

No. _____

Criminal Law
Final Examination
Professor Thaddeus Hoffmeister
Fall Semester 2015

Place your examination number at the top of this page. In addition, place your examination number on your scantron sheet. Do not include your name or personal information anywhere on this exam or your scantron sheet. This exam is **50%** of your final grade and consists of two parts.

PART I has 60 multiple choice questions and PART II has 2 short essay questions. You must limit your essay answers to 3900 characters per question. Also, you may only use 30 minutes for each question. You have 3-hours to complete this CLOSED BOOK exam.

Read the exam questions carefully and attempt to answer each directly. If there are ambiguities in the questions, discuss the ambiguity and how it impacts your answer. Your answers should be based on the assigned readings and the material covered in this class. Clear, well organized, and concise expression will be rewarded.

1. Maggie gives Nick money so that he will give her a key to the apartment of a wealthy bachelor. Nick manages the front desk of the bachelor's apartment complex. Nick believes that Maggie will use the key to sneak into the bachelor's apartment and steal his valuable collection of Air Jordans. Maggie, however, has a different plan. Maggie wants to play the role of good samaritan and return the key to the bachelor in hopes that they will become "fast friends." On the day in question, everything goes according to plan and the bachelor invites Maggie into his apartment. Shortly after entering the apartment, Maggie attempts to convince the bachelor to invest in a ponzi scheme. The bachelor quickly realizes that Maggie is a hustler and throws her out of his apartment. However, before leaving, Maggie is able to pilfer one of the bachelor's gold cufflinks.

If Maggie is later arrested for her actions and she implicates Nick, what charges will he face at Common Law?

- A. Attempted false pretenses
- B. Conspiracy to commit burglary
- C. Larceny, conspiracy to commit burglary, and conspiracy to commit false pretenses
- D. Theft of the key and conspiracy to commit theft of the key

2. An omission or a failure to act can create criminal culpability if

- I. A statute or other law creates a duty to act.
- II. The defendant had a duty under contract.
- III. The defendant could have assisted without harm to himself.
- IV. The defendant created the risk to the victim.

- A. I only
- B. II and III
- C. II, III, and IV

D. I, II, and IV

3. While in a jewelry store, Maggie starts a fire in a wastebasket. Maggie knows that this fire will activate the store's automatic sprinkler system, which, in turn, will extinguish the fire. Maggie is using the fire as a diversion tactic so she can steal an expensive necklace.

Shortly after starting the fire, Maggie was apprehended before she can get her hands on the necklace. The fire did not cause any serious damage. However, the fire did char the wall next to the wastebasket and cause the paint to peel. The local statute in the jurisdiction adheres to the common law; however, it does extend the crime of arson to buildings other than dwellings.

If Maggie is charged with arson, she is most likely to be found

- A. Not guilty. Maggie did not intend to burn the building.
- B. Not guilty. Maggie's act was not sufficient for arson only attempted arson.
- C. Guilty, because Maggie's conduct demonstrated the requisite state of mind for the crime.
- D. Guilty, because Maggie started the fire during the act of perpetrating another felony.

4. Upset about receiving a stale bagel, Nick sets off a toy smoke grenade in Big Apple bakery that fills the shop with fumes. Nick then immediately leaves the bagel shop. In his hurry to leave, Nick runs past Andrea, passing just inches from her face. Andrea is taken aback and she stumbles and falls on the cobblestone road which had become slick from ice. Nick was quickly apprehended and charged with disorderly conduct for his actions in the store. He was also charged with assault for his actions with regard to Andrea.

Which of the following represents Nick's best defense for the assault charge?

- A. The underlying offense (disorderly conduct) was a misdemeanor rather than a felony.
- B. Nick made no physical contact with Andrea.

- C. Andrea's injury was not a foreseeable consequence of Nick's criminal activity.
- D. Nick lacked the requisite mens rea.

5. After he was turned down for a promotion, a man decided to murder his boss. The man purchased a gun for this purpose and then invited his boss to his house for dinner. However, the day before the boss arrived at the man's house, the man changed his mind and left the gun under his mattress. The man was subsequently charged with attempted murder.

Should the man be convicted or acquitted?

- A. The man should be acquitted, because the boss was unaware of the man's motives.
- B. The man should be acquitted, because his actions were not sufficient to constitute an attempt.
- C. The man should be convicted, because a person is presumed to intend the natural and probable consequences of his acts.
- D. The man should be convicted, because he purchased the gun with the intent to kill his boss.

6. An elderly man's house was frequently the target of vandalism by local teenagers. Tired of having to repair the damage they did to his home, the man decided to lie and wait for the teenagers on the night before Halloween, when they often vandalized his home. True to form, teenagers in costume appeared and began spray-painting the man's house. Wanting to scare the teenagers, the man fired a shotgun over their heads. Some of the shotgun pellets went through the top of a tall hat worn by one of the teenagers, who was dressed as Abraham Lincoln, but the pellets did not harm him. The man was subsequently arrested.

What, if any, crime did the man commit?

- A. Mayhem

- B. Battery
- C. Attempted murder, because a shotgun is an inherently dangerous weapon
- D. No crime

7. Maggie wanted to get back at her life-long enemy Evelyn. Thus, one night Maggie sneaks into Evelyn's bedroom and plunges a dagger into her chest. Unbeknownst to Maggie, Evelyn had died earlier that night in her sleep. Maggie cannot be successfully convicted of murder because the prosecution cannot prove

- A. Actus reus
- B. Mens rea
- C. Causation
- D. Result

8. On Monday, three men agreed to rob a convenience store that Friday morning. The next day, one of the men, without notifying the other two, stole a truck to be used as the getaway vehicle in the robbery. The day after that, the man was arrested by the police for parole violations and was placed in jail without bail. Nevertheless, the other two men proceeded with their plan to rob the store. One of the other men, however, was a police informant who notified the police of the impending robbery. The police waited at the store and arrested the remaining man as he entered the store. Conspiracy in this jurisdiction requires proof of an overt act in addition to an agreement.

