

INTRODUCTION

This program is designed to provide a review of basic concepts covered in a first-year criminal law class and is based on Kadish & Schulhofer, *Criminal Law: Cases and Materials*. You have accessed the tutorial for Chapter 2, “Purposes of Punishment.” Prior to doing these exercises you should read the relevant material in Chapter 2.

OVERVIEW





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EXERCISE

Each question gives you a fact pattern, and then you must choose an answer that best reflects the law as you understand it. Be careful to read the question and the suggested answers thoroughly. Select your answer by clicking on it. If you give an incorrect answer, you will be given feedback on what was wrong with your answer. By clicking on the feedback you will be taken back to the question to try again. Once a correct answer is selected, click on the feedback to go to the next question.

You may begin the exercise by click on a question number below. Throughout the tutorial three Shortcut Buttons will be located in the bottom right-hand corner of each page. The Return Button  brings you back to this page allowing you jump to questions of your choice if you prefer. The Home Button  takes you to the Criminal Law Tutorial Home Page.

Questions:

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Question 2-1

Dan Defendant ("D") has been convicted of armed robbery of a state-chartered bank. It is now time for Judge Holmes to sentence D. Holmes receives a presentence report on D that includes multiple convictions, including assault, assault with a deadly weapon, grand theft auto, and robbery, for which D was incarcerated previously for a total of ten years. The prosecution has asked for a lengthy sentence in the state penitentiary. D has an 8th-grade education and had an abusive father. Which of the following would be the LEAST effective argument on behalf of the defendant for a more lenient sentence?

- (A) A lengthy sentence in D's case would serve no deterrent function.
- (B) D does not deserve to be incarcerated for a lengthy period.
- (C) Whatever benefit society might receive from incapacitating D would be offset by the cost of incarcerating D past the point where he is likely to reoffend
- (D) A long sentence would decrease the likelihood that D could be rehabilitated and returned to society.



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(D) A long sentence would decrease the likelihood that D could be rehabilitated and returned to society.

That's correct. (a) is the best answer, because it is the worst argument. First, it may be that D was not deterred by prior incarceration because it wasn't long enough. Second, even if D is undeterrable, others likely would be.



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(D) A long sentence would decrease the likelihood that D could be rehabilitated and returned to society.

Sorry, (B) is incorrect, because it's not the least effective argument. D's background might mitigate his culpability; a person who has been disadvantaged doesn't deserve to be punished as severely as someone from a more privileged background.



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- (D) A long sentence would decrease the likelihood that D could be rehabilitated and returned to society.

Sorry, (c) is incorrect; you are looking for the **worst** argument, and this isn't it. Since the propensity toward criminal activity decreases with age, there is an argument that further incarceration does not serve any societal purpose.



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Sorry, (d) is incorrect; you are looking for the **worst** argument, and there is some truth to this one, although it might be offset by other considerations.



Question 2-2

Judge Marshall is getting ready to sentence a criminal defendant, a former governor, who has been convicted of selling his power of appointment for a cash donation. In arguing for a shorter sentence, the defendant's lawyer would have LEAST success in arguing the following?

- (a) As a person with no prior criminal history, his early release is unlikely to pose a danger to society;
- (b) Since he is unlikely to be able to commit similar crimes in the future, punishment would serve no deterrent function;
- (c) The stigma of incarceration and public humiliation will make even a short sentence a significant punishment;
- (d) His crime did not involve violence toward others, but he is likely to be a target for violent attack while in prison.



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(d) His crime did not involve violence toward others, but he is likely to be a target for violent attack while in prison.

Sorry, (A) is incorrect, because one of the purposes of punishment is to incapacitate those who are likely to pose a threat to society. Since this statement is true, it is not the least effective argument.



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(d) His crime did not involve violence toward others, but he is likely to be a target for violent attack while in prison.

That's correct. (B) is the BEST answer, since the statement is wrong, and thus the LEAST effective argument. Punishing the former governor with a long sentence will have the effect of deterring OTHER persons similarly situated.



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Sorry, (C) is incorrect, because for one who has been in a high position of prominence, incarceration is a significant form of humiliation; to the extent we are trying to inflict pain upon the defendant for wrongdoing, the fact that this is painful is relevant.



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Sorry, (D) is incorrect, because it is not the least effective argument. After all, the former governor is likely to be a target and his crime did not involve violence.



END

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