INSTRUCTIONS

This examination consists of 50 multiple choice questions of equal value. You have one hour in which to answer the first 25 questions. You then will be given a short break. Following the break, you will have one hour in which to answer the remaining 25 questions. PLEASE PUT YOUR EXAM NUMBER ON YOUR ANSWER SHEET!

Part One

1. As Sally and Martin were preparing their joint Federal Income Tax return, they became convinced that they would not have enough money to pay the taxes they owed. They decided that they had to do something to lessen the amount they owed. They decided to deduct their recent moving expenses even though, the way they read the instructions about taking such a deduction, they weren't entitled to do so. After filing their return, they received a letter indicating that there was a problem with their return and that they should bring the letter and their tax records to the local IRS office. When they arrived at the IRS office, they immediately confessed to having improperly taken the moving expense deduction and asked the IRS agent for mercy. The IRS agent informed them that they had read the instructions wrong and that they were fully entitled to take the moving expense deduction. The agent further indicated that the reason they received the letter was that Martin had forgotten to put his social security number on the return.

If Sally and Martin are charged with attempted income tax evasion, they will most likely be found:

A. Guilty, because, as everyone knows, "ignorantia legis non excusat!"

B. Guilty, because they made an unreasonable mistake of law.

C. Not guilty, because it was legally impossible for them to commit the offense.

D. Not guilty, because they made a reasonable mistake of law.

EXPLANATION: "C" is the correct answer. This is a case of true juridical legal impossibility. The conduct the two were trying to engage in and that which they did engage in, simply was not against the law. "A," "B" and "C" are all wrong because this is not a mistake case. Mistake comes into play when the defendants would be guilty of the offense if their mistake is not taken into consideration to negate their mens rea. In this case, the defendants cannot be convicted of the offense even if they had the mens rea so that mistake is irrelevant.

2. Marco had just locked up the front door of his jewelry store when he was confronted by three men wielding knives who threatened to slit his throat unless he reopened the door to the store. Marco reacted instantly by running down the street. The three men with knives chased after him. Marco, who was much older than the men pursuing him and a lot heavier, was losing ground when he noticed a car double-parked with the motor running and no one in it. Just before the fastest pursuer got to him, Marco jumped into the car and sped off. Marco drove to the parking garage where his car was parked, left the car he had taken, and drove home in his own car.

If Marco is later charged with auto theft, he most likely will be found not guilty based on the defense of:

A. Self-defense.
B. Defense of property.

C. Duress.

D. Necessity.

EXPLANATION: "D" is the correct answer. Although the common law rule regarding necessity required that the threat be from a natural force, many courts have abandoned that requirement. In any event, necessity is the best alternative of those available. "A" is wrong because self-defense is only a defense for crimes committed against the person of one's attacker. "B" is wrong for the same reason. He didn't use any force against the person of the three men who were threatening him or his property. "C" is wrong because the three men did not compel Marco's theft of the car. He might have had other choices. Perhaps he could have run into a building or stopped a passing motorist.

3. Donna and Carol were walking along a sidewalk which connected the clubhouse with the swimming pool at their country club. They were both wearing bikinis and carrying towels. On the way to the pool, they passed a "cocktail wagon," which was a cart from which alcoholic drinks were served to golfers at a point where the golf cart path crossed the sidewalk. As Donna and Carol passed the cocktail wagon, Mort, a golfer who had been standing next to the wagon with a drink in his hand, reached out and tried to unfasten the back of Donna's bikini top. When Donna felt Mort's hand on her back, she spun around and gave him a shove. Mort, being quite inebriated, stumbled backwards and fell into the path of a golf cart which was crossing the sidewalk on the path. The cart struck Mort in the head and he died later that day as a result of his head injuries.

If Donna is charged with murder and raises the defense of self-defense, she most likely will be:

A. Convicted of murder because she could have escaped by simply running away from drunken Mort.

B. Convicted of assault because self-defense only provides a defense to a homicide charge.

C. Convicted of voluntary manslaughter because her self-defense was imperfect due to the fact that she was not entitled to use deadly force to resist a non-deadly attack.

D. Acquitted.

EXPLANATION: "D" is the correct response. It seems clear from the facts that Donna used a reasonable amount of force to resist Mort's assault on her. There to use anything like deadly force. "A" is wrong because a person has no duty to retreat unless they intend to use deadly force to resist a deadly attack. "B" is wrong because self-defense is a good defense to any charge relating to an attack on a person. "C" might have been an appropriate response if there was some evidence that she intended to use deadly force. Also, it is not clear whether the imperfect self-defense doctrine applies to such a case. It may be limited to situations where the defendant made a mistake about the seriousness or imminence of the attack.

4. Betty was always complaining to her boyfriend, Fred, about her boss Arlene. Finally, Fred proposed that he kill Arlene in her house and then make it look like a burglary. Betty agreed to let Fred know when Arlene would be at home. One day, after Arlene had left work and headed for home, Betty called Fred and told him that Arlene would soon be in her apartment. After placing the call to Fred, Betty discovered a birthday present which Arlene had left for her on her desk. Betty felt so bad about Fred's plan that she called Arlene and warned her that Fred was coming to kill her. Arlene quickly set up a
shotgun which she rigged to go off if anyone opened the front door to her apartment. She then went out on her terrace and was able to crawl onto the terrace of the adjoining apartment and gained entry to that apartment which was occupied by a friend of hers. Fred was killed by a blast from the shotgun when he jimmed open Arlene's door.

If Arlene is charged with murder, she most likely will be:

A. Convicted, if the jurisdiction adopts the retreat rule.

B. Convicted, because the Supreme Court ruled in Tennessee v. Garner, that it was unconstitutional for a private homeowner to use deadly force to defend against an intruder.

C. Not convicted, because Fred assumed the risk.

D. Not convicted, if the jurisdiction adopts the position taken by §85 of the Restatement, Second, of Torts.

EXPLANATION: "D" is the correct answer. As was noted in People v. Ceballos, p. 846, some courts exonerate a homeowner who uses a spring gun to inflict death or serious injury if they would have permitted to use such force if they had been present. This holding reflects the position taken by §85 of the Restatement, Second, of Torts. While the Ceballos court refused to adopt that position in criminal cases, some courts have done so. "A" is wrong because Arlene would have no duty to retreat from her own home. "B" is wrong because what the Court held to be unlawful in Garner was the use of deadly force by police to apprehend a fleeing felon who was posing no danger to persons. Arlene is not a law enforcement officer and she was not apprehending a fleeing felon. "C" is a nonsense response. Assumption of risk is a tort, not a criminal law doctrine.

5. Peter was a collector of WW II guns and other weapons. He frequently attended gun shows and flea markets specializing in military relics and weapons. While attending one such event, he set up a card table on which he displayed several rifles, pistols and a box of hand grenades. Peter was arrested by FBI agents and charged with violating U.S.C.A. § 5861 which makes it unlawful to receive or possess unregistered hand grenades. Peter defended on the ground that, although he was aware that hand grenades had to be registered, he did not know that his hand grenades were unregistered. Peter was convicted in the District Court. The Court of Appeals affirmed his conviction. If the Supreme Court grants certiorari in Peter's case, the Court is most likely to rule that Peter's conviction must be:

A. Affirmed, because Peter had notice that he possessed a particularly dangerous type of weapon.

B. Affirmed, because ignorance of the law is no excuse.

C. Reversed, because the offense was a "public welfare" offense.

D. Reversed, because of the absence of any similar offense under the common law.

EXPLANATION: "A" is the correct answer. This reflects the holding of the Supreme Court in United States v. Freed which is discussed in United States v. Staples on p. 242. The court in Staples distinguished hand grenades from semi-automatic weapons in this regard. "B" is incorrect because, while the statement about ignorance of the law may be true, Peter did not claim that he was ignorant of any law. "C" is wrong because the reason given there would support the opposite conclusion. It is precisely where an offense is a public welfare offense that the Court is most likely to dispense with any
mens rea. "D" is incorrect for the same reason: that the proposition stated supports the opposite conclusion. Morrissette teaches us that the Court is more likely to require a mens rea where the offense has a common law analog.

