

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 8, “Exculpation.” Prior to doing these exercises you should read the relevant material in Chapter 8.

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.

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Question 8-1

Jimmy Swinehart, a middle-aged TV evangelist, has a side to his personality that is not usually not highlighted during his TV program. He likes to read (or shall we say look at) magazines that portray or suggest acts that he denounces from the pulpit as immoral. One evening at 10 p.m. he was out on the street looking for female companionship. He went to a part of town where prostitutes are known to ply their trade. He entered a run-down hotel and began talking to a woman who introduced herself as "Sherri."

Suppose Swinehart had had seven martinis at a bar prior to the incidents described above. Intoxication would be relevant if:

- (A) He claims to be unaware of the risk that Sherri was under the age of 16.
- (B) He is charged with a crime for which the required culpability is knowledge or purpose;
- (C) Intoxication makes him unaware of the criminality of his conduct.
- (D) None of the above.



DeWolf, Criminal Law Tutorial, Chapter 8 – Exculpation

Question 8-1

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- (D) None of the above.

(A) is incorrect because an intoxicated person is treated as though he were sober for purposes of the awareness of risk (§ 2.08(2)).



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(B) is correct, since it may negative an element of the offense (per § 2.08(1));



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- (D) None of the above.

(C) is incorrect, since culpability with respect to criminality is never required (MPC § 2.02(9));



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- (D) None of the above.**

(D) is incorrect, since (b) is a correct answer.



Question 8-2

John Jackson is an accountant working for a multinational corporation. Billy Breaker, his boss, insisted that John "sweeten" the financial reports by omitting some information that would otherwise be included. When John demurred, Billy told him that "he'd go along if he knew what was good for him." If John is later charged with violating a statute stating, "It is a third degree felony to issue deceptive financial reports," which of the following is true:

- (A) John would have a defense if his boss told him that it was standard accounting practice to do so, and John reasonably relied upon that advice;
- (B) John would have a defense if he honestly believed that Billy was threatening him, but only if he made reasonable efforts to contact law enforcement;
- (C) John would have a defense if he reasonably believed that, since he didn't actually "issue" the information (his company did), the statute did not apply to him.
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(A) is incorrect. Reliance upon a friend's legal advice is not a defense.



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(B) is incorrect. The defense of duress does not require that one contact law enforcement.



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(C) is incorrect. This is a mistake of law, and a reasonable (but erroneous) belief about the interpretation of the law is no defense.



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(D) is correct. Billy might have gone before a different jury.



Question 8-3

Frank runs at Pamela with an axe held in a threatening manner. Pamela pulls out a gun and shoots Frank dead. The prosecutor is contemplating criminal charges against Pamela. Which of the following is correct?

- (A) Pamela would be justified if she reasonably believed that Frank was about to cause her serious bodily harm.
- (B) Pamela could be convicted of manslaughter ("homicide committed recklessly") if Frank was intending only to scare her, and a reasonable person would have recognized that he was only joking.
- (C) Pamela would be excused if her past experience with an abusive husband caused her to believe that her life was being threatened.
- (D) Pamela would be excused unless she was able to retreat with complete safety.



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- (C) Pamela would be excused if her past experience with an abusive husband caused her to believe that her life was being threatened.
- (D) Pamela would be excused unless she was able to retreat with complete safety.

(A) is correct, since a reasonable fear of imminent serious bodily harm will justify even deadly force.



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(B) is incorrect, since the MPC permits "imperfect justification."



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- (D) Pamela would be excused unless she was able to retreat with complete safety.

(C) is incorrect; the term "excused" is wrong -- one is either justified, or not -- and her belief that her life was threatened, if unreasonable, would lead to punishment for negligent homicide.



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- (D) Pamela would be excused unless she was able to retreat with complete safety.**

(D) is incorrect; again, the term "excuse" is misplaced, and she is not obligated to retreat with complete safety unless she knows she can retreat with complete safety.



Question 8-4

Donna goes to a party and asks her friend to bring her a non-alcoholic beer. Unbeknownst to Donna, the friend returns with a pitcher of ordinary alcoholic beer. After consuming several glasses, Donna gets into a car and, because of her intoxication, she loses control and causes injury to Victim. Under the Model Penal Code, which of the following is true?

- (A) Intoxication would be a defense to any crime that requires proof of knowledge or purpose;
- (B) Intoxication is not a defense so long as it is voluntary;
- (C) Donna's actions were involuntary and therefore could not be the basis for criminal liability;
- (D) Intoxication would not be a defense unless Donna used reasonable care in determining whether the beer contained alcohol.



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(A) is correct.



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(B) is incorrect, because even if voluntary, intoxication is a defense to crimes that require purpose or knowledge;



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(C) is incorrect because her *actions* were voluntary; her *intoxication* was not, and therefore might serve as a defense.



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(D) is incorrect for the same reasons that (B) is incorrect.



Question 8-5

Leonard killed James; at the time Leonard believed that James was about to attack him with a butcher knife. Under the Model Penal Code,

- (A) Leonard would be entitled to defend himself unless there was an opportunity to retreat;
- (B) Leonard would be entitled to defend himself but only if his belief was both honest and reasonable;
- (C) Leonard could be convicted of negligent homicide if he was negligent in forming the belief that James was about to attack him;
- (D) None of the above.



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- (C) Leonard could be convicted of negligent homicide if he was negligent in forming the belief that James was about to attack him;
- (D) None of the above.

(A) is incorrect, because the obligation to retreat only applies when the actor *know* that he can retreat *with complete safety*. Neither of these conditions is specified.



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- (C) Leonard could be convicted of negligent homicide if he was negligent in forming the belief that James was about to attack him;
- (D) None of the above.

(B) is incorrect, because the MPC permits the defense even where it is unreasonable.



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- (D) None of the above.

(C) is correct, because of the "imperfect justification" rule that the MPC follows;



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- (C) Leonard could be convicted of negligent homicide if he was negligent in forming the belief that James was about to attack him;
- (D) None of the above.**

(D) is therefore incorrect.