Of which of the following crimes may the man who stole the truck properly be convicted?

- A. Theft of the truck only.
- B. Theft and either conspiracy to commit robbery or attempted robbery, but not both.

C. Theft and attempted robbery only.

D. Theft, conspiracy to commit robbery, and attempted robbery.

9. A male and female teenager wanted to go to a movie, but neither had enough money. They went into a local coffee shop and saw that there was a tip jar on the counter. The female teenager said, "I bet there's enough money in the tip jar for us to go to a movie and get some pizza afterwards." The male teenager agreed and suggested that the female teenager create a diversion so that he could take the tip jar. The female teenager agreed and said she would meet the male teenager a few blocks away. The female teenager ordered a coffee and when it came, she purposefully knocked it over onto the barista. While the female teenager helped the barista clean up, the male teenager grabbed the tip jar and ran out of the coffee shop. As defined in this jurisdiction, the crime of conspiracy requires an overt act in furtherance of the conspiracy.

If prosecuted, the female teenager should be found guilty of which of the following?

A. Conspiracy, but not larceny.

B. Larceny, but not conspiracy.

C. Both larceny and conspiracy.

D. Only larceny, because the conspiracy will merge into the completed crime.

10. A student broke into a professor's home in order to look at examination questions. The questions were locked in a drawer, and the student could not find them. The student believed that looking at examination questions was a crime, but in this belief he was mistaken.

Charged with burglary, the student should be

A. Acquitted, because the crime was incomplete and he has not been charged with attempt.

- B. Acquitted, because what he intended to do when he broke in was not a crime.
- C. Convicted, because he had the necessary mental state and committed the act of breaking and entering.
- D. Convicted, because factual impossibility is not a defense.

11. A woman promised to pay \$10,000 to a hit man if he would kill her neighbor in any manner that could not be traced to her. The hit man bought a gun and watched the neighbor's house for an opportunity to shoot him. One evening, unaware of the hit man's presence, the neighbor tripped as he was walking toward his house, falling and hitting his head against the front steps. Believing that the neighbor was unconscious, the hit man ran over and shot him twice in the chest.

When the woman learned of the neighbor's death, she paid the hit man \$10,000. A medical examiner determined that the neighbor was already dead when the hit man shot him.

The crimes below are listed in descending order of seriousness.

What is the most serious crime for which the woman properly could be convicted?

- A. Murder
- B. Attempted murder
- C. Conspiracy
- D. Solicitation

12. At 11:00 p.m., a husband and wife were accosted in the entrance to their apartment building by the defendant, who was armed as well as masked. The defendant ordered the couple to take him into their apartment. After they entered the apartment, the defendant forced the wife to bind and gag her husband and then to open a safe which contained a diamond necklace. The defendant then tied the wife up and fled with the necklace. He was apprehended by apartment building security guards. Before the

guards could return to the apartment, but after the defendant was arrested, the husband, straining to free himself, suffered a massive heart attack and died.

The defendant is guilty of

- A. Burglary, robbery, and murder.
- B. Robbery and murder only.
- C. Burglary and robbery only.
- D. Robbery only.

13. Maggie operates a pawn shop. In order to increase revenue, Maggie starts accepting stolen merchandise to sell to unsuspecting customers. Police get wind of Maggie's operation and send in Nick a world re-known jewelry thief in order to set-up a sting. The police give Nick two necklaces that had been previously stolen but not yet returned to their owners. The police then tell Nick to take the necklaces to Maggie and pawn them. Maggie, who believes the necklaces are stolen, buys them from Nick.

Under the MPC, Maggie is guilty of

- A. Receipt of stolen property, because the necklaces had not been returned to their owners.
- B. Attempted receipt of stolen property.
- C. No crime. Her mistake as to the legal status of the necklaces constitutes a mistake of law, which is a defense to attempt.
- D. No crime. The necklaces no longer had "stolen" status.

14. A police officer patrolling at 2 a.m. heard a gunshot and saw a figure leap over a hedge in front of a condominium. Although it was dark, the officer could see that he was carrying a briefcase in one hand and a gun in the other. Just then, someone limped out of the building and pointed at the figure, yelling, "He shot me!" The officer then twice commanded the figure to stop and fired three warning shots in the air. The

person kept running, so the officer fired a fourth shot, bringing the person down. The person was later identified as a robber.

If the officer is charged with battery, he should be found:

- A. Not guilty, because he had a right to use deadly force in order to stop a fleeing felon posing a threat of serious bodily harm to others.
- B. Not guilty. A police officer cannot commit a crime while acting within the scope of his duty.
- C. Guilty, because a police officer does not have the right to use deadly force to prevent a getaway.
- D. Guilty, because he did not see the robber steal anything.

15. Three men agreed to rob a restaurant in a nearby town and bought pistols, ski masks, and gloves for that purpose. Prior to entering the restaurant, the man who was to be the lookout had a change of heart and wanted to call off the robbery. The other two men refused so the lookout threw down his gun and went to the nearby bus station to catch a bus back to his home. The remaining two men went into the restaurant and robbed it and its patrons. A patrol car happened by as they were leaving, and one of the men seized one of the customers as a hostage. In the exchange of gunfire with the police, a police officer and the hostage were killed. Both men escaped initially, but one of them was later captured and charged with robbery and murder. However, because of illegal police conduct in connection with his arrest and subsequent confession, all evidence connecting him with the charged crimes was suppressed and the charges dismissed.

If the lookout is also arrested and charged with murder, which of the following is his strongest defense?

- A. He did not have the requisite mental state to be convicted of murder.
- B. He did not physically participate in the events that led to the killings of the police officer and the hostage.

- C. He had withdrawn from the plan before the two others began the robbery that led to the killings.
- D. He cannot be prosecuted for a crime as to which the principals have not been convicted.