6. Alonzo was approached by two men on a St. Louis street who offered to pay him $5000 if he would take a briefcase on a bus to Chicago where he was to leave the briefcase in a locker at the bus station. He was given $2500 and was told that the other $2500 would be found in the locker in Chicago. Alonzo boarded a bus bound for Chicago and, even though the briefcase was not locked, he did not look inside it. When he arrived at the bus station in Chicago, he was placed under arrest by FBI agents and was charged with the federal offense of "knowingly transporting stolen securities in interstate commerce." The briefcase contained $50,000 worth of stolen stock certificates.

Which of the following is most likely to be involved in the prosecution of Alonzo for this offense?

A. The "lesser legal wrong" theory.
B. The "corrupt motive" doctrine.
C. The "wilful blindness" rule.
D. Wharton's Rule.

EXPLANATION: "C" is the correct answer. The facts of this case are similar to those of United States v. Jewell (p. 220) where the defendant deliberately did not check the secret compartment so that he could not be said to have knowingly transported marijuana and the notion of "wilful blindness" was discussed. "A" is not correct because it is doubtful that Alonzo committed any lesser legal wrong. "B" and "D" are incorrect because they both involve doctrines which apply to conspiracy charges and Alonzo was not charged with conspiracy.

7. In the wake of several attacks on students entering and leaving the gay student center at the University, the state legislature passed a "Racial Hate" Statute which made it a felony to commit an assault on another person where the attack is motivated by factors related to victim's race, religion, ethnicity, or sexual orientation. After the passage of the statute, Throckmorton was arrested when he threw a beer bottle at a group of black students who were protesting the decision by the University to hold classes on Martin Luther King Day. The bottle struck one of the protesting students in the head. The student, who was a hemophiliac, bled to death before help could arrive.

If Throckmorton is charged with felony-murder based on his violation of the Racial Hate Statute, it is most likely that he will be:

A. Convicted, because the underlying offense has a purpose beyond merely protecting human life.
B. Convicted, because the underlying offense "merges" with the homicide.
C. Not convicted, because of the doctrine of legal impossibility.
D. Not convicted, because the killing was not done by a co-felon.

EXPLANATION: "A" is the correct response. The problem in this case with convicting the defendant of felony-murder is that normally a felonious assault is deemed to "merge" with the homicide and no
felony-murder conviction will lie. Merger could be argued not to apply if the underlying felony has an "independent felonious purpose," which it might have here - the protection of minorities, for example. "B" is wrong because it suggests that merger points toward, not away from a felony-murder conviction. "C" is wrong because there is no sort of impossibility involved in this fact pattern. "D" is a nonsense response. The killing was done by the very felon who was charged with the killing.

8. Bob and Lester broke into the apartment of Victoria and proceeded to take turns raping her. To overcome her resistance, they both struck her very hard in the face with their closed fists. While she was being raped by Bob, Lester emerged from the kitchen with a butcher knife. He announced that he was going to slit Victoria's throat as soon as Bob was finished with her so that she would never be able to identify them. When Victoria heard that, she mustered all of her strength and, pushing Bob off of her, rammed her head into Lester's stomach so hard that he fell backwards through the seventh story window of her apartment. Bob got scared, pulled up his pants and ran from the apartment. Lester died from injuries suffered in his fall. Of what homicide is Bob most likely to be convicted?

A. Murder, if the court holds Bob vicariously responsible for Lester's causing Victoria to defend herself against a deadly attack.

B. Felony-murder, if the court applies the "agency" theory.

C. Felony-murder, if the court uses the excusable - justifiable homicide distinction.

D. Voluntary manslaughter.

EXPLANATION: "A" is the correct response. It reflects the holding in Taylor v. Superior Court, p. 503, which held one co-felon vicariously responsible where the act of the co-felon was sufficiently provocative of lethal resistance to support a finding of implied malice. "B" is wrong because if the court uses the agency theory, Bob could only be held responsible for killings done by Lester. "C" is wrong because, if a court made the excusable/justifiable distinction, Bob would not be guilty of felony-murder because the killing of Lester would be deemed justifiable. "D" is wrong because there is nothing in the facts of this question to support a voluntary manslaughter conviction of anyone.
9. Keesha had been brutally raped by a short man wearing a Cleveland Brown's stocking cap. She did not get a good look at his face. Ten days later, with her rapist still at-large, Keesha had just pulled her car into the parking lot of her apartment, when another car pulled in next to hers and a man wearing a Pittsburgh Steeler's stocking cap got out. When he approached the driver's side of Keesha's car, she reached under the seat and grabbed a pistol which she had purchased after having been raped. When the man tapped on the window next to her, she rolled the window down and shot him in the face - killing him instantly. A later investigation revealed that Keesha had driven home with her purse on the roof of her car and the man was apparently going to call Keesha's attention to that fact. DNA tests on the man's corpse, ruled him out as the man who had raped her.

If Keesha is charged with first degree murder and is successful in asserting the defense of imperfect self-defense, she most likely will be convicted of:

A. Second degree depraved heart murder.
B. Involuntary manslaughter.
C. Voluntary manslaughter.
D. No homicide at all.

EXPLANATION: "C" is the right answer. As is noted on p. 812, the common approach to imperfect self-defense is to have it reduce murder to voluntary manslaughter. Because of this, "A" is clearly wrong. "B" is the next best answer because some jurisdictions hold that imperfect self-defense does reduce murder to involuntary manslaughter. "D" is wrong, because only "perfect" self-defense could lead to exoneration.

10. Fred was on trial for gross sexual imposition involving a minor under the age of 10. Kara was present in the courtroom when her 6 year-old daughter painfully testified about the sexual liberties Fred had taken with her over a period of 10 months while Fred had been living with Kara and her. During a break in the testimony, the sheriff's deputies were leading Fred out of the courtroom for a trip to the restroom, when Kara grabbed a pistol from one of the deputies and shot Fred in the face. Fred died instantly. Kara is charged with first degree murder, and the judge includes a voluntary manslaughter instruction to the jury.

If the judge tells the jury that they may consider Kara's sex in determining whether she is guilty of manslaughter rather than murder, it is because:

A. Mothers generally love their children more than fathers.
B. Women are less capable of defending themselves by the use of less than deadly force.

C. Women generally have less self-control.

D. A woman might view the gravity of the provocation differently than a man.

EXPLANATION: "D" is the correct answer. The court would be concerned about not having the standard for judging whether there was adequate provocation become too subjective. "A" is a nonsense response. "B" is wrong because there was no indication that Kara was acting in self defense. "C" would be the next best answer but it would make the standard more subjective than "D".

11. Danny owned an apartment building in a high-crime section of the city. Due to this location, he had difficulty keeping all the apartments rented. He decided to rent an apartment to Penelope, who he knew to be the girlfriend of a reputed underworld figure, even though her request to have him install 3 telephone lines and a dozen phone jacks, made him suspicious. Six months later, when the police arrested Penelope and 3 others for running a gambling operation out of the apartment, Danny was charged as an accessory to the illegal gambling operation.

If the court applies the MPC to the charges against Danny, he will most likely be found:

A. Guilty, because the MPC adopts the "natural and probable consequences" test.

B. Guilty, because Danny acted "knowingly" with respect to the fact that the apartment would put to a criminal use.

C. Not guilty, if Penelope was unaware that Danny suspected that she was going to use the apartment for a criminal purpose.

D. Not guilty, because Danny did not have the purpose of
facilitating the crime of gambling.

EXPLANATION: "D" is the best response because it reflects the MPC's requirement that, in order to be an accessory, one must have "the purpose of promoting or facilitating the offense." Here, it could be argued that all Danny wanted to do was rent the apartment. In addition, he did not know what "offense" Penelope might be planning to commit. It could have been prostitution, bank fraud or some other offense. "A" is wrong because the MPC says nothing about "natural and probable consequences" in conjunction with accessorial responsibility. "B" is wrong because the MPC rejects the Backun approach which finds knowledge of criminal purpose sufficient to make one an accessory. "C" is wrong because it suggests erroneously that the MPC requires that there be a "nexus" between Danny and Penelope.

12. Marvin believed that the impending launch of the space shuttle Endeavor would interfere with the landing of a spaceship from Mars which he thought would happen on the same day. He traveled to Cape Canaveral, armed with a plexiglass prism which he planned to aim at the space shuttle and destroy it before it could be launched. Before Marvin left for Cape Canaveral, he announced his intention to destroy the space shuttle on his personal web site on the internet. The security forces at Cape Canaveral were advised of Marvin's plan and told to watch out for him. Just prior to the launch, one of the members of the security force spotted Marvin with his prism aimed at the shuttle. Marvin was arrested and charged with attempted interference with an official operation of NASA - a serious federal offense.