Question 8-6

Michael drove a school bus carrying 28 children. As he came around a corner, a tire exploded; unless he drove into the other lane, the bus would slide off the cliff and fall 1000 feet, killing everyone aboard. However, a car was in the other lane. Michael knew that if he hit the car it would go over the cliff. Despite this, Michael steered his bus into the other lane, the other car went over the cliff, and the driver of the car and his passenger were both killed. In a prosecution of Michael for murder, Michael's best argument would be:

- (A) He chose the lesser of two evils;
- (B) He was operating under duress;
- (C) Michael was not negligent in the rupture of the tire;
- (D) Michael was entitled to use force, even deadly force, if he reasonably believed his life was in danger.



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(A) is the correct answer, under MPC § 3.02;



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(B) is incorrect, because duress only arises as a result of human pressure;



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(C) is incorrect, because it is not his behavior prior to the final act that is the subject of his criminal liability; even if he were negligent in bringing about the circumstances that led to his choice, Michael would not be guilty of murder;



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- (C) Michael was not negligent in the rupture of the tire;
- (D) Michael was entitled to use force, even deadly force, if he reasonably believed his life was in danger.**

(D) is incorrect, because deadly force is only justified when *unlawful* force is directed toward the actor.



Question 8-7

Joan has been a long-time user of heroin. She locks her four-year-old son Larry in a closet to punish him and, after injecting herself with heroin, falls asleep. There is so little oxygen in the closet that Larry suffers permanent brain damage. In a prosecution of Joan for aggravated assault ("causing serious bodily injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life"), which of the following is true?

- (A) Joan could defend by showing that falling asleep was not a voluntary act;
- (B) Joan could defend by showing that she was intoxicated at the time;
- (C) Joan could defend by showing that long-time use of heroin had resulted in a permanent mental disorder that caused her to lack substantial capacity to appreciate the wrongfulness of her conduct;
- (D) None of the above.



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(D) None of the above.

(A) is incorrect, because the criminal conduct need only include a voluntary act, and locking Larry into the closet was a voluntary act;



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(C) Joan could defend by showing that long-time use of heroin had resulted in a permanent mental disorder that caused her to lack substantial capacity to appreciate the wrongfulness of her conduct;

(D) None of the above.

(B) is incorrect because intoxication is not an effective defense to crimes for which recklessness suffices;



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- (D) None of the above.

(C) is correct, because permanent mental injury, even if it results from long-term drug abuse, may qualify as a mental disease.



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- (D) None of the above.**

(D) is incorrect because (C) is a correct answer.



Question 8-8

Andy became intoxicated at a college fraternity party. Jane, a 17-year-old high school student, snuck into the fraternity party and began dancing with Andy. Andy pulled her into a side room at the fraternity house and had sexual intercourse with her. Jane didn't have anything to drink, but she didn't resist because she was afraid of Andy. Jane later filed a complaint with the police and Andy has been charged with rape. Could Andy be convicted of rape (MPC § 213.1)?

- (A) No, if, because of his intoxication, he lacked the purpose of engaging in sex with an underage woman;
- (B) No, if he did not use force, threats of force, or intoxicants to have sex;
- (C) Yes, if Jane never gave her consent to sexual intercourse;
- (D) Yes, if, because of his intoxication, he did not realize that Jane was not consenting.



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Question 8-8

Andy became intoxicated at a college fraternity party. Jane, a 17-year-old high school student, snuck into the fraternity party and began dancing with Andy. Andy pulled her into a side room at the fraternity house and had sexual intercourse with her. Jane didn't have anything to drink, but she didn't resist because she was afraid of Andy. Jane later filed a complaint with the police and Andy has been charged with rape. Could Andy be convicted of rape (MPC § 213.1)?

- (A) No, if, because of his intoxication, he lacked the purpose of engaging in sex with an underage woman;**
- (B) No, if he did not use force, threats of force, or intoxicants to have sex;
- (C) Yes, if Jane never gave her consent to sexual intercourse;
- (D) Yes, if, because of his intoxication, he did not realize that Jane was not consenting.

(A) is incorrect, because rape only requires recklessness;



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- (B) No, if he did not use force, threats of force, or intoxicants to have sex;**
- (C) Yes, if Jane never gave her consent to sexual intercourse;
- (D) Yes, if, because of his intoxication, he did not realize that Jane was not consenting.

(B) is correct, because rape requires force, threats of force, use of intoxicants, or unconsciousness;



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- (D) Yes, if, because of his intoxication, he did not realize that Jane was not consenting.

(C) is incorrect, because lack of consent is insufficient to establish rape;



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(D) is incorrect, for the same reasons as (C).



Question 8-9

Michael was arrested for possession of methamphetamine. He claims that he became addicted when his friend let him smoke something that his friend said was marijuana, but was really methamphetamine. Michael's best defense would be:

- (A) His use of methamphetamine was an involuntary act;
- (B) It is unconstitutional to punish someone for a status rather than an act;
- (C) As a result of his addiction, he lacked substantial capacity to control his behavior;
- (D) His first use of methamphetamine was a case of involuntary intoxication.



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- (B) It is unconstitutional to punish someone for a status rather than an act;
- (C) As a result of his addiction, he lacked substantial capacity to control his behavior;
- (D) His first use of methamphetamine was a case of involuntary intoxication.

(A) is incorrect, because the *use* of methamphetamine (as distinguished from being addicted) is a voluntary act;



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- (C) As a result of his addiction, he lacked substantial capacity to control his behavior;
- (D) His first use of methamphetamine was a case of involuntary intoxication.

(B) is incorrect, for the same reason as (A);



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- (D) His first use of methamphetamine was a case of involuntary intoxication.

(C) is not a strong defense, but it is better than the others;



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- (C) As a result of his addiction, he lacked substantial capacity to control his behavior;
- (D) His first use of methamphetamine was a case of involuntary intoxication.**

(D) is incorrect, because he is not being charged with a crime done under the influence of involuntary intoxication.



