space than that available if you were writing the answer directly on the quiz. 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 four questions worth a total of 40 points. The number of points out of which each part of each question will be graded is specified next to that part of the question.

Good luck!

1. Assume a particular state, which has been following the common law with respect to the crime of involuntary manslaughter, has decided to codify that crime. The Model Penal Code is not part of this state's criminal laws. You are a legislator in this state. You wish to propose to replace the common law definition of the crime with a new statutory definition that assigns the crime a "negligent" mental state as that mental state is defined in the Model Penal Code.

(A)(2 points) Write down your proposed statute.

(B) (3 points) Suppose case law in this jurisdiction is consistent with the Model Penal Code with respect to attempt, conspiracy, and accomplice liability. Explain whether it is possible in this jurisdiction for a person to be guilty of attempted involuntary manslaughter. How about conspiracy to commit manslaughter? What about accomplice to involuntary manslaughter?

2. A state criminal statute provides as follows: “Any person who knowingly sells, distributes, or possesses with the intent to distribute a controlled substance is guilty of a felony and may be sentenced to incarceration for any term of years or for life, fined up to \$100,000, and placed on probation for a period of up to five years. Any sentence imposed under this statute may be suspended for up to ten years on such conditions as the court may impose.” Heroin and fentanyl are controlled substances. By case law, distribution includes giving drugs to another person, even if no money is exchanged.

(A) (2 points) Explain whether a person who sold heroin believing the substance was sugar may be guilty of a felony under this statute.

(B) (2 points) Explain whether a person who sold fentanyl believing the substance was heroin may be guilty of a felony.

(C) (8 points) In 2016, Tammy, a heroin addict, bought drugs from her heroin dealer and then shared them with her friend Sue. The drugs were not pure heroin, but included some fentanyl. Moments after taking the drugs, Sue collapsed. Tammy called 911, but Sue was dead by the time an ambulance arrived. Tammy is thirty years old. She became addicted to heroin at age 22. She has been through three residential drug treatment program, but each time she relapsed shortly after completing the program. She has three prior convictions, all for possession of heroin. She received the following sentences for these convictions: 2010 conviction -- 6 months of incarceration, suspended. 2012 convictions -- 1 year of incarceration, with 30 days to be served and the remainder suspended, and one year of probation, with completion of drug treatment a condition of probation and the suspended sentence. 2014 conviction -- 1 year of incarceration. Assume Tammy is guilty under the above state statute, and she pleads guilty to the charge. Tammy was severely abused as a child and a defense expert has provided a report explaining that such childhood trauma is a known risk factor for drug addiction which increases the likelihood of relapse after treatment. Tammy, who is single and has no children, has been unemployed for years. There has been widespread coverage in the media of the overdoses resulting from unknowingly using fentanyl. Tammy and Sue both had a number of acquaintances who died as a result of overdosing

on fentanyl. As a judge, explain how you would sentence Tammy.

(D) (4 points) Now assume that in addition to the above statute, the jurisdiction also has the following statute: “Any person who knowingly sells or distributes a controlled substance and, the sale or distribution results in the death of another, is guilty of a felony and shall be sentenced to a term of incarceration not less than twenty years, or for life, and no portion of the sentence may be suspended.” Assume Tammy is prosecuted under this statute instead of under the one set forth earlier. What do you think William Stuntz would say about this statute?

(E) (4 points) Explain whether the dealer who sold Tammy the drugs is guilty under either or both of the statutes set out in sections (A) and (D).

3. Alan and Tom are driving to work together one day, with Alan driving, when a car driven by Sandy starts tailgating them. Alan slows down suddenly, and his car is bumped by Sandy's. Both drivers stop. Alan gets out of the car, notices a dent in his car, and starts to approach Sandy's car. Sandy takes off, in the process brushing up her car against Alan's body. Alan gets back in his car. Tom says, "We should catch up to her and beat the crap out of her." Alan starts pursuing Sandy's car, while Tom makes threatening and lewd gestures at her. Afraid of what the two men might do, Sandy accelerates rapidly and suddenly changes lanes just as Kim is crossing in front of her. Sandy's car hits and seriously injures Kim. Sandy stops her car. Alan and Tom pull up, get out of their car, and attack Sandy. As they are both throwing punches at her, Alan kicks her, causing her to fall to the ground and hit her head on the pavement. Sandy suffers serious and permanent brain injury such that she is unable to communicate with others.