Marvin will most likely be found:

A. Guilty, because mistake of fact is no defense.

B. Guilty, because factual impossibility is no defense.
C. Not guilty, because Marvin's belief in the Martian spaceship negatived the required *mens rea*.

D. Not guilty, because it was legally impossible for him to complete the offense.

EXPLANATION: "B" is the correct response. This response applies the Black Letter rule. Even under the MPC, a defendant can be convicted even though it was inherently impossible for him to commit the offense.

"A" is wrong because Marvin is not claiming that he lacked the *mens rea* due to a mistake of fact. "C" is wrong because his reason for wanting to destroy the shuttle would not negate the *mens rea* for such a crime.

Even if he claimed insanity, the effect of the plea is to excuse his conduct, not to find that he lacked the *mens rea*. "D" is wrong because this clearly is not a case of legal impossibility. If the shuttle had been destroyed by the prism, Marvin would have been guilty of the crime.

(QUESTIONS 13 AND 14 ARE BASED ON THE FOLLOWING FACTS)

Bart and Parker were sailors on shore leave in San Francisco when they were approached by two young women in Chinatown. Neither of the young women spoke any English. Bart, thinking that the two were prostitutes, led them to the hotel room that he was sharing with Parker. Parker, who had spent some time in Hong Kong, knew enough Chinese to know that the women were not prostitutes but were just asking for help in finding an address in Chinatown. Parker went along with Bart and the two women to the hotel room. As Bart began stripping the clothes off one of the women, she began yelling something over and over again in Chinese. When Bart asked Parker what she was saying, Parker lied to him - telling him that she, "wanted it right now!" As Bart was about to penetrate the woman, a hotel employee entered the room and threw all of the them out of the hotel. When the women went to the police, Bart and Parker were charged with attempted rape. Bart was tried first and acquitted on the basis that he had made a reasonable mistake with respect to whether the victim had consented.
13. If Parker is tried as an accessory to attempted rape, it is most likely that he will be found:

A. Guilty, because he had a legal duty to act to stop Bart from raping the victim.
B. Guilty, because he had a "corrupt motive."
C. Not guilty, because attempted rape is a specific intent crime.
D. Not guilty, because Bart did not commit attempted rape.

EXPLANATION: "D" is the correct response. The common law rule is that a person cannot be convicted of a crime as an accessory, unless a crime was committed by the principal actor. State v. Hayes, p. 671, supports this conclusion. "A" is wrong because Parker probably did not have a duty to act to protect the victim, but even if he did, the general rule reflected in "D,"
means that he cannot be convicted as an accessory. "B" is wrong because the corrupt motive doctrine applies to cases where the defendant is charged with conspiracy to commit a strict liability offense. "C" is wrong because, even though the statement of law there is true, Parker cannot be convicted where the principal actor cannot be. Parker might be convicted as a principal for attempted rape using the "innocent agent" theory, but he was not charged as a principal and that theory is not included in any of the responses.

14. If Parker is charged with attempted rape as a principal actor, he most likely will be found:
A. Guilty, because the impossibility of his having sex with the victim was factual, not legal.

B. Guilty, because Bart could be viewed as an "innocent agent."

C. Not guilty, because it was legally impossible for him to commit the offense.

D. Not guilty, because one cannot be convicted of an attempt if one's conduct is necessarily incidental to the commission of the offense.

EXPLANATION: "B" is the correct answer. You might view Parker in this case as using Bart as a tool or dupe to commit the crime of rape. There is a discussion of the use of the innocent agent device on pp. 675-76. "A" is wrong because this case does not involve impossibility. If Bart had penetrated the victim, the crime of rape could have been committed. "C" is wrong for the same reason - this is not an impossibility case. "D" is a nonsense response.

15. After Hinckley was found not guilty by reason of insanity for trying to kill President Reagan, Congress acted to:

A. Abolish the insanity defense in federal cases.

B. Adopt the ALI/MPC version of the insanity defense in federal cases.

C. Reinstate the Durham Rule as the test of insanity in federal cases.
D. Adopt what is basically the *M’Naghten* test of insanity in federal cases.

EXPLANATION: "D" is the correct response. "A" is wrong because Congress acted to limit, but not abolish the insanity defense. "B" is wrong because Congress repudiated the ALI/MPC rule which had been used to exonerate Hinckley. "C" is wrong because Congress did not adopt the *Durham* Rule.

16. Carlos, a resident of Arizona and the founding member of a right-wing, citizen-militia organization called "Free America Now," maintained a web site on the internet where he offered to sell fully automatic weapons which could be used to resist FBI and ATF agents. Peter, a resident of Ohio, placed an order with Carlos for two of the weapons and authorized Carlos to charge his credit card $475 for each of the weapons. Carlos sent an e-mail message to Peter acknowledging his order and indicating that the weapons would be shipped in six to eight weeks. Three days later, FBI agents, armed with lawful warrants, raided Carlos' headquarters, placed him under arrest and seized his computer. They were able to get the information about Peter from Carlos' computer.

If Peter is charged with conspiracy to sell automatic weapons in violation of federal law, and raises "Wharton's Rule" as a defense, he most likely will be found:

A. Guilty, if he is viewed as a victim of the offense.

B. Guilty, if the offense only provides punishment for the seller of such weapons.

C. Not guilty, if the offense could be committed by more than two persons.

D. Not guilty, if Peter's credit card was a joint credit card making his wife a "third party" to the agreement.

EXPLANATION: "B" is the correct response. It is an exception to the Wharton's Rule if the offense only provides punishment for one person. "A" is wrong because, if a person is a victim of the crime, it is
less likely that they will be convicted even though
an exception to Wharton's Rule might apply to them.
"C" is wrong because it suggests that the offense is
not even subject to Wharton's Rule - an argument which
points toward guilt, not away from it. "D" is wrong
for the same reason.

17. Under which of the following circumstances would a court be most likely to dismiss criminal
charges based on the absence of an *actus reus*?

A. The defendant committed an act because he was threatened
by another with death if he did not commit the act.
B. The defendant committed an act while under hypnosis.
C. The defendant committed an act after having "chugged"
a quart of whiskey.
D. The defendant committed an act while suffering from
a severe mental disorder which made it impossible
for him to control his conduct.

EXPLANATION: "B" is the correct answer. While there is
controversy over whether hypnosis should negate actus
reus, the MPC does recognize it as a condition which
has that effect. "B" is also the best answer because
of the other responses are wrong. "A" is an example of
duress which is treated as an excuse. "C" is wrong
because of the clear rule that voluntary intoxication
does not negate actus reus. "D" is an example of
insanity which is also treated as an excuse.
18. When Priscilla knocked on Bill's apartment door to make a drug purchase, he jerked the door open and pulled her inside. He forcibly removed her clothing and tied her up. He was poised to stick his penis into her, when his beeper went off. He glanced at the beeper, pulled up his pants, announced to her that she had "lucked out," and set her free. After Bill left the apartment, Priscilla called the police and Bill was arrested when he returned. Bill is charged with drug possession, kidnapping and attempted rape.

With respect to the attempted rape charge, in a jurisdiction which has adopted the MPC, Bill's best defense is that:

A. Priscilla assumed the risk by coming to his apartment to buy drugs.

B. His renunciation of his effort to rape her was "involuntary" because the beeper message forced him to quit.

C. The beeper caused him to lose his erection and thus made it impossible to complete the offense.

D. His renunciation of his effort to rape her was complete because he had no intent to postpone his efforts to rape her to another time.

EXPLANATION: "D" is the correct response. The MPC provides for the defense of renunciation or abandonment. The abandonment must be "voluntary" and "complete." It is not complete, if the actor postpones the criminal conduct to a more advantageous time. "A" is a nonsense response. "B" is wrong because the MPC requires the abandonment to be voluntary, not involuntary. "C" is wrong for several reasons. First, a man does not have to have an erection to commit the crime of rape. (Any penetration, however slight, will
do.) Second, the MPC does not recognize the defense of impossibility.