Question 8-10

Edward's route to work and back home included walking through a dangerous part of town. One night Edward was approached by James, a ten-year-old boy, who asked him to give him \$10. James had his hand in his pocket when he made the request. Edward was afraid that James was going to shoot him with a gun or stab him with a knife, so Edward pretended to reach into his pocket, but instead knocked James down and then ran in the other direction. James suffered a serious head injury. Could Edward be charged with aggravated assault?

- (A) Yes, but only if Edward was at least reckless in assessing the need for force and manifested extreme indifference to the value of human life;
- (B) Yes, if James in fact was unarmed and didn't pose a real threat to Edward;
- (C) No, so long as Edward didn't intend to hurt him;
- (D) No, so long as Edward didn't use deadly force.



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(A) is correct;



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- (C) No, so long as Edward didn't intend to hurt him;
- (D) No, so long as Edward didn't use deadly force.

(B) is incorrect, because Edward might have reasonably believed that he did pose a real threat;



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- (C) No, so long as Edward didn't intend to hurt him;**
- (D) No, so long as Edward didn't use deadly force.

(C) is incorrect, because aggravated assault doesn't require intent;



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- (C) No, so long as Edward didn't intend to hurt him;
- (D) No, so long as Edward didn't use deadly force.**

(D) is incorrect, because aggravated assault doesn't require the use of deadly force.



Question 8-11

Mary has incurable multiple sclerosis. She tried marijuana and found that it produced a "remarkable remission" of her symptoms. If she is charged with violating a statute that makes possession of marijuana a crime, her best defense would be:

- (A) A person of reasonable firmness would have been unable to resist the temptation to relieve her symptoms;
- (B) She has the right, under the Constitution, to decide for herself fundamental questions about the meaning of life;
- (C) She suffers from a mental defect that excuses her;
- (D) Her medical condition justifies her use of marijuana.



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(A) is incorrect, because it states the standard for duress, and there is no duress in this situation;



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- (C) She suffers from a mental defect that excuses her;
- (D) Her medical condition justifies her use of marijuana.

(B) is potentially correct, but it is a difficult argument to show that there is a "fundamental liberty" connected with the use of marijuana, similar to the right recognized in *Lawrence*;



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(C) is incorrect, because there is no showing that she has a mental defect;



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- (D) Her medical condition justifies her use of marijuana.**

(D) is CORRECT because she can argue that there is a lesser of evils associated with her possession of marijuana.



Question 8-12

Jim was standing in line at a big department store just before the doors opened on a big sale. There was a crowd of about 300 people. At first the line was orderly, but then people started to cut in line. Jim said in a loud voice to Sam, "Hey, you've got to go to the end of the line," Sam responded, "I just went to my car to get something." A loud argument ensued, there was pushing and shoving, but then the doors opened and everybody rushed inside. In the confusion, Sam was knocked to the ground and then pushed outside the view of the security cameras. Ten minutes went by before someone reported his injury and help was summoned. Because of the fall and the delay in treatment, Sam suffered permanent brain damage. Which of the following is true?

- (A) Jim owed a duty not to harm Sam, but he owed no affirmative duty to summon help.
- (B) If a person of reasonable firmness would not have been able to resist getting pushed along with the crowd, Jim would be excused;
- (C) If Jim's conduct led, even indirectly, to Sam's injury, he had a duty to summon help,
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(A) is incorrect, because Jim might have caused Sam to be knocked down by initially challenging him. Even if he didn't physically run over him, causing the injury might result in a legal duty to summon help.



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(B) is incorrect, because it is the standard for duress. There is no showing that Jim was under any legal duress.



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(C) is CORRECT.



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- (D) Jim had a duty to summon help if he knew that Sam had been injured, if a reasonable person in his position would have done so**

(D) is incorrect because it does not specify whether Jim had any causal role.



Question 8-13

Louis Kildare was a pediatrician at a big hospital. Patrick, an 8-year-old boy, was brought into the hospital after a serious automobile accident. In consultation with Patrick's parents, Dr. Kildare ordered the nurses to turn off a ventilator that was kept Patrick breathing. Twenty minutes later Patrick was pronounced dead. If Dr. Kildare was charged with murder, which of the following arguments would be the LEAST helpful to his defense:

- (A) He didn't actually turn the ventilator off; it was the nurses who did so;
- (B) The ethical guidelines of the hospital allowed him to do what he did;
- (C) He didn't owe a legal duty to keep Patrick alive;
- (D) The parents had the right to decide what medical care was appropriate for their child;



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- (D) The parents had the right to decide what medical care was appropriate for their child;

(A) is the CORRECT answer, because it is the least relevant consideration. IF Dr. Kildare had a legal duty not to turn the ventilator off, then the fact that the nurses did it for him is not relevant to his legal guilt.



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(B) is incorrect, because the ethical guidelines of the hospital would be relevant to determining his legal duty.



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Similarly, (C) is incorrect, because whether he had a legal duty or not is a debatable point.



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(D) is incorrect for the same reason.



Question 8-14

Jim was standing in line at a big department store just before the doors opened on a big sale. There was a crowd of about 300 people. At first the line was orderly, but then people started to cut in line. Jim said in a loud voice to Sam, "Hey, you've got to go to the end of the line," Sam responded, "I just went to my car to get something." A loud argument ensued, there was pushing and shoving, but then the doors opened and everybody rushed inside. In the confusion, Sam was knocked to the ground and then pushed outside the view of the security cameras. Ten minutes went by before someone reported his injury and help was summoned. Because of the fall and the delay in treatment, Sam suffered permanent brain damage. Which of the following is true?

- (A) Jim owed a duty not to harm Sam, but he owed no affirmative duty to summon help.
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(A) is incorrect, because Jim might have caused Sam to be knocked down by initially challenging him. Even if he didn't physically run over him, causing the injury might result in a legal duty to summon help.



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(B) is incorrect, because it is the standard for duress. There is no showing that Jim was under any legal duress.



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(C) is CORRECT.



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- (D) Jim had a duty to summon help if he knew that Sam had been injured, if a reasonable person in his position would have done so.**

(D) is incorrect because it does not specify whether Jim had any causal role.