16-18. A Criminal statute in Ohio makes it a major misdemeanor to sell firearms to anyone under 18. Violators are strictly liable for the crime. Nick's Gun store has a strict age verification policy prior to making any gun sale. Evelyn works at Nick's store, but regularly fails to i.d. customers. Nick knows about Evelyn's transgressions but allows her to keep working at the store because she is family. One Friday afternoon when it is close to quitting time, Evelyn decides to get the weekend started early and drinks a six pack of beer while behind the counter. This in turn causes her to pass out. Al, who is 14, comes into the store and sees Evelyn's condition. He leaves \$50 and takes a \$500 handgun. Al has misread the price tag and thinks that he is making payment in full for the gun.

16. If Evelyn is arrested and charged for violating the statute. She will likely be found

- A. Guilty because the statute makes this a strict liability crime.
- B. Guilty because voluntary intoxication is not a defense to this crime.
- C. Not guilty because she lacked the requisite intent.
- D. Not guilty. She did not perform the actus reus.

17. If Al is charged with larceny his best defense is

- A. He was mistaken on the price, which negated the trespassory element.
- B. As a minor, he was legally incapable of forming the necessary intent.
- C. He was under duress because his friend Gus told him if he didn't get a gun, Gus would wreck his car.
- D. The gun did not work and therefore was not worth \$5, let alone \$500.

18. If Nick is arrested and charged with violating the gun sale statute, he will likely be
- A. Acquitted, because he was unaware of the existence of the law.
 - B. Convicted, because he knew of Evelyn's problem with alcohol and failed to supervise Evelyn which led to the violation.
 - C. Convicted, because as the owner of the store he is responsible for the "sale."
 - D. Acquitted, because the statute only imposes liability for the act of a sale.

19. A man and woman had been dating for a few years. One day, the man decided to murder his father, in order to obtain the inheritance that was promised him under the father's will. The man asked the woman to assist him in the murder, and the woman agreed. The woman subsequently purchased a knife for use in the murder. However, the following day, the woman changed her mind. She called the man and told him that she would not participate in the murder. She also returned the recently purchase knife to the store. She did not call the police. The man later murdered his father and was apprehended for the crime. The man's criminal trial concluded with a finding of not guilty.

Is the woman guilty of murder as the man's accomplice?

- A. Yes, because she did not thwart the murder.
- B. Yes, because she did not effectively withdraw.
- C. No. The man was found not guilty.
- D. No, because she effectively withdrew from participation in the crime.

20. A drug dealer agreed with another individual to purchase heroin from the individual in order to sell it on a city street corner. Unknown to the drug dealer, the other individual was an undercover police officer whose only purpose was to arrest

distributors of drugs. The drug dealer made a down payment for the heroin and agreed to pay the remainder after he sold it on the street. As soon as the undercover officer handed over the heroin, other officers moved in and arrested the dealer.

The jurisdiction follows the common law approach to conspiracy.

Could the dealer properly be convicted of conspiring to distribute drugs?

- A. No. There was no overt act.
- B. No. There was no plurality of agreement.
- C. Yes, because neither an overt act nor plurality of agreement was required at common law.
- D. Yes, because the dealer believed all the elements of conspiracy were present and cannot take advantage of a mistake of fact or law.

21. A foreign diplomat discovered that a small person could enter a jewelry store by crawling through an air vent. The diplomat became friendly with a woman in a bar whom he believed was small enough to crawl through the air vent. Without telling her that he was a diplomat, he explained how she could get into the jewelry store. She agreed to help him burglarize the store. Someone overheard their conversation and reported it to the police. Shortly thereafter, the police arrested the diplomat and the woman. Both were charged with conspiracy to commit burglary.

Before trial, the diplomat moved to dismiss the charge against him on the ground that he was entitled to diplomatic immunity. The court granted his motion. The woman then moved to dismiss the conspiracy charge against her.

The jurisdiction has adopted the Model Penal Code version of conspiracy.

Should the woman's motion to dismiss the conspiracy charge against her be granted?

- A. No. The diplomat's defense does not negate any element of the crime.
- B. No. The woman was not aware of the diplomat's status.
- C. Yes, because a conspiracy requires two guilty participants.

D. Yes, because but for the diplomat's conduct, no conspiracy would have occurred.

22. A woman offered to pay her friend one-third of the stolen proceeds if the friend would drive the getaway car to be used in a bank robbery. The friend agreed but made the woman promise not to hurt anyone during the robbery.

The woman then drove to a sporting goods store, where she explained to the store owner that she needed a small firearm for use in a bank robbery. The store owner responded that he would charge extra because the woman was so unwise as to confide her unlawful plans for using the weapon, and he sold her a handgun at four times the regular price.

During the robbery, the woman used the gun to threaten a bank teller into handing over the money. The gun discharged by accident and killed a bank customer.

At common law, who in addition to the woman could properly be convicted of murder in the death of the customer?

- A. Both the friend and the store owner.
- B. Neither the friend nor the store owner.
- C. Only the friend.
- D. Only the store owner.

23. A young man and an older man planned to break into a federal government office to steal food stamps. The young man telephoned a woman one night and asked whether the woman wanted to buy some "hot" food stamps. The woman, who understood that "hot" meant stolen, said, "Sure, bring them right over." The young man and the older man then successfully executed their scheme. That same night they delivered the food stamps to the woman, who bought them for \$500. The woman did not ask when or by whom the stamps were stolen. All three were arrested. The woman was brought to trial on a charge of conspiracy to steal food stamps.

On the evidence stated, the woman should be found

A. Guilty, because when a new confederate enters a conspiracy already in progress, she becomes a party to it.

B. Guilty, because she knowingly and willingly aided and abetted the conspiracy and is chargeable as a principal.

C. Not guilty. Although the woman knew the stamps were stolen, she neither helped to plan nor participated or assisted in the theft.