(QUESTIONS 19 AND 20 ARE BASED ON THE FOLLOWING FACTS)

Jose was a member of an animal right's organization which was targeting the hunting of elk in Montana for its protests. In anticipation of the group's activities, the Montana legislature passed a "Hunter Harassment" statute making it a felony for anyone to interfere with the lawful activities of duly-licensed hunters in Montana. On the night before the start of elk season in Montana, Jose, posing as an elk hunter, was able to remove the firing pins from a number of the rifles of a group of elk hunters he had joined. The next day, one of the hunters was killed by a grizzly bear. An investigation showed that the dead hunter's rifle had no firing pin. An expert for the Montana Game Commission issued an opinion that the hunter would not have been killed if the rifle had been operable.

19. If Jose is charged with felony-murder, he will most likely be found:

A. Guilty, because Jose committed one of the commonly enumerated felonies.

B. Guilty, because Jose committed a lesser legal wrong in removing the firing pins from the rifles.

C. Not guilty, because of the merger doctrine.

D. Not guilty, because Jose did not commit an act likely to cause death while committing a felony likely to cause death.

EXPLANATION: "D" is the correct response. The felony is one that can easily be committed without posing any danger to anyone's life. For example, Jose might have sounded a horn or played loud music to scare away the elk. Thus, the felony "in the abstract" could not be said to be a dangerous one. "A" is wrong because this is not one of the commonly enumerated felonies unlike...
rape or robbery. "B" is wrong because the lesser legal
time has nothing to do with the felony-murder
rule. "C" is wrong because the underlying felony
clearly had an independent felonious purpose other than
the protection of the lives of hunters.

20. If Jose is charged with unlawful act manslaughter, he most likely will be found:

A. Guilty, because Jose committed the act as a result of
having been reasonably provoked by the killing of elk.

B. Guilty, because a violation of the Hunter Harassment law
is a malum prohibitum offense.

C. Not guilty, because Jose committed a felony.

D. Not guilty, if Montana follows the MPC.

EXPLANATION: "D" is the correct response. The MPC does
not recognized unlawful act manslaughter. "A" is wrong
because it is unlikely that the hunting of elk would
qualify as adequate provocation, and, in any event, if
it did, it would reduce a charge of murder to voluntary
manslaughter - not involuntary unlawful act
manslaughter. "B" is wrong because, if the law were a
malum prohibitum offense (which is arguable), that fact
would argue against applying the unlawful act doctrine
because in some jurisdictions that doctrine is
restricted to mala in se offenses. "C" is wrong
because, while unlawful act manslaughter is sometimes
known by the name "misdemeanor manslaughter," it is
deemed more appropriate to call it unlawful act manslaughter because it can be based on the commission
of any unlawful act - including felonies, misdemeanors or violations.

21. Quentin owned a check-cashing service which was a front for his counterfeiting and gambling activities. Federal agents had been monitoring his business for over a year before they arrested him. During that year, he had committed scores of crimes relating to both his counterfeiting and gambling operations.

If Quentin is charged with violation of RICO, it is most likely that he will be found:

A. Guilty, because RICO adopts the theory of unilateral conspiracy.
B. Guilty, because he is an enterprise and committed at least two predicate offenses.
C. Not guilty, because, while he may be a hub, there are no spokes nor any rim.
D. Not guilty, because there is no proof that he entered into an agreement with anyone.

EXPLANATION: "B" is the correct answer. Enterprise is defined under RICO to include an individual. In order be guilty of engaging in racketeering activities, he need only have committed two predicate offenses. The facts here indicate that he committed scores of such offenses. "A" is wrong because RICO is not really a conspiracy statute and to the extent that it is, it adopts the "enterprise" theory of conspiracy. "C" is wrong because RICO says nothing about wheels or chains.
"D" is wrong because RICO does not require proof of an agreement for substantive RICO violations.

22. Over the years, a large number of cats began congregating in an area of Dayton, Ohio, near some fast-food restaurants. When a child leaving one of the restaurants tried to pet one of the cats, the child was bitten by the cat and contracted rabies. In reaction to the public outcry, the Dayton City Council enacted an emergency "cat licensing" ordinance which was modeled after Dayton's longstanding "dog licensing" ordinance. About 2 weeks after the cat licensing ordinance went into effect, the Dayton fire department was called to the home of Velma Stillwell, to fight a small grease fire. While in her home, the firemen noticed that there were 10 or 12 cats running around the house without any license tags. They alerted the animal control authorities and Velma was eventually charged with 13 counts of failing to license her cats. Velma testified at her trial that she did not own a TV or a radio and did not read newspapers and was unaware of the cat licensing law. The court convicted Velma on all 13 counts.

If Velma challenges the constitutionality of the cat licensing ordinance, the appellate court is most like to rule that the ordinance is:

A. Constitutional, because not reading the newspaper showed that Velma was at least reckless.
B. Constitutional, because possession of so many cats would be likely to affect interstate commerce.
C. Unconstitutional, because the ordinance only applies to affirmative acts - keeping unlicensed cats.
D. Unconstitutional, because the circumstances would not move one to inquire as to the necessity of licensing her cats.

EXPLANATION: "D" is the correct response. The ordinance is very similar to the one in Lambert v. California, the case in which the Supreme Court struck down a registration requirement on that ground. "A" is wrong because it states a pretty far-out proposition and there is nothing in the facts to suggest that the ordinance even requires recklessness. "B" is a nonsense
answer because a city ordinance doesn't have to have anything to do with interstate commerce. "C" is wrong because it is doubtful that the ordinance did only apply to affirmative acts, and, in any event, such a fact would argue in favor of the ordinance's constitutionality since the ordinance struck down in *Lambert* was deemed to be addressed to passive conduct by the defendant.

23. Tim met Sarah in the snack bar at the university's student union. She told him that she was a freshman "townie" and lived off-campus with her mother. When Tim ran into Sarah again in the student union a week later, she told him that her mother was away and invited him to her house. At Sarah's house, they began making out. They had taken off their clothes and Tim was trying to insert his penis into her vagina when her mother burst into the room. Because Sarah was only 14 years, 11 months old at the time, and the age of consent was 15, Tim is charged with attempted statutory rape.

If Tim wants to assert his reasonable belief that Sarah was over the age of consent as a defense, his best argument would be that:

A. Statutory rape is a strict liability offense.

B. The MPC requires that a person be consciously aware of the risk to be convicted of an attempt.

C. Since he believed that Sarah was over 15, it would be a legal impossibility for him to commit the offense.

D. Attempt is a specific intent crime.

EXPLANATION: "D" is the best response. It states the general rule about attempt and suggests that, while the crime of statutory rape is a strict liability offense, an attempted statutory rape is not. "A" is wrong because it is not really relevant but would argue for his conviction of attempt, rather than against it. "B"
is wrong because it does not state the MPC position about the culpability required for an attempt. "C" is wrong because his conduct would certainly have constituted statutory rape if he had penetrated Sarah.

24. Josie, who was 7 months pregnant, went to the In-N-Out convenience store late one night to buy a box of chocolate-covered donuts. While she was paying for the donuts, the store was held up by Felix who was wielding a sawed-off shotgun. Felix's grandmother, Martha, who was acting as a lookout, waited outside the store in her car with the motor running. When the police arrived in response to a silent alarm triggered by the store clerk, Martha attempted to run down one of the policemen as he tried to enter the store with his service revolver drawn. The policeman fired his revolver several times at Martha's car as it headed toward him. Martha lost control of the car and it smashed into the front of the store. Felix was arrested and, when Martha later died as a result of injuries received in the car crash, he was charged with felony-murder. Felix most likely will most likely be found:

A. Guilty, because the policeman was justified in shooting at Martha.
B. Guilty, because the policeman was acting as Felix's agent.
C. Not guilty, because Felix did not intend to kill his own grandmother.
D. Not guilty, because the felony-murder rule was never intended to protect the lives of felons.

EXPLANATION: "D" is the best response. Under the rule of Canola, many courts hold that under the felony-murder rule, a felon is only responsible for killings done by one of the felons. In this case, even if can be said that the killing in this case was done by a felon-Martha killing herself through her attempt to run over the policeman, it is unclear whether the Canola rule would be applied to a case where one of the felons
killed herself or another felon for that matter. "A"
is wrong because, in jurisdictions distinguishing
between justifiable and excusable deaths, the felony-
murder doctrine is applied the latter, not the former.
"B" is wrong because, while many courts use the agency
theory in felony-murder cases, it could hardly be said
that the policeman was an agent of Felix. In any event,
it might be said that the policeman did not kill Martha
but that she killed herself. "C" is a nonsense response
since felony-murder does not require such an intent.