Question 8-15

Suppose Bill was a regular marijuana user and had smoked marijuana on the day of the crime. This evidence would be relevant:

- (A) To establish that Bill was unaware of the risk that injury might result from their activities.
- (B) To establish that Bill was unable to form the purpose of assisting Jack in committing the crime.
- (C) Both (1) and (2) are correct.
- (D) Neither (1) nor (2) is correct.



Question 8-15

Suppose Bill was a regular marijuana user and had smoked marijuana on the day of the crime. This evidence would be relevant:

- (A) To establish that Bill was unaware of the risk that injury might result from their activities.
- (B) To establish that Bill was unable to form the purpose of assisting Jack in committing the crime.
- (C) Both (1) and (2) are correct.
- (D) Neither (1) nor (2) is correct.

(A) Sorry, that's incorrect, since § **2.08** makes lack of awareness of risk immaterial in crimes for which recklessness suffices. Since recklessness is the mens rea for the element of causing bodily injury, intoxication would be irrelevant for that element.



Question 8-15

Suppose Bill was a regular marijuana user and had smoked marijuana on the day of the crime. This evidence would be relevant:

- (A) To establish that Bill was unaware of the risk that injury might result from their activities.
- (B) To establish that Bill was unable to form the purpose of assisting Jack in committing the crime.**
- (C) Both (1) and (2) are correct.
- (D) Neither (1) nor (2) is correct.

(B) That's correct, since **intoxication** might "negative" the existence of purpose.



Question 8-15

Suppose Bill was a regular marijuana user and had smoked marijuana on the day of the crime. This evidence would be relevant:

- (A) To establish that Bill was unaware of the risk that injury might result from their activities.
- (B) To establish that Bill was unable to form the purpose of assisting Jack in committing the crime.
- (C) Both (1) and (2) are correct.**
- (D) Neither (1) nor (2) is correct.

(C) Sorry, that's incorrect. Only one of the statements is correct. Try again.



Question 8-15

Suppose Bill was a regular marijuana user and had smoked marijuana on the day of the crime. This evidence would be relevant:

- (A) To establish that Bill was unaware of the risk that injury might result from their activities.
- (B) To establish that Bill was unable to form the purpose of assisting Jack in committing the crime.
- (C) Both (1) and (2) are correct.
- (D) Neither (1) nor (2) is correct.**

(D) Sorry, that's incorrect. One of the statements is accurate. Try again.



Question 8-16

Ron owns a local trucking company. On one trip an employee named Harry picked up a barrel of VIOL, a hazardous chemical, when the barrel ruptured, spilling its contents into the town's source of drinking water. A statute provides, "Any person who negligently causes a hazardous chemical to be released in or near a source of drinking water shall be guilty of a misdemeanor."

Suppose that Harry regularly transported and dumped hazardous chemicals illegally, but did so because one of his customers had threatened one of his family members if he didn't cooperate. If Harry is prosecuted for violating either of the above statutes, which of the following is correct:

- (A) The threats made by the customer would not affect Harry's guilt or innocence, but could be used to mitigate Harry's punishment.
- (B) Harry would be entitled to a defense only if he could identify the person who threatened him.
- (C) Harry could claim that a person of reasonable firmness in his situation would not have been able to resist, but only if his own safety was also jeopardized.
- (D) None of the above.



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(B) Harry would be entitled to a defense only if he could identify the person who threatened him.

(C) Harry could claim that a person of reasonable firmness in his situation would not have been able to resist, but only if his own safety was also jeopardized.

(D) None of the above.

(A) Sorry, that's incorrect; the defense of duress (MPC § 2.09) will avoid any criminal liability if the standard is met.



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- (C) Harry could claim that a person of reasonable firmness in his situation would not have been able to resist, but only if his own safety was also jeopardized.
- (D) None of the above.

(B) Sorry, that's incorrect; whether the person can be identified is relevant only as an evidentiary matter; it is not essential to the defense.



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- (C) Harry could claim that a person of reasonable firmness in his situation would not have been able to resist, but only if his own safety was also jeopardized.**
- (D) None of the above.

(C) Sorry, that's incorrect; MPC § **2.09** allows use of the defense where there is unlawful force against the person of another (§ 2.09(1)).



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Question 8-16

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- (C) Harry could claim that a person of reasonable firmness in his situation would not have been able to resist, but only if his own safety was also jeopardized.
- (D) None of the above.**

(D) That's correct. Each of the answers was incorrect pursuant to MPC § 2.09.



Question 8-17

Paul, a plumber, has a long pipe in the back of his truck to transport it to a repair job. It sticks out approximately 6 feet past the rear bumper. After stopping at a red light on a slight incline he attempts to move forward, but the car stalls and slips backward. The pipe goes through the windshield of a car immediately behind him, seriously injuring the driver.

Mike, a mechanic, fixed the brakes the week before. He was drunk at the time and didn't properly repair the brakes. Mike could be convicted of simple assault only if at the time of repairing the brakes:

- (A) Mike was actually aware of the risk of harm
- (B) A sober person should have been aware of the risk of harm.
- (C) A sober person would actually have been aware of a risk of serious injury.
- (D) He knew that serious injury would result from his conduct.



Question 8-17

Paul, a plumber, has a long pipe in the back of his truck to transport it to a repair job. It sticks out approximately 6 feet past the rear bumper. After stopping at a red light on a slight incline he attempts to move forward, but the car stalls and slips backward. The pipe goes through the windshield of a car immediately behind him, seriously injuring the driver.

Mike, a mechanic, fixed the brakes the week before. He was drunk at the time and didn't properly repair the brakes. Mike could be convicted of simple assault only if at the time of repairing the brakes:

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- (C) A sober person would actually have been aware of a risk of serious injury.
- (D) He knew that serious injury would result from his conduct.

(A) Sorry, that's incorrect. Under MPC § **2.08** the fact that a person is intoxicated is *irrelevant* to a prosecution requiring recklessness.



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Question 8-17

Paul, a plumber, has a long pipe in the back of his truck to transport it to a repair job. It sticks out approximately 6 feet past the rear bumper. After stopping at a red light on a slight incline he attempts to move forward, but the car stalls and slips backward. The pipe goes through the windshield of a car immediately behind him, seriously injuring the driver.