D. Not guilty. The young man and the older man had not been convicted of or charged with conspiracy. Thus, the woman cannot be guilty of conspiracy by herself.

24. A woman's boyfriend came to her apartment with an expensive dress and handed it to the woman as a gift. The woman asked her boyfriend how he obtained the dress and the boyfriend responded, "From Saint Nick." After the boyfriend left, the woman put the dress on and admired how good it looked on her in the mirror.

The next day, the woman read online about a burglary at the home of a well known celebrity. One of the items stolen was an expensive dress. This news item sparked the woman's curiosity. She subsequently inspected the dress and discovered that the celebrity's unique initials were embroidered inside the dress. Nevertheless, the woman decided to keep the dress believing that the celebrity could afford another one.

Which of the following best describes the crime or crimes, if any, the woman has committed?

- A. Accessory after the fact to burglary
- B. Larceny and accessory after the fact to burglary
- C. Receipt of stolen property
- D. The woman has not committed any crime

25. While browsing in a clothing store, the defendant decided to take a purse without paying for it. She placed the purse under her coat and took a couple of steps toward the exit. She then realized that a sensor tag on the purse would set off an alarm. She placed the purse near the counter from which she had removed it.

The defendant has committed

- A. No crime. The purse was never removed from the store.
- B. No crime, because she withdrew from her criminal enterprise.
- C. Only attempted larceny, because she intended to take the purse out of the store.
- D. Larceny, because she took the purse from its original location and concealed it with the intent to steal.

26. While at a party, Maggie noticed a man (Nick) wearing an expensive gold watch. Maggie wanted the watch but didn't think she could take it from Nick without a fight so she decided to put a "roofie" in his drink. Once Nick passed out, Maggie removed the watch from the Nick's wrist and left the party. When the party ended and Nick woke up he realized that his watch was gone. Nick was distraught because the watch belonged to his father. In getting ready for the party, Nick snuck into his father's bedroom and surreptitiously removed the watch. Maggie is eventually prosecuted for robbery for taking the watch.

At trial, should Maggie be found guilty?

- A. Yes, because she used force to permanently deprive the man of the watch he was wearing.
- B. Yes, because the taking took place in a dwelling.
- C. No. The watch belonged to the man's father and the man did not have permission to use it.
- D. No, because the man was unconscious when his watch was taken.

27. A homeowner decided to destroy his home by fire in order to collect the insurance. A neighbor's house was located a short distance from the homeowner's home. The homeowner knew that there was a strong wind blowing towards the neighbor's home; while he did not want to burn the neighbor's home, he nevertheless set fire to his own

home. The fire department was unable to save the homeowner's house. They did manage to put out the fire moments before it spread to the neighbor's home, which suffered damage from smoke and soot. The jurisdiction's arson statute covers burning one's own dwelling as well as the dwelling of another, but is otherwise unchanged from the common law.

If the homeowner is charged with attempted arson of the neighbor's home, he will most likely be found:

- A. Not guilty, because he did not intend to burn the neighbor's house.
- B. Not guilty, because the fire was put out before any part of the neighbor's home was burned.
- C. Guilty, because he intended to burn his own home and took a substantial step toward burning the neighbor's house.
- D. Guilty, because he acted with malice and took a substantial step toward burning the neighbor's house.

28. A woman was sitting on a bench in the park reading a book. A father and his six year old daughter sat down on the other end of the park bench. A bee suddenly stung the little girl, who was very allergic to bees. The father panicked because he could not find the bee sting antidote, EpiPen, in the bag the mother had packed. The woman ran to a nearby playground and asked if anyone there had an EpiPen. A nanny told him that she did have one but that she needed it in case the little boy she cared for was stung by a bee. The woman explained that a little girl had just been stung and could go into shock and die without a shot soon. However, the nanny refused to hand over the EpiPen so the woman shoved the nanny to the ground, grabbed the EpiPen from the nanny's diaper bag, and injected the little girl, saving her life.

Should a jury convict the woman of battery?

- A. Yes, because the woman was not related to the little girl.
- B. Yes, because she intentionally applied unlawful force to the nanny's person.

- C. No, because the nanny, as a caregiver, owes a special duty to others and her inaction prevents her recovery.
- D. No, because the woman reasonably believed that shoving the nanny was necessary to save the little girl's life.

29. A married couple was waiting in line for tickets to a movie. A man waiting ahead of them was quite overweight. The husband made several comments to his wife about how fat the man was, and the man overheard. He confronted the husband and demanded an apology. The husband refused. The man again demanded an apology and threatened to punch the wife if he did not get one. To show he was serious, the man pushed the wife and waved a closed fist in her face. Fearing that his wife would suffer a heart attack from shock, the husband reached down, grabbed a nearby pipe lying on the ground, and beat the man in the head with it repeatedly. The man died from head injuries.

If the husband is prosecuted for criminal homicide, should the court instruct the jury on voluntary manslaughter in addition to murder?

- A. No, because the husband clearly intended to kill or at least seriously injure the man.
- B. No, because the husband was the initial wrongdoer, having provoked the man with his rude comments.
- C. Yes, because the jury could reasonably conclude that the husband lacked the intent to kill or injure and was merely engaged in reckless conduct.
- D. Yes, because the jury could find that the husband unreasonably, but honestly, believed that deadly force was needed to defend his wife.

30. The defendant was an alcoholic who frequently experienced auditory hallucinations that commanded him to engage in bizarre and sometimes violent behavior. He generally obeyed their commands. The hallucinations appeared more frequently when he was intoxicated, but he sometimes experienced them when he had not been drinking. After the defendant had been drinking continuously for a three day period, an

elderly woman began to reproach him about his drunken condition, slapping him on the face and shoulders as she did so. The defendant believed that he was being unmercifully attacked and heard the hallucinatory voice telling him to strangle his assailant. He did so, and she died.