25. Winthrop was a respected corporate executive who frequently flew on the early morning shuttle
from LaGuardia Airport in New York to the Ronald Reagan Airport in Washington, D.C. He lived in
Manhattan with his beautiful wife, Penelope. One day, a group of masked terrorists forced their way into
Winthrop and Penelope's apartment on Park Avenue. The terrorists had a ticket, which had been issued
in Winthrop's name, on the morning shuttle. While they held a gun to Penelope's head, they told
Winthrop to go to LaGuardia and check a suitcase which they gave him. They told him that he should go
to the gate, but that he did not have to board the plane. They indicated that they would kill Penelope if
they did not hear about a plane crash on the 9 a.m. news. Winthrop did as he was told and the terrorists
left Penelope unharmed when they saw a newsflash at 8:05 a.m. announcing that a plane had exploded
shortly after having left LaGuardia.

If Winthrop is charged with 107 counts of murder for killing the persons on the plane and pleads duress,
most likely he will be found:

A. Guilty, because he failed to choose the lesser of evils.
B. Guilty, because duress is no defense to such charges.
C. Not guilty, because the threat came from a person, not
from a natural force.
D. Not guilty, because he never saw what was in the
suitcase.

EXPLANATION: "B" is the correct response. The black
letter rule is that duress is never a defense to
murder. "A" is wrong because it describes a standard used for necessity, not duress. "C" is wrong because the threat in duress has to come from a person not from a force of nature. "D" is wrong because it would very unlikely that anyone would believe that Winthrop did not know what was in the suitcase under the circumstances. The doctrine of "wilful blindness" might also apply.

PART TWO - INSTRUCTIONS

This portion of the exam consists of 25 questions. You will have one hour in which to complete this part. You may leave the room as soon as you have completed the exam. PLEASE LEAVE QUIETLY AND DO NOT LINGER AROUND THE HALLS OR THE LOUNGE TO DISCUSS THE EXAM.

PLEASE PUT YOUR EXAM NUMBER ON THE ANSWER SHEET!

26. The so-called "grand criterion" which separates murder from manslaughter is:

A. Conscious disregard for the life of another.

B. Premeditation.

C. Deliberation.

D. Malice aforethought.

EXPLANATION: "D" is the correct response. It reflects the general rule of the law of homicide under the common law. "A" is the next best answer because it could be argued that, under the MPC's version of depraved heart murder, it might be said that the defendant must have consciously disregarded human life. However, the question does not call for the application of the MPC, and, in any event, a conscious disregard
for human life is not the only thing that distinguishes
murder from manslaughter under the code. "B" is
incorrect because premeditation is something that
distinguishes first from second degree murder - not
murder from manslaughter. "C" is incorrect for the same
reason.

27. Which of the following insanity tests best incorporates the concept of "affective cognition"?

A. Durham Rule.
B. Irresistible impulse rule.
C. M'Naghten Rule.
D. ALI/MPC Rule.

EXPLANATION: "D" is the correct response. The ALI/MPC's
use of the term "appreciate" is said to incorporate the
concept of affective cognition into the test. "A" is
wrong because the Durham Rule has nothing in it which
relates to cognition - affective or otherwise. "B" is
wrong because the Irresistible Impulse Rule is a test
of volition, not cognition. "C" is the next best answer
because the M'Naghten Rule is a test of cognition but
the concept of affective cognition has to be read into
that rule while the ALI/MPC expressly incorporates the
concept of affective cognition.

28. Carl told Parnell that he was planning to rob a Brink's armored truck and was in need of a phoney passport. Parnell agreed to furnish Carl with the phoney passport for $10,000. Carl told Parnell that he needed the passport by the following Tuesday. On Monday, Parnell got cold feet and left town. On Tuesday night when Carl showed up at Parnell's print shop, the shop was closed and Parnell was nowhere to be found. Carl decided to go ahead and commit the robbery that night, but was arrested when
he tried to leave the country using his own passport. He immediately implicated Parnell in the robbery.

If Parnell is charged in a jurisdiction following the MPC with being an accessory to the robbery of the Brink's truck, he most likely will be found:

A. Guilty, because he did not actually thwart the commission
   of the offense by Carl.

B. Guilty, because his withdrawal from the scheme came too late.

C. Not guilty, because he voluntarily withdrew from the scheme.

D. Not guilty, because he terminated his complicity prior
to Carl's commission of the offense and wholly deprived
his complicity of its effectiveness.

EXPLANATION: "D" is the correct answer. To be relieved
of responsibility as a accomplice under the MPC, the defendant must "terminate his complicity prior to the commission of the offense and wholly deprive it of its effectiveness," which you could say Parnell did here by not providing Carl with the passport. "A" is wrong because the MPC only requires the defendant to thwart the commission of the offense when charged with conspiracy. "B" is wrong because he withdrew prior to the commission of the offense. "C" is wrong because the requirement of voluntariness is not found in the MPC provision relating to the responsibility as an accomplice.
29. A provision of the United States Code makes it an offense "to knowingly import (certain exotic birds) in violation of regulations promulgated pursuant to the Endangered Species Act." When Shawn tried to enter the United States with a parrot that a friend had given her in Buenos Aires, she was charged with this offense. If Shawn defends on the ground that she was unaware of the Endangered Species Act regulations, and her case is governed by the provisions of the MPC, she will most likely be found:

A. Not guilty, if the court views the offense as one requiring specific intent.

B. Not guilty, if the court views knowledge that one's conduct constitutes an offense is by definition an element of the offense.

C. Guilty, because under the MPC, "wilful blindness" is sufficient to satisfy the requirement of having acted "knowingly."

D. Guilty, because the MPC adopts the unilateral conspiracy theory.

EXPLANATION: "B" is the correct answer because the MPC has a provision, § 2.02(9) p. 263, which provides that knowledge as to whether conduct constitutes an offense is not a material element unless the definition of the offense so provides. "A" is clearly wrong because the MPC says nothing about specific/general intent. "C" is wrong because there is nothing in the facts to suggest that Shawn tried not to know something. "D" is wrong because, while the statement about unilateral conspiracy is true, this case has nothing to do with conspiracy.
30. On the eve of the Little Miss Omaha beauty contest, two thugs hired by the mother of one of the contestants, broke into the home of another contestant, Pam. The thugs had been told to just make sure that Pam's face was badly enough bruised so that she would be unable to win the contest. Pursuant to the mother's instructions, the thugs slapped Pam hard with their open hands and then left. The hard slaps loosened a blood clot in Pam's brain, and she died later in the day. No one had known that Pam had such a clot prior to her death.

Of what crime would the mother most likely be convicted?

A. First degree murder.
B. Depraved heart murder.
C. Intent to inflict serious bodily injury murder.
D. Involuntary manslaughter.

EXPLANATION: "D" is the correct answer. The events describe a classic case of misdemeanor manslaughter.

"A" is wrong because there is no evidence that Pam's death was premeditated or deliberate. "B" is wrong because just slapping someone in the face, is not so egregious as to qualify as depraved heart murder. "C" is wrong because neither the mother nor the thugs intended to inflict a serious bodily injury.

31. Tom was playing pool with friends at a local tavern when his arch-enemy Leopold entered. When Tom spotted Leopold, he shouted, "I thought I told you never to come in here! Didn't I tell you that I would bash your head in if I saw you in here again?" When Leopold gave Tom the finger, Tom said to one of the friends who he was playing pool with, "give me that cue stick! I'm going to crack his skull!!" Tom's friend refused to let go of the cue stick despite the fact that Tom was trying to wrestle it from his grasp. Finally, some other friends held Tom back while Leopold beat a hasty retreat from the tavern. Leopold reappeared with the police who filed charges against Tom for attempted assault.

Tom's best defense would be that:

A. Assault is an attempted battery.
B. It was impossible for him to complete the offense.
C. He had committed no overt act in furtherance of the offense.
D. He had exercised his *locus poenitentiae*.