A state statute provides as follows: "A person is guilty of Aggravated Assault if he knowingly or recklessly causes serious bodily injury to another person." Another state statute provides as follows: "A person is guilty of Assault if he purposely or knowingly causes bodily injury to another person." A third statute provides: "A person is guilty of Criminal Mischief if he knowingly or recklessly damages the property of another without a right to do so." A fourth statute provides, "A person is guilty of Criminal Threatening if, by physical conduct, he places another in fear of bodily injury." The jurisdiction in question has adopted all the attached provisions of the Model Penal Code.

- (A)(6 points) You are a prosecutor. What charges will you consider against Alan, Tom, and Sandy. Briefly explain the basis for each charge and whether you ultimately decide to bring it, citing to the state statutes above and any relevant provisions of the Model Penal Code.

(B) (4 points) You are Sandy's defense lawyer. What defenses and arguments will you consider raising?

4. (5 points) Describe ten circumstances we have discussed in this class in which a state court criminal conviction or sentence may violate the U.S. Constitution. Briefly describe each circumstance, identifying the constitutional provision at issue.

MODEL PENAL CODE – SELECTED PROVISIONS

§ 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.

§ 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.

§ 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

§ 3.02. Justification Generally: Choice of Evils.

(1) Conduct that the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that:

(a) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and

(b) neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and

(c) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this Section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

§ 4.01. Mental Disease or Defect Excluding Responsibility.

(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.

(2) As used in this Article, the terms “mental disease or defect” do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

§ 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.

§ 5.02. Criminal Solicitation.

(1) Definition of Solicitation. A person is guilty of solicitation to commit a crime if with the purpose of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct that would constitute such crime or an attempt to commit such crime or would establish his complicity in its commission or attempted commission.

(2) Uncommunicated Solicitation. It is immaterial under Subsection (1) of this Section that the actor fails to communicate with the person he solicits to commit a crime if his conduct was designed to effect such communication.

(3) Renunciation of Criminal Purpose. It is an affirmative defense that the actor, after soliciting another person to commit a crime, persuaded him not to do so or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

§ 5.03. Criminal Conspiracy.

(1) Definition of Conspiracy. A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:

- (a) agrees with such other person or persons that they or one or more of them will engage in conduct that constitutes such crime or an attempt or solicitation to commit such crime; or
- (b) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

(2) Scope of Conspiratorial Relationship. If a person guilty of conspiracy, as defined by Subsection (1) of this Section, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, whether or not he knows their identity, to commit such crime.

(3) Conspiracy with Multiple Criminal Objectives. If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

(4) Joinder and Venue in Conspiracy Prosecutions.

(a) Subject to the provisions of paragraph (b) of this Subsection, two or more persons charged with criminal conspiracy may be prosecuted jointly if:

- (i) they are charged with conspiring with one another; or
- (ii) the conspiracies alleged, whether they have the same or different parties, are so related that they constitute different aspects of a scheme of organized criminal conduct.

(b) In any joint prosecution under paragraph (a) of this Subsection:

- (i) no defendant shall be charged with a conspiracy in any county [parish or district] other than one in which he entered into such conspiracy or in which an overt act pursuant to such conspiracy was done by him or by a person with whom he conspired; and
- (ii) neither the liability of any defendant nor the admissibility against him of evidence of acts or declarations of another shall be enlarged by such joinder; and
- (iii) the Court shall order a severance or take a special verdict as to any defendant who so requests, if it deems it necessary or appropriate to promote the fair determination of his guilt or innocence, and shall take any other proper measures to protect the fairness of the trial.

(5) Overt Act. No person may be convicted of conspiracy to commit a crime, other than a felony of the first or second degree, unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

(6) Renunciation of Criminal Purpose. It is an affirmative defense that the actor, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

(7) Duration of Conspiracy. For purposes of Section 1.06(4):

- (a) conspiracy is a continuing course of conduct that terminates when the crime or crimes that are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he conspired; and
- (b) such abandonment is presumed if neither the defendant nor anyone with whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation; and
- (c) if an individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom he conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and of his participation therein.