If the defendant is charged with second degree murder, his best chance of acquittal would be to rely on a defense of

- A. intoxication.
- B. lack of malice aforethought
- C. self-defense
- D. insanity

31. In a criminal trial, the evidence showed that the defendant's neighbor tried to kill the defendant by stabbing him. The defendant ran to his room, picked up a gun, and told his neighbor to back off. The neighbor did not, but continued her attack and stabbed him in the arm. The defendant then shot the neighbor twice. The neighbor fell to the floor and lay quietly moaning. After a few seconds, the defendant fired a third shot into the neighbor. The jury found that the neighbor died instantly from the third shot and that the defendant was no longer in fear of being attacked by her.

The defendant could properly be convicted of which of the following crimes, if any?

- A. Attempted murder only.
- B. Manslaughter only.
- C. Murder or manslaughter.
- D. No degree of criminal homicide.

32. Bill and Chuck hated Vic and agreed to start a fight with Vic and, if the opportunity arose, to kill him. Bill and Chuck met Vic in the street outside a bar and began to push him around. Ray and Sam, who also hated Vic, stopped to watch. Ray threw Bill a knife. Sam told Bill, "Kill him." Chuck held Vic while Bill stabbed and killed him.

On a charge of murdering Vic, Sam is

A. Not guilty. His words did not create a “clear and present danger.”

B. Not guilty. Mere presence and oral encouragement, regardless of whether Sam has the requisite intent, will not make him guilty as an accomplice.

C. Guilty, because, with the intent to have Bill kill Vic, he shouted encouragement to Bill.

D. Guilty, because he aided and abetted the murder through his mere presence plus his intent to see Vic killed.

33. The defendant, while eating in a restaurant, noticed that a departing customer at the next table had left a five-dollar bill as a tip for the waitress. The defendant reached over, picked up the five-dollar bill, and put it in his pocket. As he stood up to leave, another customer who had seen him take the money ran over to him and hit him in the face with her umbrella. Enraged, the defendant choked the customer to death.

The defendant is charged with murder. He requests the court to charge the jury that they can find him guilty of voluntary manslaughter rather than murder. The defendant’s request should be

A. Granted, because the jury could find that the defendant acted recklessly and not with the intent to cause death or serious bodily harm.

B. Granted, because the jury could find that being hit in the face with an umbrella constitutes adequate provocation.

C. Denied, because the evidence shows that the defendant intended to kill or to cause serious bodily harm.

D. Denied, because the evidence shows that the defendant provoked the assault on himself by his criminal misconduct.

34. A wife was extremely hot tempered and very possessive of her husband. She frequently flew into a hysterical rage if he even looked at another woman. One evening the husband and wife were in a bar when they began arguing. Wanting to hurt the wife, and knowing that it would infuriate her, the husband asked a young woman, who was sitting at the next table, to dance with him. The young woman accepted, but as she and the husband began to dance, the wife became enraged and ran at them, striking the husband over the head with a wine bottle. Later that night, the husband died of a head

injury resulting from the blow. The wife was charged with murder, but her lawyer argued that the jury should be given a charge of voluntary manslaughter.

Should the wife's lawyer's request be granted?

- A. Yes, on the theory of deliberate provocation.
- B. Yes, because of the wife's extreme feelings of possessiveness regarding the husband.
- C. Yes, if the ordinary person in the wife's situation would have become enraged by the husband's dancing with the young woman.
- D. No, on the theory of mistaken justification.

35. To punish a gambler who owed him money, a bookie purchased from a demolitions expert a small explosive device that he planned to place under the driver's seat of the gambler's automobile. The demolitions expert assured the bookie that the explosive would be strong enough to cause severe damage to the legs and ankles of anyone sitting in the front seat of the car, but would under no circumstances be strong enough to kill. The device would go off when the ignition was turned on. On Sunday night, the bookie planted the device in the gambler's car. On Monday, the gambler was sick and did not go to work. That afternoon, the gambler's 15-year-old son came home from school and saw his father's car in the driveway. The son took an extra set of keys from the house to take the car for a joyride, even though the gambler had forbidden his son to drive the car without permission. When the 15-year-old turned on the ignition, the explosive device went off and the boy died instantly.

If the bookie is charged with the murder of the gambler's son, he will probably be found:

- A. Guilty, because the bookie's act caused the son's death.
- B. Guilty, because he intended to cause serious bodily harm to the gambler.
- C. Not guilty. He did not intend to cause the death of any person.
- D. Not guilty. It was not foreseeable that the son would attempt to drive the car.

36. A pickpocket lifted a man's wallet from his rear pants pocket while the man was distracted by the pickpocket's confederate, and the pickpocket began walking away. When the man noticed that his wallet was gone a few seconds later, he turned and started after the pickpocket, but the confederate grabbed him momentarily, allowing the pickpocket to escape.

If the pocket and the confederate are subsequently arrested and charged with robbery, the likely result will be:

- A. Only the pickpocket will be guilty of robbery because he stole the wallet.
- B. Only the confederate will be guilty of robbery because he used force against the man.
- C. Both the pickpocket and the confederate will be guilty of robbery.
- D. Neither the pickpocket nor the confederate will be guilty of robbery.

37. Pedro found Maggie in bed with the neighbor, Percy. Upon discovery, Percy ran to his house. Pedro vowed revenge. To build up his courage, Pedro consumed several drinks. He also went to his friends house to obtain a weapon. Pedro then proceeded to Percy's house and obtained entry through an unlocked garage door. Upon entering the house, Pedro found Percy trembling in the living room. When Percy saw Pedro he immediately began to apologize and begged for his life. He also pulled out a large knife from behind his back. Upon seeing the knife, Pedro removed the hidden gun from inside his coat and shot Percy who subsequently died.

Pedro can be convicted of:

- A. Murder
- B. Manslaughter, because Pedro was still distraught over finding Percy in bed with his Maggie.
- C. Manslaughter, because intoxication prevented Pedro from having the requisite intent for murder.