EXPLANATION: "A" is the correct answer. Where assault is defined as an attempted battery, some courts hold that a person cannot be convicted of attempted assault because that would be saying that they attempted to attempt a battery. "B" is wrong because, if there was impossibility due to the intervention of Tom's friends, it would clearly be factual, not legal impossibility. "C" is wrong because there is no recognized theory of attempt requiring an overt act. The overt act notion relates to the law of conspiracy. In any event, you could argue that his attempt to secure the pool cue was an overt act. "D" is a nonsense response. If his contention is that he renounced his criminal purpose, there is nothing in the facts which would support that contention.

32. Allison worked as a systems analyst with the CIA. She was a compulsive gambler who made frequent calls to her bookie on a public phone in the lobby of her building. When her husband Chuck found some papers marked "top secret" at home in a dresser drawer, he confronted Allison. She confessed that she had been selling some documents to an employee of the Iranian embassy in order to pay off some of her gambling debts. She told Chuck that she had to make one more sale in order to be free of gambling debts and that, as soon as the sale was made, she would join Gamblers Anonymous and stop gambling. Chuck reluctantly agreed to help her make the delivery, but, before final arrangements were made for the drop-off, Allison and Chuck were arrested. The indictment named Allison, Chuck and the Iranian embassy employee as co-conspirators. The embassy employee enjoyed diplomatic immunity and was expelled from the United States.

If Chuck is charged with conspiracy to steal secrets from the CIA, he most likely will be found:

A. Guilty, because of the *Pinkerton* doctrine.

B. Guilty, because he made an agreement with his wife.

C. Not guilty, because the embassy employee could not be
D. Not guilty, because he lacked the *mens rea*.

EXPLANATION: "B" is the correct response. It only takes two persons to enter into the agreement which constitutes the conspiracy. Here Allison and Chuck entered into an agreement to commit a criminal act.

"A" is wrong because the *Pinkerton* doctrine has to do with when a co-conspirator is responsible for crimes committed by co-conspirators. Chuck was not charged with any such crimes. "C" is wrong because it only takes two persons to make a conspiracy. "D" is wrong because it is clear that Chuck had the intent to enter into an agreement with a criminal act as its objective.

Even if conspiracy is deemed to be a specific intent crime, it seems clear Chuck had that intent.

33. While waiting in the Ft. Lauderdale airport for a flight back to Cleveland at the end of spring break from college, Fred was approached by Marlene who told him that she had planned to fly to Cleveland for her mother's birthday but that she had to cancel her plans at the last minute. She asked Fred if he would be so kind as to take her mother's birthday present with him on the plane and deliver it to her mother's house in Cleveland. Fred said that he would help her out and Marlene gave him a Banana Republic shopping bag containing what appeared to be an elaborately wrapped birthday present. Unbeknownst to Fred, the airport police had been shadowing Marlene and when she handed the shopping bag to Fred, they moved in and arrested her. The "birthday present" contained more than a kilo of pure cocaine.

If Marlene is charged with attempted aggravated drug trafficking, she most likely will be found:

A. Guilty, because criminal solicitation of such conduct is a felony.

B. Guilty, because Fred may be viewed as an "innocent agent."
C. Not guilty, because the agreement between Fred and her was not bilateral.

D. Not guilty, because criminal solicitation "merges" with the offense of aggravated drug trafficking.

EXPLANATION: "B" is the correct answer. The general rule is that mere solicitation does not constitute an attempt. Many courts and the MPC recognize an exception to that rule where the person solicited is an innocent agent - a person who does not know that they are being asked to commit a crime. "A" is a non sequitur. "C" is wrong because Marlene is not charged with conspiracy - a crime that might require a bilateral agreement. "D" is a nonsense response mixing in the merger doctrine which applies to felony-murder.

34. Monica was the branch manager of a bank. She raised collies as a hobby. Her prize-winning bitch, Twinkletoes, had just had a litter of seven puppies. One day, as Monica was about to lock the vault at the bank, she got a phone call from Roger who informed her that he was standing in the kennel behind her house. She could hear the dogs barking in the background. Roger told her that, unless she took $50,000 out of the vault and brought it to him, he would set fire to the kennel with the dogs in it. He warned her that a colleague of his was watching her and if she tried to contact the police, the dogs would die. Monica threw a bunch of money into a bag and headed home.

If Monica is charged with stealing the money from the bank, and raises the defense of duress, she will mostly likely be found:

A. Not guilty, because Roger's threat was imminent.

B. Not guilty, because a person of reasonable firmness would have yielded to Roger's demands.

C. Guilty, because duress cannot be used to excuse a theft offense.
D. Guilty, because dogs are not persons.

EXPLANATION: "D" is the correct response. Under the common law as well as under the MPC, the threat must be to a person. "A" is wrong because, although the threat was imminent, it was not to a person. "B" is wrong because although a person of reasonable firmness might have yielded to Roger's threat, the threat was not addressed to a person. In addition, this response borrows language from the MPC, which might not reflect the common law which often talked about a person's will being overcome. "C" is wrong because there is no such rule.

35. Brent Kilgore and his girlfriend Alice were traveling from Oregon to Maryland to attend her aunt's funeral when they stopped for the night at a motel in Casper, Wyoming. Even though they were not married, Brent registered at the motel using the names of Mr. and Mrs. Brent W. Kilgore. That night, erroneously believing that while in Wyoming Alice was his common law wife, Brent forced Alice to have sexual intercourse with him. At the time of the incident, in Wyoming a man could not be convicted of raping his own wife. Unknown to Brent, Wyoming had abolished common law marriage 6 months before this incident. The next morning, Alice went to the police and filed a rape complaint against Brent. The police arrested Brent and charged him with rape. If Brent raises the defense that he honestly believed that Alice was his wife while in Wyoming, he will most likely be found:

A. Guilty, because even a reasonable mistake of law is no defense to a general intent crime.

B. Guilty, because even a reasonable mistake of law is no defense to a specific intent crime.

C. Not guilty, because one cannot be convicted if a mistake of fact or law negatives the *actus reus* of the offense.

D. Not guilty, because even an unreasonable mistake of fact is a defense to a general intent crime.
EXPLANATION: "A" is the correct response. Rape is often a general intent crime and no mistake of law can serve as a defense. "B" is wrong because if rape is a specific intent crime, a reasonable mistake of law is a defense to a specific intent crime. "C" is wrong because, while it appears to state the MPC rule regarding mistake, it refers erroneously to the mistake negating actus reus - not mens rea. "D" is wrong because Brent made a mistake of law not fact, and even if it were deemed a mistake of fact, it would not provide a defense.

36. In a sting operation, the FBI created a web site which they called "Twelve and Under," where pornographic movies involving children under the age of 13 were offered for sale. Taylor, in another state, placed an order for three videotapes using a credit card for the purchase. Then Taylor received an e-mail message from the FBI acknowledging the order and indicating that the videotapes would be shipped within two weeks. As soon as the FBI agents running the sting operation sent the acknowledgment, other agents went to Taylor's home and placed him under arrest.

If Taylor is charged with conspiracy to engage in the interstate shipment of pornographic materials depicting minor children in violation of federal law, he most likely will be found:

A. Guilty, because even a reasonable mistake with respect to the age of the children, is no defense.

B. Guilty, because his use of his credit card constituted an overt act.

C. Not guilty, because the agreement was unilateral.

D. Not guilty, because the videotapes were never sent.

EXPLANATION: "C" is the correct response. The common law rule is that there must be a bilateral agreement between the defendant and another person - both of
whom could be convicted of conspiracy, in order to have a conspiracy. "A" is wrong because there is nothing in the question to suggest any mistakes on Taylor's part. "B" is wrong because the common law did not require an overt act for a conspiracy conviction, and "C" is a better response. "D" is incorrect because it is irrelevant. There need be no crime committed in order to have a conspiracy conviction. The common law did not even require an overt act.

37. Penny was the president of a group devoted to ridding area convenience stores of adult magazines like Playboy, Playmate and Penthouse. When one store refused to give into the group's demand to stop selling such magazines, Penny organized a picket line to march outside of the store. Penny led the march. While the picketers were marching, Maxwell, the owner of the store began taking the centerfolds out of several adult magazines and taping them to the window of the store for the whole world to see. Penny was incensed. She went to the gasoline pump in front of the convenience store and filled a pop can full of gasoline. She made a wick out of facial tissue, ignited it and flung it inside of the store. When Maxwell heard the door open, he came out from behind the counter and was struck right in the chest with the fire bomb. He soon died of the burns he suffered.

