Professor DeWolf | Criminal Law
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SAMPLE ANSWER TO FINAL EXAM

MULTIPLE CHOICE

1. (a) Lady Wootton made this statement, p. 324.

2. (a) is incorrect, because there was no overt act, and the crime is only a third degree felony. Pursuant to MPC § 5.03(5), someone within the conspiracy has to commit an overt act. (b) is correct, because John encouraged another person to commit a crime; it sufficient if it establishes the other's complicity in committing the crime. By encouraging Nathan to purchase the acid that would be used to commit the crime, Nathan would be an accomplice, and thereby John would be guilty of solicitation. (c) is incorrect, because one of the answers is incorrect. (d) is incorrect because solicitation and conspiracy do not require a substantial step.

3. (a) is correct, because Mary would then be an accomplice to burglary under MPC § 2.06. (b) would be incorrect, because mere knowledge is insufficient; there must be the purpose to commit the crime. (c) is incorrect, because Nathan would be an accomplice to John's commission of burglary, and he thereby is guilty of the crime. The *actus reus* consists in the encouragement that he provided. (d) is incorrect, because of the preceding analysis demonstrating that other crimes would be available for conviction.

4. (a) is incorrect, because in order to be guilty of attempted murder one must have the purpose of causing death. That is lacking from the description. (b) is incorrect because in order to be an accomplice one must have the purpose of facilitating the commission of the crime. Here the standard is merely foreseeability. (c) is likewise incorrect, because it uses recklessness as the threshold; the standard is purpose. Thus, (d) is the only correct answer.

5. (a) is potentially correct, because the statute is ambiguous. "Knowingly" certainly applies to the sale or delivery of a visual depiction. But the other element of the statute, that it contain a depiction of a minor engaged in sexually explicit conduct, is distinguished by being separately laid out. For that reason, (b) is also a plausible reading of the statute, making (c) the best answer. (d) is incorrect, because the standard is at least recklessness; the issue is whether knowledge or recklessness is the standard. See *U.S. v. X-Citement Video*, 1994 WL 662620.

6. (a) is incorrect, because her mistake relates to the existence or interpretation of the law defining the criminality of her conduct (it says that the definition of age is found in the criminal code itself). (b) is therefore correct. (c) is incorrect, because no culpability is required for a mistake of law. (d) is likewise incorrect.

QUESTION 1 (based on

As prosecutor I would consider a charge of murder, which carries with it the lesser included offenses of manslaughter and negligent homicide. Mary Elaine ("ME") will offer defenses of self-defense and possibly intoxication.

Homicide Charges. Under MPC § 210.1, criminal homicide requires causing the death of another human being, with the punishment varying according to whether it was committed purposely, recklessly, or negligently. Murder is committed either purposely or knowingly, or committed recklessly under circumstances manifesting extreme indifference to the value of human life. [I don't think the latter would be useful because, given the abusive behavior against her, it would be hard to characterize her response, however jury views it, as "extreme indifference."] The facts of this case would suggest that Mary Elaine used the knife against her husband purposely, that is, she took out the knife presumably with the intention of using it (if necessary) to protect herself. She may claim that she didn't really have the purpose of causing Her husband's death, but there is evidence that would suggest that as a possibility. Further investigation should be conducted. Manslaughter requires that she act recklessly (aware of a substantial and unjustifiable risk, and a gross deviation from the standard of a law-abiding person) in causing her husband's death, or in the alternative that she be guilty of murder but for the fact that the murder was committed under extreme mental or emotional disturbance. I don't think she would argue the latter in this case, because she would argue that her conduct was justified, as discussed below.

For negligent homicide, a jury must find that she acted negligently (should be aware of a risk, and a gross deviation from the standard of a reasonable person) in causing her husband's death.

Self-Defense. The lesser versions of homicide would come into play when ME asserts her right to self-defense. MPC § 3.04 allows ME to use force when if she believed that it was immediately necessary to defend herself against unlawful force on that occasion. ME will claim that her husband's abusive behavior was the prelude to fulfilling his threat to kill her, and therefore her use of force, even deadly force, was justified. If her belief was genuine, even if unreasonable (or reckless), it will defend against a crime of murder. However, her previous statements, coupled with her behavior afterward, cast doubt on whether she genuinely believed her life was in danger, or instead was "spoiling for a fight," as the decedent's brother has stated.

Speaking of which, even if she would otherwise be justified in using deadly force, her right to use it is withdrawn if she provoked her victim with the purpose of using deadly force. It is puzzling why she kept talking about her intent to leave him if in fact she was afraid that that would lead him to carry out his threat to kill her. Also, there is a duty to retreat to avoid the use of deadly force, but it wouldn't apply here, not only because she was in her own home, but because ME didn't *know* she could retreat with complete safety.