D. No homicide crime, because Percy was about to attack Pedro with a knife.

38. John has Lou Gehrig's (ALS) disease. For the past 6 months, his mother, Andrea visits him every day in the hospital. During each visit John talks about how much pain he is in and ask his mom to end his misery. On her final visit, Andrea gives John a hug and then pulls out a small handgun and ends John's life. Andrea walks out of John's hospital room and turns herself over to authorities.

What is the most serious crime Andrea be convicted of?

- A. First degree murder
- B. Second degree murder
- C. Voluntary manslaughter
- D. No crime.

39. If a child is 12 years old at the time she is charged with murder

- A. She is conclusively presumed incapable of forming the requisite intent
- B. She is presumed incapable of forming the requisite intent and the prosecutor must provide clear and convincing proof of capacity.
- C. She is presumed incompetent to stand trial.
- D. She may be tried as an adult.

40. 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.

41. Murder would most likely be classified as a

A. Malum in se crime

B. Malum prohibitum

C. Neither A nor B

D. Either A or B

42. Fed up with Joe's dalliances, Evelyn strikes him over the head with nunchuks. Because neither Joe nor Evelyn have adequate health insurance, Joe has to be treated at County General Hospital. While at County General Joe is forgotten about while waiting in the emergency room. Unfortunately, Joe succumbs to his injuries while waiting to see a doctor. According to defense experts, if Joe had been treated upon arrival he could have survived. Evelyn is subsequently prosecuted for Joe's death. Is Evelyn the proximate cause of Joe's death?

A. No, because the doctor was negligent for not treating Joe sooner.

B. No, because Joe could should have went to a better hospital.

C. Yes, because Evelyn started the chain of causation by striking and injuring Joe.

D. Yes, because the Doctor did not break the chain of causation.

43. Georgia was unhappily married to Blue who was an alcoholic. When Blue got drunk, he would become abusive and beat up Georgia. During the course of their marriage, the beatings became more violent and more frequent. Unable to endure the physical abuse any longer, Georgia hired Hawk, a gang member, to kill Blue. One night while Blue was asleep, Hawk entered the home with a pass key given to him by Georgia and shot Blue to death. Afterwards, Georgia was prosecuted for murder as an accomplice.

At trial the prosecution presented the facts outlined above. Thereafter, the defense sought to have the judge instruct the jury that Georgia acted in self-defense under the battered woman's syndrome.

Based on the given facts, should the judge give such an instruction?

A. No, because Georgia's belief in the necessity of deadly force in self-defense was unreasonable

B. No, even though Georgia was the victim of spousal abuse, she could have avoided the danger by safely retreating

C. Yes, because on these facts, a reasonable jury could conclude that Georgia acted in self-defense by using necessary force to protect herself from Blue's constant violent attacks

D. Yes, because a criminal defendant's Sixth Amendment right to jury trial prohibits a court from refusing to submit affirmative defenses to the jury

44. A man who had become very drunk left a bar and started to walk home. Another patron of the bar, who had observed the man's condition, followed him. The patron saw the man stumble and fall to the ground near an alley. The patron then began to pull out a gun but saw that the man had passed out asleep in the gutter. The patron reached into the man's pocket, grabbed his wallet, and started to walk away. When the patron heard police officers approaching, he dropped the wallet and ran off.

The crimes below are listed in descending order of seriousness.

What is the most serious crime for which the patron could be convicted?

A. Robbery

- B. Larceny
- C. Attempted robbery
- D. Attempted larceny

45. Which of the following is most likely to be found to be a strict liability offense?

- A. A city ordinance providing for a fine of not more than \$200 for shoplifting
- B. A federal statute making it a felony to possess heroin
- C. A state statute making it a felony to fail to register a firearm
- D. A state statute making the sale of adulterated milk a misdemeanor

46. A professional basketball player was scheduled to play in an important basketball game on Sunday. On Friday, after wagering heavily on the game, a gambler attacked the player with a baseball bat. The gambler's intent was to inflict injuries severe enough to require hospitalization and thus keep the player from playing as planned. As a result of the beating, the player was taken to a hospital, where he was treated by a doctor. The following day, the doctor injected the player with a medicine to relieve his pain. Because of an allergic reaction to the drug, the player died within minutes.

If the gambler is charged with the murder of the player, he should be found

- A. Not guilty, because the player's allergic reaction to the drug was an intervening cause of death.
- B. Not guilty, if the player's death was proximately caused by the doctor's negligence.
- C. Guilty, only if the player's death was proximately caused by the gambler's attack.
- D. Guilty, unless the doctor's conduct is found to be reckless or grossly negligent

47. A father who was paralyzed in an accident and unable to work refused to accept financial support from relatives or the government to help him care for his family. When one of his children became seriously ill and needed medical attention, the father refused to allow the child to receive medical care at the local public health clinic because of his feelings regarding the acceptance of charity. The father thought that the child was starting to get better, but then she took a turn for the worse and died from her illness.

What crime has the father most likely committed?

- A. Murder.
- B. Voluntary manslaughter.
- C. Involuntary manslaughter.
- D. No crime.

48. While walking outside on a public street, Maggie finds a Rolex watch and decides to keep it. She thinks that the watch has been thrown away. Somehow the police learn that Maggie has the watch and arrest her for larceny.

If the jury thinks that Maggie honestly believes that the watch has been abandoned, she should be acquitted under the Common Law.

- A. False.
- B. False, larceny is a specific intent crime and mistake of fact is no defense.
- C. True only if the jury also finds that Maggie's belief is reasonable.
- D. True.

49. Maggie came across Facebook posts that disclosed that her husband Pedro was having an extended affair with her sister, Patty. Upset, Maggie purchases a gun to kill Pedro. At a recent family reunion, the wife gave the gun to her 11-year old niece. She told the niece that the gun was fake and that it was okay to point it at Patty. The niece took the gun pointed it at Patty and pulled the trigger. However, the niece's aim was off and the bullet fired from the gun hit Pedro killing him.