If Penny is charged with murder in a jurisdiction which follows the MPC, her best argument for having the charged reduced to manslaughter is that:

A. Her "situation" included her fervent opposition to the sale of such magazines.

B. Her acts were "designedly ambiguous."

C. Her acts were committed without malice aforethought.

D. Her acts were the result of legally sufficient provocation.

EXPLANATION: "A" is the correct answer. Under the MPC she must show that she killed Maxwell under extreme emotional disturbance for which there is a reasonable explanation or excuse. The reasonableness of that
explanation or excuse is determined from the standpoint of a person in the actor's situation. "B" is wrong because what is "designedly ambiguous" under the MPC is the actor's "situation" - not the actor's conduct. "C" is wrong because the MPC does not make any reference to malice aforethought. "D" is wrong because the MPC does not recognize the doctrine of legal sufficiency.

38. Kirk was having sex with Mary Ann in the bedroom of her home when Burt, Mary Ann's husband, came home unexpectedly. Burt peeked into the bedroom and saw what was going on. The lovers did not see or hear Burt. Burt snuck downstairs where he got a rifle out of his gun cabinet. He loaded the gun and went back upstairs. He burst into the bedroom and said to Mary Ann, "Prepare to meet your maker!" He pulled the trigger on the rifle but it did not go off. Before Burt could pull the trigger again, Mary Ann got a pistol out of a drawer of a bedside stand and shot Burt. Burt died later at the hospital of his wounds.

If Mary Ann enters a plea of self-defense in a jurisdiction which follows the MPC, she most likely will be found:

A. Guilty of murder of the purposely/knowingly variety.
B. Guilty of manslaughter.
C. Guilty of felony-murder.
D. Not guilty of any homicide.

EXPLANATION: "D" is the correct answer. Under the MPC, since the use of deadly force by Burt against Mary Ann was unlawful, Mary Ann would be justified in her use of deadly force to defend herself even though she was the initial aggressor by committing adultery. However, unless adultery is a crime, she would not be guilty of having committed any crime. For this reason, "A" and "B" are wrong. "C" is wrong because the MPC does not
recognized the felony-murder doctrine.

39. Under which of the following circumstances is a doctor most likely to be held criminally responsible for a patient's death?

A. The doctor refuses to see a patient who staggers into doctor's office after having been in a car accident.

B. The doctor disconnects an IV which is providing a patient with hydration and nutrition.

C. The doctor disconnects a respirator which is enabling a patient to breathe.

D. The doctor drives by the scene of a bad car accident without stopping and the patient, injured in the accident, later dies in the hospital emergency room.

EXPLANATION: "B" is the correct response. While the court in Barber v. Superior Court (p.197) did not distinguish between disconnecting a respirator and disconnecting an IV providing nutrition and hydration, we learned that some courts do make that distinction. Thus, "B" is a better answer than "C" because a court would be less likely to treat the removal of the respirator as an act of commission. "A" and "D" are wrong because in neither case would the doctor have a legal duty to act.

40. As part of his initiation into his college fraternity, Alton was instructed to rapidly drink a quart bottle filled with an unidentified liquid. The next thing Alton remembered after drinking the liquid, was awakening in jail where he discovered that he had been charged with attempted rape. An investigation revealed that the bottle had contained a mixture of 151 proof rum, 90 proof vodka and a bit of pink lemonade added for the color and taste. The police report indicated that Alton was profoundly intoxicated when he was arrested.

With regard to the charge against Alton of attempted rape, in view of his profound intoxication, he most
likely will be found:

A. Guilty, because Alton was at least reckless in drinking the liquid without knowing what it was.

B. Guilty, if his intoxication is viewed as voluntary and attempted rape is treated as a specific intent crime.

C. Not guilty, due to an absence of *actus reus* if his intoxication is viewed as "involuntary."

D. Not guilty, if his intoxication is viewed as "involuntary" and Alton can prove that did not know the nature and quality of his act or that it was wrong.

EXPLANATION: "D" is the correct response. Involuntary intoxication is treated as an excuse if it constitutes a mental state equal to insanity. "A" is wrong because the crime is a specific intent crime for which recklessness would probably not suffice. "B" is wrong because it is when a crime is specific intent in nature that evidence of voluntary intoxication is most likely to be taken into consideration. "C" is wrong because involuntary intoxication is not usually treated as an absence of *actus reus*.

41. Under the MPC, the difference between manslaughter and negligent homicide is that manslaughter can only result if the defendant:

A. Was reasonably provoked.

B. Consciously disregarded a risk.
C. Suffered from a diminished mental capacity.

D. Exhibited an extreme indifference to the value of human life.

EXPLANATION: "B" is the correct response. The key distinction between the two crimes under the MPC is that a person cannot be convicted of manslaughter unless he had a subjective awareness of the risk he was disregarding. "A" is wrong because under the MPC, manslaughter can be committed recklessly - not requiring anything resembling provocation. "C" is wrong because it is questionable whether the MPC even recognizes diminished mental capacity manslaughter. In any event, manslaughter can also result from recklessness. "D" is wrong because it reflects a requirement for a kind of murder under the MPC.

42. Sergei, a citizen of Grenada, came to the United States to serve as an au pair for Rhonda and Victor who were both attorneys licensed to practice in Virginia. Rhonda was employed by the Department of Housing and Urban Development in Washington, D.C., and Victor worked as a patent attorney for a corporation located in Maryland. Upon the advice of Rhonda and Victor that his compensation did not constitute wages subject to federal or state income tax, Sergei did not file any tax returns for 1996. When Sergei tried to extend his stay in the United States, he was charged with "willfully failing to make an income tax return required by law." If Sergei defends by alleging that he honestly believed that his compensation from Rhonda and Victor was not subject to taxation, he most likely will be found:

A. Not guilty, because he reasonably relied on the advice of two different attorneys.

B. Not guilty, because his conduct lacked the willfulness required by the law.

C. Guilty, because his belief was unreasonable.
D. Guilty, because the offense is a strict liability -
public welfare offense.

EXPLANATION: "B" is the correct response. It reflects
the holding the Supreme Court in Cheek v. United States
(p. 265). "A" is not correct because of the rule that
reliance on attorney's advice is no defense. "C" is
wrong because even if his belief was unreasonable, he
still would not have been acting "willfully." "D" is
wrong because the statute provides the intent required.

43. Martha began embezzling large amounts from her employer when she was unable to pay her
extensive gambling debts. She would often go back to the office at night to make alterations in the
company's books to cover her embezzlement. When Martha was caught juggling the books one night,
she was charged with grand larceny. Martha entered a plea of not guilty by reason of insanity and her
psychiatrist testified at the trial that she suffered from Compulsive Gambling Disorder and was literally
compelled to steal the money to feed her gambling habit.

Under which test of insanity is Martha least likely to be acquitted of the charge of grand larceny?

A. Durham Rule.

B. Irresistible impulse rule.

C. M'Naghten Rule.

D. ALI/MPC Rule.

EXPLANATION: "C" is the correct response. What Martha
is claiming is a mental illness which affects her
volitional control. The M'Naghten test is said to be
one purely of cognition, not volition. Each of the
other tests would allow her to claim a lack of
volitional control.

(QUESTIONS 44 AND 45 ARE BASED ON THE FOLLOWING FACTS)
Tony told a co-worker that he planned to bring a knife to work the next day, and stab the boss with it. He indicated that he was going to conceal the knife in a folded newspaper. The co-worker called the police and alerted them to Tony's plan. Tony was arrested the next morning at a local drug store where he had just purchased a newspaper. After arresting Tony, the police searched his car and found a hunting knife when they opened the trunk.

44. If Tony is charged with attempted murder, he will most likely be found:

A. Guilty, if the court uses the "act of mere preparation" theory.
B. Guilty, if the court uses the "last step" theory.
C. Not guilty, if the court uses the unequivocality theory.
D. Not guilty, if the court uses the "first step" theory.

EXPLANATION: "C" is the correct response. Tony's purchase of a newspaper while having a knife in the trunk of his car, could hardly be said to be an unequivocal act. "A" is wrong because the rule that a mere act of preparation is not an attempt points away from guilt, not toward guilt. "B" is wrong because it could hardly be argued that Tony had taken the last step toward killing his boss. "D" is wrong because, if the first step theory is used, it would point toward guilt, not away from it.