Mike, a mechanic, fixed the brakes the week before. He was drunk at the time and didn't properly repair the brakes. Mike could be convicted of simple assault only if at the time of repairing the brakes:

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- (B) A sober person should have been aware of the risk of harm.**
- (C) A sober person would actually have been aware of a risk of serious injury.
- (D) He knew that serious injury would result from his conduct.

(B) Sorry, that's incorrect. Whether a sober person *should* have been aware of the risk would be relevant to prosecution for negligence, but here the standard is recklessness. Try again.



Question 8-17

Paul, a plumber, has a long pipe in the back of his truck to transport it to a repair job. It sticks out approximately 6 feet past the rear bumper. After stopping at a red light on a slight incline he attempts to move forward, but the car stalls and slips backward. The pipe goes through the windshield of a car immediately behind him, seriously injuring the driver.

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- (B) A sober person should have been aware of the risk of harm.
- (C) A sober person would actually have been aware of a risk of serious injury.**
- (D) He knew that serious injury would result from his conduct.

(C) That's correct. Under MPC § **2.08** the fact that a person is intoxicated is *irrelevant* to a prosecution requiring recklessness.



Question 8-17

Paul, a plumber, has a long pipe in the back of his truck to transport it to a repair job. It sticks out approximately 6 feet past the rear bumper. After stopping at a red light on a slight incline he attempts to move forward, but the car stalls and slips backward. The pipe goes through the windshield of a car immediately behind him, seriously injuring the driver.

Mike, a mechanic, fixed the brakes the week before. He was drunk at the time and didn't properly repair the brakes. Mike could be convicted of simple assault only if at the time of repairing the brakes:

- (A) Mike was actually aware of the risk of harm
- (B) A sober person should have been aware of the risk of harm.
- (C) A sober person would actually have been aware of a risk of serious injury.
- (D) He knew that serious injury would result from his conduct.**

(D) Sorry, that's incorrect. Simple assault doesn't require **knowledge** that injury would result; it only requires recklessness.



Question 8-18

Richard is a violinist. Sam is his roommate. Richard and Sam have a disagreement over who is supposed to pay the rent. While Richard is gone one day, Sam takes Richard's violin to a pawnshop and pawns it. Richard arrives home at 6:00 with an important solo concert to play that night. Sam isn't home.

If Richard broke into the pawnshop to retrieve his violin, his conduct would constitute burglary. Richard could successfully plead the affirmative defense of necessity:

- (A) Unless he were negligent in bringing about the conditions allegedly requiring his conduct.
- (B) Unless he were reckless in bringing about the conditions allegedly requiring his conduct.
- (C) So long as the harm avoided outweighed the harm caused by his conduct.
- (D) Only if he could prove that the danger was imminent.



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(B) Unless he were reckless in bringing about the conditions allegedly requiring his conduct.

(C) So long as the harm avoided outweighed the harm caused by his conduct.

(D) Only if he could prove that the danger was imminent.

(A) Sorry, that's incorrect. Under the MPC, necessity is still a defense, even if one is negligent in producing the conditions that create the necessity.



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Question 8-18

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- (D) Only if he could prove that the danger was imminent.

(B) Sorry, that's incorrect. Under the MPC, necessity is still a defense, even if one is negligent in producing the conditions that create the necessity.



Question 8-18

Richard is a violinist. Sam is his roommate. Richard and Sam have a disagreement over who is supposed to pay the rent. While Richard is gone one day, Sam takes Richard's violin to a pawnshop and pawns it. Richard arrives home at 6:00 with an important solo concert to play that night. Sam isn't home.

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- (A) Unless he were negligent in bringing about the conditions allegedly requiring his conduct.
- (B) Unless he were reckless in bringing about the conditions allegedly requiring his conduct.
- (C) So long as the harm avoided outweighed the harm caused by his conduct.**
- (D) Only if he could prove that the danger was imminent.

(C) That's correct. The MPC permits the defense of necessity even where the actor is at fault in bringing about the conditions that create the necessity.



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Question 8-18

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- (A) Unless he were negligent in bringing about the conditions allegedly requiring his conduct.
- (B) Unless he were reckless in bringing about the conditions allegedly requiring his conduct.
- (C) So long as the harm avoided outweighed the harm caused by his conduct.
- (D) Only if he could prove that the danger was imminent.**

(D) Sorry, that's incorrect. Imminence (more accurately, that the defendant's conduct is "immediately necessary") is required if one is using self-defense (or defense of others), but not for the general defense of necessity.



Question 8-19

In a jurisdiction that has adopted the Model Penal Code, a defendant can be found not guilty by reason of insanity if he

- (A) Lacked the capacity to distinguish right from wrong.
- (B) Was unable to control his actions as a result of some mental defect.
- (C) Lacked the capacity to distinguish right from wrong, was unable to control his actions as a result of some mental defect, or was totally incapable of realizing what he was doing.
- (D) Acted out of terror as a result of a threat of substantial physical harm.



Question 8-19

In a jurisdiction that has adopted the Model Penal Code, a defendant can be found not guilty by reason of insanity if he

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- (D) Acted out of terror as a result of a threat of substantial physical harm

(A) is not the best answer because it is incomplete.



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- (C) Lacked the capacity to distinguish right from wrong, was unable to control his actions as a result of some mental defect, or was totally incapable of realizing what he was doing.
- (D) Acted out of terror as a result of a threat of substantial physical harm

(B) is not the best answer because it is incomplete.



Question 8-19

In a jurisdiction that has adopted the Model Penal Code, a defendant can be found not guilty by reason of insanity if he

- (A) Lacked the capacity to distinguish right from wrong.
- (B) Was unable to control his actions as a result of some mental defect.
- (C) Lacked the capacity to distinguish right from wrong, was unable to control his actions as a result of some mental defect, or was totally incapable of realizing what he was doing.**
- (D) Acted out of terror as a result of a threat of substantial physical harm

(C) The Model Penal Code recognizes all three of these conditions as acceptable for an insanity defense.