"Imperfect" Self-Defense. Even if a defendant genuinely believes in the need to use force (even deadly force), the justification is lost to the extent that the defendant recklessly (in the case of crimes requiring recklessness) or negligently (in the case of negligence) appraised the need to use deadly force, or was culpable in the way in which the force was used. Thus, ME may be guilty of manslaughter if the jury finds that she recklessly formed the belief in the need to use deadly force, or of negligent homicide if she negligently formed that belief. Recklessness and negligence are determined by reference to what a law-abiding or reasonable person would do "in the actor's situation." The defense may call experts on the "battered woman syndrome" in order to help the jury understand what ME's situation was. Depending upon whether the judge admits such testimony, and depending upon how the jury assesses this testimony, they may find that ME's testimony about her belief in the need for self-defense was (1) a cover-up (in which case she is convicted of murder), (2) reckless (in which case she is convicted of manslaughter), (3) negligent (in which case she is guilty of negligent homicide), or reasonable (in which case she is acquitted.

Duty to Rescue. Another potential charge may arise from the fact that ME didn't do anything after her husband was stabbed to get medical help. If she was still afraid of him, she should have called the police and/or the ambulance to try to save him; she did neither. Since she has a relationship to him (spouse) she owes an affirmative duty to rescue him, and her failure to do so could be judged as intentional (it was her purpose to have him die), reckless or negligent. Or the jury may credit her statement that she was in such a state of shock that she didn't even know what was happening. In any event, to be the basis of a charge there would need to be a showing that her delay caused his death.

Finally, her intoxication wouldn't have much bearing on this case. It would only be relevant to the charge of murder, and even then she is unlikely to base her defense on an inability to form any purpose (she wasn't that intoxicated anyway). With respect to the crimes of recklessness and negligence, intoxication is irrelevant.

QUESTION 2

The question asks for a worst case scenario and a best case scenario.

Worst Case. The worst case scenario for Sette is that he could be convicted of murder, and several counts of attempted murder and/or aggravated assault.

To convict him of murder, the jury would have to find beyond a reasonable doubt that he stabbed Devaney with the purpose of killing her. His gruesome behavior, however bizarre it may be, was followed by relative rationality and coherence, giving the jury some evidence upon which to conclude that he purposely caused her death.

On similar grounds, the jury could find that he attempted to murder Johnson (he had the purpose of causing his death and took a substantial step in that direction); or in the alternative that he committed aggravated assault against Johnson (purposely causing serious bodily injury to

another (2nd degree), or purposely caused injury with a deadly weapon (3rd degree)); he also attempted to murder Triano and Columbus (again, he made a substantial step with the purpose of causing their death), and he assaulted Sergeant Edwards.

All of these charges presuppose that the jury disbelieves Sette's claim that he was so intoxicated that he didn't know what he was doing. The jury might decide beyond a reasonable doubt either that he knew what he was doing (he was not so intoxicated as to lose the capacity to form a purpose); and/or that his intoxication was self-induced.

Best case. The defense might be successful in establishing that Sette was a victim of involuntary intoxication, or in terms of the Model Penal Code, that his intoxication was not self-induced. MPC § 2.08(4) says that "Intoxication which . . .is not self-induced . . . is an affirmative defense if by reason of such intoxication the actor at the time of his conduct lacks substantial capacity either to appreciate its criminality [wrongfulness] or to conform his conduct to the requirements of law." In turn, self-induced is defined as "intoxication caused by substances which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, ..." In other words, if Sette didn't knowingly introduce the substance into his body, or if the jury doesn't find that he "knew or ought to have known" the effect of those substances on him, then the intoxication was not self-induced. Thus, it is critical that the experts convince the jury that the pesticide exposure was so significant in causing an unexpected (and not reasonably anticipated) interaction with alcohol, cold medicine and cocaine, so that his intoxication was not self-induced.

Assuming the jury at least has a reasonable doubt with regard to the drug interaction theory, they must also conclude that Sette lacked substantial capacity either to appreciate the wrongfulness of his conduct or to control his behavior. At this point the test is like an insanity defense. However, the MPC clearly provides that unless the intoxication is not self-induced, it does **not** constitute a mental disease or defect. Thus, unless the defense experts' testimony is believed, we're in big trouble.

QUESTION 2½

The major difference would be in the definition of insanity; although the case isn't really about insanity, it incorporates a test for involuntary intoxication that is much like the test for mental disease or defect under MPC § 4.01. Thus, the rejection of the MPC test for insanity would likely carry over to the redefinition of involuntary intoxication. Many jurisdictions have cut back the test from whether the defendant "appreciated" the wrongfulness of his conduct to whether, under the traditional M'Naghten test, he could distinguish right from wrong. In addition, many jurisdictions have abandoned the "control prong."

The other major difference would be in defining the level of intoxication that becomes relevant. Many jurisdictions have adopted something like the "complete prostration" of faculties before intoxication becomes relevant.