45. If Tony is charged with attempted murder under the MPC, he most likely will be found:

A. Guilty, because he was in dangerous proximity of killing his boss.
B. Guilty, because it was not probable that he would desist from killing his boss.
C. Not guilty, because his acts did not "speak for themselves."

D. Not guilty because Tony's acts were not strongly corroborative of his criminal purpose.

EXPLANATION: "D" is the best answer. While you could argue that Tony's acts were strongly corroborative of his purpose, none of the other answers relate at all to what the MPC requires for an attempt. You could also argue that simply buying a newspaper while having a knife in your car, does not strongly corroborate one's purpose to kill someone. "A" is wrong because the notion of dangerous proximity is not found in the MPC. "B" is wrong because the MPC did not adopt the notion of probable desistance. "C" is wrong because the MPC did not really adopt the res ipsa loquitur theory of attempt except as it is embodied in the requirement that the defendant's acts be strongly corroborative of his criminal purpose.

46. Due to a long backup of traffic on the approach to the George Washington Bridge, Violet decided to drive her semi tank truck partially loaded with gasoline through the Lincoln Tunnel in violation of a law making it a felony to transport such substances through that tunnel. When a drunk driver sideswiped her rig, Violet's truck crashed and the gasoline which spewed out, caught fire. The fire engulfed a small car and the two occupants were burned to death. Violet is charged with two counts of murder based on her having committed the felony of transporting the gasoline through the tunnel. If the court follows the MPC, Violet will most likely be found:

A. Guilty, because the felony she committed is inherently dangerous.

B. Guilty, because there is a rebuttable presumption of
extreme indifference to human life when a death results from the commission of a felony.

C. Not guilty, because her commission of the felony was not the proximate cause of the deaths.

D. Not guilty, because the felony she committed is not one of the felonies listed in the MPC.

EXPLANATION: "D" is the correct response. The MPC provides in § 210.2(1)(b), that the rebuttable presumption of extreme indifference only arises with respect to the commission of certain felonies and the felony Violet committed is not included. "A" is wrong because the MPC does not use an "inherently dangerous" felony approach. "B" is wrong because the rebuttable presumption only arises with the commission of certain felonies. "C" is wrong because it isn't the reason why the commission of the felony doesn't support a murder conviction under the MPC. Additionally, her commission of the felony probably was the proximate cause of the deaths.

47. Abigail approached Cindy and asked for her help in pulling off the robbery of a convenience store. She told Cindy that she would pay her $100 if she would loan Abigail her pistol and would let Abigail use Cindy's storage shed to hide a car after the heist. Cindy said that she would help Abigail and gave her the pistol. When Abigail was apprehended stealing a car, and charged with carrying a concealed weapon, the police told her that they would drop the weapons charge if she would reveal who was in on the heist with her. Abigail talked.

If Cindy is charged with carrying a concealed weapon, auto theft and conspiracy to commit robbery, she most likely will be convicted of:

A. Conspiracy only.
B. Conspiracy and carrying a concealed weapon only.

C. Conspiracy and auto theft only.

D. Conspiracy, carrying a concealed weapon and auto theft.

EXPLANATION: "D" is the correct answer. This response reflects the application of the *Pinkerton* Doctrine whereby a co-conspirator is held responsible for all the substantive offenses committed by any of the co-conspirators in furtherance of the conspiracy as long as those offenses are reasonably foreseeable. Here, Cindy knew that Abigail was going to carry the pistol, and knew that she was going to have a car which needed to be hidden after the heist - strongly suggesting that knew it would be a stolen car. Since this is the best response, all of the others are wrong.

48. When Donald showed up at Caroline's apartment on Valentine's day with a dozen roses, she refused to open the door. Through the intercom she told him that she was in love with someone else and did not want to see Donald again. Donald was devastated. He had dated Caroline for over 3 years and had planned to ask her to marry him on that day. Donald went home and got his loaded, automatic pistol which he kept by his bed. Sticking the pistol in his coat pocket he went to a local tavern where he played pool and drank beer for several hours. While playing pool and after having become somewhat intoxicated, Donald spilled his story of love gone wrong. When some of the other patrons of the tavern began making fun of the fact that Donald had lost his girlfriend on Valentine's day, Donald went berserk. He grabbed his pistol from his coat pocket and began firing wildly. By the time he was subdued, the blaze of bullets had struck 7 persons - one of whom later died at the hospital. Donald was charged with first degree murder.

Donald's best argument for having his first degree murder charge reduced to second degree murder is that:

A. His intoxication was not voluntary.

B. The manner of the killing reflected a random act caused by an explosion of violence and which was not calculated to result in death.
C. The taunting by the other patrons constituted adequate provocation.

D. The taunting by the other patrons caused him to become temporarily insane.

EXPLANATION: "B" is the correct response. As we learned in *People v. Anderson*, p. 399, at least one view of the premeditation and deliberation requirement which separates first from second degree murder, requires that the manner of the killing point to a preconceived design as opposed to an explosion of violence. Although Donald's having taken the gun to the tavern might be some evidence of planning, the way in which the victim was hit seems to point more toward an explosion of violence. "A" is incorrect because there is no evidence that Donald was involuntarily intoxicated, and, even if he was, that intoxication would not necessarily reduce first degree murder to second degree. Involuntary intoxication is usually treated as an insanity defense which would completely excuse the homicide. "C" is wrong because the taunting would probably not be deemed adequate provocation, and, if it was, then it would reduce the charge to manslaughter. "D" is incorrect because there no generally recognized legal doctrine bearing that name. If it suggests an insanity defense, again that defense would completely exculpate the
defendant, not reduce the degree of murder.

49. Ronald, a 19 year-old man, had sexual intercourse with Alice, a 15 year-old female who he believed was 17 years of age. When Alice became pregnant, her parents went to the local prosecutor and filed a complaint. The prosecutor brought the case before the grand jury and Ronald was indicted for statutory rape - the age of consent being 16. If Ronald's case is governed by the provisions of the Model Penal Code, it is most likely that Ronald will be found:

A. Guilty, even if he proves he made a reasonable mistake as to Alice's age.

B. Guilty, because the MPC adopts the "moral wrong" theory of Regina v. Prince.

C. Not guilty, if he proves that he made a reasonable mistake as to Alice's age.

D. Not guilty, if he proves he made either a reasonable or unreasonable mistake as to Alice's age.

EXPLANATION: "C" is the correct response because the MPC provides in § 213.6(1)(discussed on p. 233) that a reasonable mistake with respect to the age of victim is a defense when the crime involves a child 10 years of age or older. Since "A" states the opposite proposition, it is wrong. Although you might argue that the MPC does adopt the moral wrong theory by not permitting any mistake with respect to age for children under 10, and only permitting reasonable mistakes for children 10 or older, "C" is clearly correct without having to make such a complex argument. "D" is wrong because under the MPC an unreasonable mistake does not provide a defense.
50. Matt had been drinking heavily prior to showing up for work on the midnight shift at a metal stamping plant. His duties at the plant required him to operate a large drop forge metal stamping machine which posed extreme danger to workers who worked around the machine. Due to his intoxication, Matt forgot that the machine was being serviced by one of his co-workers and started up the machine without a complete visual inspection of the machine which company safety rules required. The co-worker was crushed by the machine and died of his injuries soon after the incident.

If Matt is charged with murder under the MPC, he will most likely be found:

A. Guilty, because his violation of the safety rules constitutes negligence per se.

B. Guilty, because the MPC has a special provision dealing with the effect of self-induced intoxication on criminal culpability.

C. Not guilty, because he was not conscious of the risk he was creating.

D. Not guilty, because it could not be said that he acted with an intent to inflict serious bodily injury.

EXPLANATION: "B" is the correct response. As is discussed on p. 465, § 2.08(2) of the MPC contains a rule which essentially says that self-induced intoxication satisfies the MPC requirement of recklessness. "A" is wrong because there is no form of murder under the MPC (or anywhere else) based on the notion of negligence per se. "C" is wrong because self-induced intoxication makes it unnecessary to establish a conscious awareness on his part. "D" is wrong because there is no such thing as serious bodily injury murder under the MPC.