Question 8-19

In a jurisdiction that has adopted the Model Penal Code, a defendant can be found not guilty by reason of insanity if he

- (A) Lacked the capacity to distinguish right from wrong.
- (B) Was unable to control his actions as a result of some mental defect.
- (C) Lacked the capacity to distinguish right from wrong, was unable to control his actions as a result of some mental defect, or was totally incapable of realizing what he was doing.
- (D) Acted out of terror as a result of a threat of substantial physical harm**

(D) is incorrect because Option D describes the defense of duress, not insanity.



Question 8-20

A criminal defendant must be capable of understanding the criminal proceedings and effectively assisting her lawyer because

- (A) If she can't, it violates her constitutional right to a fair trial.
- (B) If she can't, she was likely unable to comprehend the nature of her crime at the time she committed it.
- (C) She must appear as a witness in her own defense.
- (D) She must tell her lawyer when to make objections.



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- (A) If she can't, it violates her constitutional right to a fair trial.**
- (B) If she can't, she was likely unable to comprehend the nature of her crime at the time she committed it.
- (C) She must appear as a witness in her own defense.
- (D) She must tell her lawyer when to make objections.

(A) This is the standard for competency to stand trial, which is constitutionally required.



Question 8-20

A criminal defendant must be capable of understanding the criminal proceedings and effectively assisting her lawyer because

- (A) If she can't, it violates her constitutional right to a fair trial.
- (B) If she can't, she was likely unable to comprehend the nature of her crime at the time she committed it.**
- (C) She must appear as a witness in her own defense.
- (D) She must tell her lawyer when to make objections.

(B) is incorrect because “competency to stand trial” and “insanity at the time the crime was committed” are examined separately.



Question 8-20

A criminal defendant must be capable of understanding the criminal proceedings and effectively assisting her lawyer because

- (A) If she can't, it violates her constitutional right to a fair trial.
- (B) If she can't, she was likely unable to comprehend the nature of her crime at the time she committed it.
- (C) She must appear as a witness in her own defense.**
- (D) She must tell her lawyer when to make objections.

(C) misstates the law – a defendant need not appear as a witness.



Question 8-20

A criminal defendant must be capable of understanding the criminal proceedings and effectively assisting her lawyer because

- (A) If she can't, it violates her constitutional right to a fair trial.
- (B) If she can't, she was likely unable to comprehend the nature of her crime at the time she committed it.
- (C) She must appear as a witness in her own defense.
- (D) She must tell her lawyer when to make objections.**

(D) is incorrect – usually the lawyer will use her judgment to determine when to object.



Question 8-21

Q goes to a bar and orders a number of virgin daiquiris. Unbeknownst to him, the bartender makes them with alcohol. Q, who never drinks, becomes quite drunk and batters V. On the battery charge, Q will likely be found

- (A) Guilty, because intoxication is not a defense.
- (B) Guilty, because a reasonable person would have known that the drinks contained alcohol.
- (C) Not guilty, because involuntary intoxication is a defense.
- (D) Guilty, because battery is a strict liability crime.



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- (D) Guilty, because battery is a strict liability crime.

(A) is incorrect because involuntary intoxication is a defense.



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- (B) Guilty, because a reasonable person would have known that the drinks contained alcohol.**
- (C) Not guilty, because involuntary intoxication is a defense.
- (D) Guilty, because battery is a strict liability crime.

(B) is not the best answer because no such reasonableness standard is required for involuntary intoxication.



Question 8-21

Q goes to a bar and orders a number of virgin daiquiris. Unbeknownst to him, the bartender makes them with alcohol. Q, who never drinks, becomes quite drunk and batters V. On the battery charge, Q will likely be found

- (A) Guilty, because intoxication is not a defense.
- (B) Guilty, because a reasonable person would have known that the drinks contained alcohol.
- (C) Not guilty, because involuntary intoxication is a defense.**
- (D) Guilty, because battery is a strict liability crime.

(C) Voluntary intoxication is not a valid defense, but involuntary intoxication can be a defense to any crime, equivalent to temporary insanity.



Question 8-21

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- (A) Guilty, because intoxication is not a defense.
- (B) Guilty, because a reasonable person would have known that the drinks contained alcohol.
- (C) Not guilty, because involuntary intoxication is a defense.
- (D) Guilty, because battery is a strict liability crime.**

(D) is incorrect because battery is not a specific intent crime.



Question 8-22

A commits burglary because B threatens to sink A's yacht if A does not comply. Charged with burglary, A will likely be found

- (A) Guilty, because duress is not an available defense to burglary.
- (B) Not guilty, because under duress A could not have formed the requisite specific intent.
- (C) Not guilty, because A was acting under duress.
- (D) Guilty, because a threat to property is insufficient for a duress defense.



Question 8-22

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- (A) Guilty, because duress is not an available defense to burglary.**
- (B) Not guilty, because under duress A could not have formed the requisite specific intent.
- (C) Not guilty, because A was acting under duress.
- (D) Guilty, because a threat to property is insufficient for a duress defense.

(A) is incorrect because duress is available for all crimes except murder and manslaughter.



Question 8-22

A commits burglary because B threatens to sink A's yacht if A does not comply. Charged with burglary, A will likely be found

- (A) Guilty, because duress is not an available defense to burglary.
- (B) Not guilty, because under duress A could not have formed the requisite specific intent.**
- (C) Not guilty, because A was acting under duress.
- (D) Guilty, because a threat to property is insufficient for a duress defense.

(B) is incorrect because duress does not negate intent, it is a defense to the crime.



Question 8-22

A commits burglary because B threatens to sink A's yacht if A does not comply. Charged with burglary, A will likely be found

- (A) Guilty, because duress is not an available defense to burglary.
- (B) Not guilty, because under duress A could not have formed the requisite specific intent.
- (C) Not guilty, because A was acting under duress.**
- (D) Guilty, because a threat to property is insufficient for a duress defense.

(C) is incorrect because duress requires imminent threat of serious bodily harm or death to oneself or a third party that the defendant reasonably believed would be carried out.