Which of the following best describes the crime or crimes of which the wife can be properly convicted?

- A. Murder of Pedro and attempted murder of Patty
- B. Murder of Pedro only.
- C. Attempted murder of Patty.
- D. Attempted murder of Patty or murder of Pedro, but not both.

50. Harvey is charged with committing battery upon Percy. In Ohio battery is defined, in part, as “touching another person without consent.” At his trial, Harvey testifies that he mistakenly believed that it was okay to touch Percy because the two had been “horsing” around earlier and he thought his actions were just a continuation of the earlier game.

If the jury finds Harvey’s belief to be honest but unreasonable, is Harvey likely to be convicted?

- A. Yes, if battery is a general intent crime in Ohio.
- B. Yes, if battery is a specific intent crime in Ohio.
- C. Yes, regardless of whether battery is a specific or general intent crime in Ohio.
- D. None of the above

51. A young man and two of his friends were members of a teenage street gang. While they were returning from a dance late one evening, their car collided with a car driven by an elderly woman. After an argument, the young man attacked the elderly woman with his fists and beat her to death. The two friends watched, and when they saw the woman fall to the ground they urged the young man to flee. The young man was eventually apprehended and tried for manslaughter, but the jury could not decide on a verdict.

If the friends are subsequently tried as accomplices to manslaughter, they should be

- A. Acquitted, because the young man was not convicted of the offense
- B. Acquitted, because they did not assist or encourage the young man to commit the crime
- C. Convicted, because they urged the young man to flee
- D. Convicted, because they made no effort to intervene

52. A driver stopped at a red light in his home state. A stranger opened the passenger door, got in, and pointed a gun at the driver. The stranger then directed the driver to keep driving. They drove several miles, crossed into a neighboring state, and drove several more miles. When they reached a remote location, the stranger ordered the driver to pull over. The stranger then robbed the driver of his wallet and cash, and ordered him out of the car. The stranger drove off in the driver's car. The stranger is charged with kidnapping.

Could the stranger properly be convicted of kidnapping in the neighboring state?

- A. Yes, because the driver was transported under threat of force in the neighboring state.
- B. Yes, because the driver in effect paid ransom for his release.
- C. No, because any kidnapping took place in the driver's home state.
- D. No, because the restraint was incidental to the robbery.

53. A woman and her best friend went out to lunch at a local restaurant. During their lunch, the friend received several calls on her cell phone, and the woman grew increasingly frustrated at the constant interruptions. When the friend stepped out to use the ladies' room, leaving her cell phone on the table, the woman took the phone, turned it off and put it in her purse, planning to return it at the end of lunch. However, the woman forgot to return the phone to her friend and ended up taking it home with her.

If the woman is charged with larceny, should she be convicted?

- A. No, the woman has a defense of legal impossibility.
- B. No. The woman did not intend to permanently deprive her friend of the phone.
- C. Yes, because the woman knowingly deprived the friend of her phone.
- D. Yes, because the woman purposely took and kept the friend's phone.

54. A defendant planned to hold up his neighborhood market. He waited at the bus stop across the street from the market until he saw that the market was empty. He went into the market and walked up to the counter with his hand in his jacket to simulate a gun. Before the clerk could turn around to see what the defendant wanted, a shopper entered the market, startling the defendant, who turned and ran out the door. The defendant jumped into the shopper's car, which was standing unlocked with the motor running outside the market and sped off to the nearby train station. The shopper's car was recovered at the train station and the defendant was later arrested in another town.

If the defendant is charged with the theft of the shopper's car, he should be found:

- A. Guilty of larceny, because it was taken to aid in the commission of an inherently dangerous felony.
- B. Guilty of larceny, because using the car for his escape subjected it to a substantial risk of loss.
- C. Not guilty of larceny, because he only intended to use it for his escape.
- D. Not guilty of larceny, because the shopper was grossly negligent in leaving it unlocked and running.

55. A man was walking home from work late one night when he was confronted by an acquaintance, who demanded that the man pay him money owed from a recent Super Bowl wager. The acquaintance threatened the man and then proceeded to punch him

in the face. As the man was running away to escape the attack, a \$100 dollar bill fell out of his pocket. After the man was gone, the acquaintance glanced down and noticed the bill. The acquaintance pocketed the bill and returned home.

For which of the following crime(s) should the acquaintance be convicted?

- A. Robbery
- B. Larceny
- C. Battery and larceny
- D. Battery

56. One night, a woman returned from a long business trip exhausted and ready to go to bed. However, she could not find the keys to her house in her purse. The woman saw that a window on the first floor of her neighbors' house was partially open. She did not know her neighbors well. However, she was aware that they were on vacation and did not believe they would mind her crashing on their couch for the night. The woman pushed the window open, crawled through, and fell asleep on the neighbor's couch. Just before the neighbors arrived home, the woman awoke and exited the house. As she was climbing back out the window, she saw a snow globe that she liked and decided to take it with her.

If the woman is prosecuted for burglary, how should the court find?

- A. The woman is not guilty.
- B. The woman is not guilty, because the house was unoccupied when she entered it.
- C. The woman is guilty, because she broke into and entered the dwelling of another person during the night.
- D. The woman is guilty, because she took the snow globe with the intent to permanently deprive.

57. A recently laid-off man was updating his resume on his laptop computer at a local coffee shop. He noticed that a woman at a nearby table was wearing huge diamond earrings. When the woman took off her coat to sit down, it caught on one of the earrings, and the earring fell to the floor. The man realized that the earring could probably be sold for the equivalent of several months' rent. He bent down as if to tie his shoe, and then surreptitiously picked up the earring and placed it in his computer bag. The woman soon realized that her earring was missing. As she and her companion searched for it, the man heard the woman mention that the earrings had been a gift from her late father. Feeling terrible, the man took the earring from his bag and gave it to the woman. An elderly man who had been watching the whole scene flagged down a passing police officer and reported the incident.