Question 8-22

A commits burglary because B threatens to sink A's yacht if A does not comply. Charged with burglary, A will likely be found

- (A) Guilty, because duress is not an available defense to burglary.
- (B) Not guilty, because under duress A could not have formed the requisite specific intent.
- (C) Not guilty, because A was acting under duress.
- (D) Guilty, because a threat to property is insufficient for a duress defense.**

(D) Duress requires imminent threat of serious bodily harm or death to oneself or a third party which the defendant reasonably believed would be carried out. Property damage threats are insufficient.



Question 8-23

In a busy restaurant, A tells B, “If you don’t pay this debt by 5:00 tomorrow, I’m coming to your house to cut your arms off.” B, in terror, shoots A. B is charged with murder and argues self-defense. His defense will fail because

- (A) He had a duty to retreat.
- (B) He used deadly force when deadly force was not threatened.
- (C) He was threatened with future, not imminent, harm.
- (D) He recklessly put himself.



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- (C) He was threatened with future, not imminent, harm.
- (D) He recklessly put himself.

(A) is not the best answer because even if B had retreated, and then shot A, he would not be entitled to argue self-defense.



Question 8-23

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- (A) He had a duty to retreat.
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- (C) He was threatened with future, not imminent, harm.
- (D) He recklessly put himself.

(B) is incorrect because an imminent threat of serious bodily harm is sufficient for deadly force to be justified.



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- (A) He had a duty to retreat.
- (B) He used deadly force when deadly force was not threatened.
- (C) He was threatened with future, not imminent, harm.**
- (D) He recklessly put himself.

(C) This is the best answer because a threat of harm must be imminent for self-defense to be applicable.



Question 8-23

In a busy restaurant, A tells B, “If you don’t pay this debt by 5:00 tomorrow, I’m coming to your house to cut your arms off.” B, in terror, shoots A. B is charged with murder and argues self-defense. His defense will fail because

- (A) He had a duty to retreat.
- (B) He used deadly force when deadly force was not threatened.
- (C) He was threatened with future, not imminent, harm.
- (D) He recklessly put himself.**

(D) is incorrect because one may always act reasonably in self-defense, even if one has not chosen the wisest course of action beforehand.



Question 8-24

A defendant who makes an honest but unreasonable mistake in using deadly force as self-defense against an aggressor will likely

- (A) Be charged with murder, because mistake is not acceptable when the use of deadly force is involved.
- (B) Be charged with manslaughter, because the mistake negated the required mental state for murder.
- (C) Be acquitted, because he acted in self-defense.
- (D) Be acquitted, because he had no criminal intent.



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- (A) Be charged with murder, because mistake is not acceptable when the use of deadly force is involved.**
- (B) Be charged with manslaughter, because the mistake negated the required mental state for murder.
- (C) Be acquitted, because he acted in self-defense.
- (D) Be acquitted, because he had no criminal intent.

(A) is not the best answer because mistake about the amount of necessary force will likely be sufficient to reduce the charge from murder to manslaughter.



Question 8-24

A defendant who makes an honest but unreasonable mistake in using deadly force as self-defense against an aggressor will likely

- (A) Be charged with murder, because mistake is not acceptable when the use of deadly force is involved.
- (B) Be charged with manslaughter, because the mistake negated the required mental state for murder.**
- (C) Be acquitted, because he acted in self-defense.
- (D) Be acquitted, because he had no criminal intent.

(B) This is the best answer because mistake about the amount of necessary force does not exonerate a defendant, but can be sufficient for reducing the charge from murder to manslaughter.



Question 8-24

A defendant who makes an honest but unreasonable mistake in using deadly force as self-defense against an aggressor will likely

- (A) Be charged with murder, because mistake is not acceptable when the use of deadly force is involved.
- (B) Be charged with manslaughter, because the mistake negated the required mental state for murder.
- (C) Be acquitted, because he acted in self-defense.**
- (D) Be acquitted, because he had no criminal intent.

(C) is incorrect because deadly force may only be used in self-defense if deadly force is threatened.



Question 8-24

A defendant who makes an honest but unreasonable mistake in using deadly force as self-defense against an aggressor will likely

- (A) Be charged with murder, because mistake is not acceptable when the use of deadly force is involved.
- (B) Be charged with manslaughter, because the mistake negated the required mental state for murder.
- (C) Be acquitted, because he acted in self-defense.
- (D) Be acquitted, because he had no criminal intent.**

(D) is incorrect, because the intent was to inflict serious bodily harm or death.



Question 8-25

The majority view on defense of others is that a defender may use as much force as he reasonably believes is required to protect the victim. The minority view holds that

- (A) A defender may use as much force as he reasonably believes is required, but only if he has a personal relationship to the victim.
- (B) A defender may not use any force but must summon help from a law enforcement officer.
- (C) A defender must use only non-deadly force unless he has a personal relationship to the victim.
- (D) A defender can only use that amount of force that the victim himself would be legally allowed to use.



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(A) is incorrect because today the defender need not have a personal relationship to the victim in any jurisdiction.



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(D) A defender can only use that amount of force that the victim himself would be legally allowed to use.

(B) is not the best answer because the defender may always act if reasonable, rather than waiting for police.



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- (D) A defender can only use that amount of force that the victim himself would be legally allowed to use.

(C) is incorrect because the amount of force allowed does not turn on the defender's relationship to the victim.



Question 8-25

The majority view on defense of others is that a defender may use as much force as he reasonably believes is required to protect the victim. The minority view holds that

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- (D) A defender can only use that amount of force that the victim himself would be legally allowed to use.**

(D) This is the best answer because it accurately states the minority view of imputing the V's status on the D.



Question 8-26

Quincy witnesses Abram robbing Jones, although he sees no weapon. As Abram flees from the scene he runs by Quincy, who hits Abram in the head with a golf club, killing him instantly. If charged with murder, Quincy will likely be

- (A) Convicted, because Abram did not pose an immediate threat.
- (B) Acquitted, because Abram was a fleeing felon.
- (C) Convicted, because private citizens may never use force to apprehend suspects.
- (D) Convicted, because Quincy was not correct in his belief that Abram was a felon.



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- (C) Convicted, because private citizens may never use force to apprehend suspects.
- (D) Convicted, because Quincy was not correct in his belief that Abram was a felon.

(A) This is the best answer because although Abram is a fleeing felon (he committed a robbery), Quincy has no basis for the belief that Abram is an immediate threat.



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(B) is not the best answer because Quincy has no basis for the belief that Abram is an immediate threat.



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(C) misstates the law; a citizen may use force to apprehend a fleeing felon if that felon poses an immediate threat.



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- (C) Convicted, because private citizens may never use force to apprehend suspects.
- (D) Convicted, because Quincy was not correct in his belief that Abram was a felon.**

(D) is incorrect because Quincy witnessed Abram committing robbery, which is a felony.



Question 8-27

In a jurisdiction which has adopted only the *M’Naghten* test, which of the following scenarios could provide defendant with a colorable insanity defense?

- (A) Defendant is charged with first degree murder. He is a clinically diagnosed schizophrenic and claims that demonic voices commanded him to stab the victim.
- (B) Defendant is charged with second degree murder. He claims he was enraged over the discovery of his wife’s extra-marital affair and lost control, hitting the victim with his fists and breaking his neck.
- (C) Defendant is charged with vehicular manslaughter. He is a clinically diagnosed psychotic and claims he thought he was riding a horse in an open pasture, not driving a car.
- (D) Defendant is charged with arson. He has been diagnosed as a pyromaniac, unable to control his urges to burn buildings.



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(A) is not the best answer because it suggests an acknowledgement of awareness that an act is incorrect, which is overridden by an uncontrollable urge created by mental illness. In a jurisdiction governed by the “irresistible impulse” test, this argument might be successful.



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- (D) Defendant is charged with arson. He has been diagnosed as a pyromaniac, unable to control his urges to burn buildings.

(B) is not the best answer because there is no mental disease or defect at work. At best the defendant's sudden violent outburst might save him from a first-degree premeditated murder charge.



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(C) This is the best answer because it describes the requisite state of mind to pass the *M’Naghten* test: the presence of a mental disease or defect coupled with an inability to comprehend the nature and quality of the act.



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(D) is not the best answer because it suggests an acknowledgement of awareness that an act is incorrect, which is overridden by an uncontrollable urge created by mental illness. In a jurisdiction governed by the “irresistible impulse” test, this might be successful.



Question 8-28

Kidnapping is defined as the intentional and unlawful confinement of a person with movement of that person to another location. However, a defendant is not guilty of kidnapping if

- (A) The victim is not physically restrained.
- (B) The victim does not attempt escape.
- (C) The victim is only confined for a short time.
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- (D) The defendant does not intend to confine the victim.

(A) is incorrect because physical restraint is not required; a threat is enough.



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- (B) The victim does not attempt escape.**
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(B) is incorrect because the victim need not attempt to escape.



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- (B) The victim does not attempt escape.
- (C) The victim is only confined for a short time.**
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(C) is not the best answer because any measurable confinement time can qualify.



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- (A) The victim is not physically restrained.
- (B) The victim does not attempt escape.
- (C) The victim is only confined for a short time.
- (D) The defendant does not intend to confine the victim.**

(D) For a charge of kidnapping, specific intent or substantial certainty that confinement of the victim will result is required.



Question 8-29

Mel is painting his car in his garage, surrounded by flammable chemicals. He stops for a moment to take a smoke break, sits down, and falls asleep with the cigarette in his hand. The cigarette ignites some fumes and burns the garage down. Charged with arson under most modern statutes, Mel will likely be

- (A) Convicted, because his actions were reckless, sufficient *mens rea* for arson.
- (B) Acquitted, because he did not burn down a dwelling.
- (C) Acquitted, because the garage was his own property.
- (D) Acquitted, because he did not intend to start the fire or manifest extreme disregard for the danger.



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- (C) Acquitted, because the garage was his own property.
- (D) Acquitted, because he did not intend to start the fire or manifest extreme disregard for the danger.

(A) is incorrect because recklessness is not a sufficient *mens rea* for arson.



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- (D) Acquitted, because he did not intend to start the fire or manifest extreme disregard for the danger.

(B) is incorrect because most modern statutes have eliminated the “dwelling” requirement.



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(C) is incorrect because most modern statutes have eliminated the exception for burning down one's own property.



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(D) This is the required *mens rea* for arson.



Question 8-30

Shawn and Tanya break into Umberto's house at night and are arrested and charged with burglary and conspiracy to commit burglary. At trial, the prosecutor presents evidence that they had planned the break-in, but does not successfully demonstrate what they intended to do once inside. Shawn and Tanya will likely be

- (A) Convicted, because agreement and substantial step is enough for conspiracy, even if the crime is not committed.
- (B) Convicted, because they broke into a dwelling at night and therefore an inherently dangerous situation was created.
- (C) Acquitted, because the conspiracy merged with the burglary once it was actually committed.
- (D) Acquitted, because the prosecution failed to prove agreement or intent to commit the substantive crime of burglary.



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- (B) Convicted, because they broke into a dwelling at night and therefore an inherently dangerous situation was created.
- (C) Acquitted, because the conspiracy merged with the burglary once it was actually committed.
- (D) Acquitted, because the prosecution failed to prove agreement or intent to commit the substantive crime of burglary.

(A) is incorrect because the agreement must include the *mens rea* of a crime as well as the *actus reus*.



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- (D) Acquitted, because the prosecution failed to prove agreement or intent to commit the substantive crime of burglary.

(B) is incorrect because it describes a factor in determining the degree of burglary, not an element of the crime.



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- (D) Acquitted, because the prosecution failed to prove agreement or intent to commit the substantive crime of burglary.

(C) is incorrect because conspiracy does not merge with burglary and could be a separate charge.



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- (D) Acquitted, because the prosecution failed to prove agreement or intent to commit the substantive crime of burglary.**

(D) This is the best answer, because the prosecution must prove all elements, and an element of burglary is intent to commit a felony or larceny which the facts state were not demonstrated.



END

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