Is the man guilty of larceny?

- A. Yes, because he took the earring and put it in his bag, intending to keep it.
- B. Yes, because he fraudulently converted the earring.
- C. No. He never left the coffee shop.
- D. No, because he gave the earring back to the woman.

58. A drug addict entered a pawnshop with a starter pistol that could not fire real bullets, intending to rob it so he could buy drugs. However, once inside the pawnshop, the addict was too afraid to do anything and turned to leave. He bumped into another customer who was coming in as he was going out, and the pistol fell from his coat pocket. The shopkeeper saw it and realized what the addict had intended. She grabbed a pistol from behind the counter and yelled to the addict to stop. However, the addict picked up his pistol and started to run out the door. The shopkeeper fired her gun and the bullet struck and killed the other customer who had just come into the shop.

The addict is charged with burglary. In this jurisdiction, burglary is defined as "breaking and entering of any building for the purpose of committing a felony."

The addict's best defense to burglary would be that:

- A. His pistol was inoperative.
- B. The pawnshop was open for business.
- C. He had abandoned his plan to commit the robbery.
- D. As a drug addict, he was incapable of forming the requisite intent.

59. A woman told a man to go into her friend's unlocked barn and retrieve an expensive black saddle that she said she had loaned to the friend. The man went to the friend's barn, opened the door, found a black saddle, and took it back to the woman's house. The friend had in fact not borrowed a saddle from the woman, and when the friend discovered her black saddle missing, she suspected that the woman was the thief. The friend used a screwdriver to break into the woman's house to find the saddle. Upon discovering the saddle on the woman's table, the friend took it back and called the police.

This jurisdiction follows the common law, except that burglary covers structures in addition to dwellings and the nighttime element has been eliminated.

Which, if any, of these individuals is guilty of burglary?

- A. All of them
- B. Only the friend
- C. Only the man
- D. Only the woman

60. A man decided to steal a car he saw parked on a hill. When he got in and started the engine, the car began rolling down the hill. The man quickly discovered that the car's brakes did not work. He crashed through the window of a store at the bottom of the hill.

The man was charged with larceny of the car and with the crime of knowingly damaging the store's property. At trial, the judge instructed the jury that if the jury found both that the man was guilty of larceny of the car and that the damage to the store was the result of that larceny, then it should also find him guilty of malicious damage of property.

The man was convicted on both counts. On appeal, he argued that the conviction for malicious damage of property should be reversed because the instruction was not a correct statement of the law.

Should the man's conviction be affirmed?

- A. Yes, because his intent to steal the car provides the necessary mental element.
- B. Yes, because he was committing a felony.
- C. No, because the instruction wrongly described the necessary mental state.
- D. No, because it would violate double jeopardy to convict the man of two crimes for a single act.

PART II: Essay I

30 Minutes

3900 Characters

Robin borrowed Hood's video tape, then repeatedly refused to return the tape. Hood, who had a prior conviction for burglary, decided to use the self-help approach. One day, Hood waited outside Robin's house until Robin left for work. Hood then entered the house without Robin's permission by removing a screen from an open window. Hood retrieved his own tape and departed.

An hour later, Hood returned to Robin's house, entered the same way, and departed with two tapes belonging to Robin. Hood intended to sell the tapes and keep the money for his own use.

A neighbor witnessed Hood's activities and reported them to Robin. Robin became extremely irate and he drove immediately to Hood's house. Robin forced open the door of Hood's house and confronted Hood in the hallway. He grabbed Hood in a stranglehold and forced Hood to accompany him to the kitchen. Robin then struck Hood on the head with a hammer, fracturing Hood's skull. Robin left Hood lying unconscious on the kitchen floor, then Robin retrieved his own tapes and departed.

On the way through the living room, Robin tripped over a lamp cord, unintentionally causing a lamp to fall to the floor. After Robin had left the house, the broken bulb started an electrical fire in the house. Fortunately for Hood, a neighbor saw the flames and rescued Hood from the kitchen. Hood spent several days in intensive care in critical condition and remained in the hospital for several weeks, but he eventually recovered.

Analyze and explain any criminal offenses that are involved in the activities of Hood and Robin

PART II: Essay II

30 Minutes

3900 Characters

On a recent snowy January afternoon at a small convenience store in Anytown, Ohio, the store's owner, Owner, left the store to take a deposit to the bank. Owner left his young employee, Employee, in charge while he was gone. Shortly after Owner left, Assailant walked into the store, brandished a gun, and ordered Employee to empty the register. Assailant shoved the cash into his pockets and, pointing his weapon, ordered Employee to "get in the cooler." As Assailant was nudging Employee toward the walk-in cooler, Employee screamed that she would not get in. Assailant hit her over the head with his gun and forced her into the cooler and closed her inside.

Just as Assailant was leaving the store, Owner returned from the bank, and the two passed each other. After Owner walked into the store, he saw the cash register drawer open and that no one was in the store. He soon discovered Employee inside the cooler. Seeing Employee bleeding from the head, Owner became overwhelmed with anger. He had known Employee for many years and she was like a daughter to him. Owner immediately grabbed the gun he had hidden in a drawer underneath the cash register and ran outside to find Assailant.

Owner followed footprints through the snow that led from the store down an alley to a small building. Within ten minutes, Owner had reached the end of the footprints and came upon a man standing outside the building smoking a cigarette. Owner was certain that it was the man he had seen leaving the store. Still very angry, and without saying a word, Owner fatally shot the man that he believed had harmed Employee. It was later discovered that the man Owner killed was not Assailant.

Fully explain what Ohio crimes Assailant committed that afternoon.

Fully explain why Owner's actions did or did not satisfy the elements of the following homicide offenses under the Ohio Revised Code:

- (a) Murder**
- (b) Aggravated Murder, and**
- (c) Voluntary Manslaughter**