

Criminal law test with answers essay sample

[Family](#), [Marriage](#)



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Adultery

- Common Law

- oAdultery was sexual intercourse with another's wife

- oSexual intercourse out of wedlock was punished by the church as an ecclesiastical offence

- MPC

- oStatutes against fornication and adultery are unenforced; omitted any provisions relating to these offenses

- State Statutes

- oState Statutes vary:

- ⊖ Voluntary sexual intercourse between persons, one of whom is lawfully married to another, both parties being guilty
 - ⊖ Intercourse by a married person with one who is not his or her wife or husband, the married person only being guilty of adultery
 - ⊖ Intercourse with a married women by one not her husband, both parties being guilty
- Actus Reus: voluntary sexual intercourse; between two persons unmarried to each other; with at least one of the parties being married to another
- Mens Rea: Intent to have intercourse; knowing of the marriage to another

Fornication

- Voluntary unlawful sexual intercourse, under circumstances not constituting adultery. While fornication was not a crime at common law, it was made a crime by early statutes in many of the states
- Actus Reus: Voluntary sexual intercourse; between two adults who are not married to each other
- Mens Rea: Intentional

Vibrator/Sex Toy

• Because of *Lawrence v. Texas*, the issue is whether the Texas statute impermissibly burdens the individual's substantive due process right to engage in private intimate conduct of his or her choosing. • Contrary to the district court's conclusion, we hold that the Texas law burdens this constitutional right. • An individual who wants to legally use a safe sexual device during private intimate moments alone or with another is unable to legally purchase a device in Texas, which heavily burdens a constitutional right.

Prostitution

• Common law

o Prostitution is not synonymous with the offense of prostitution
o Prostitution was not a crime at common law

o More appropriate to discuss this manner in terms of "crimes relating prostitution" rather than using prostitution, the offense, interchangeably with prostitution, the practice
o Elements:

☞ Only women would commit prostitution

☞ Offering one's self or one's body

☞ For hire or for money

• MPC

o Prostitution. A person is guilty of prostitution, a petty misdemeanor, if he or she: ☞ Is an inmate of a house of prostitution or otherwise engages in sexual activity as a business; or ☞ Loiters in or within view of any public place for the purpose of being hired to engage in sexual activity • State Statutes

oEvery state, except Nevada, has a statute outlawing solicitation and other crimes related to prostitution oAlmost all states have statutes relating to prostitution—" solicitation" is the most common charge and applies to the act of offering to engage in sexual conduct for a fee •Actus Reus: offering to, engaging in, or asking others to engage in sexual conduct, for a fee (or pecuniary gain) •Mens Rea: Intentional

Obscenity

- Common Law

oObscenity refers to the depictions of sexual acts that are defined as legally impermissible oStatutes outlaw obscenity, not pornography; but that begs the question as to what constitutes obscenity •MPC

oObscene. Material is obscene, if considered as a whole, its predominant appeal is to prurient interests, that is, a shameful morbid interest, in nudity, sex or excretion, and if in addition it goes substantially beyond customary limits of candor in describing or representing such matters oOffenses. A person commits a misdemeanor if he knowingly or recklessly: ☞Sells, delivers or provides, or offers or agrees to sell, deliver or provide, any obscene writing, picture, record or other representation or embodiment of the obscene; or ☞Presents or directs an obscene play, dance or performance, or participates in that portion thereof which makes it obscene; or ☞Publishes, exhibits or otherwise makes available any obscene material dissemination; or ☞Possesses any obscene material for purposes of sale or other commercial dissemination; or ☞Sells, advertises or otherwise

commercially disseminates material, whether or not obscene, by representing or suggesting that it is obscene • State Statutes

o Miller v. California

▫ The US supreme court announced a broad test that defined obscenity

▫ Miller test has been followed by state and federal courts ▫ The court stated that three questions must be asked before a literary work could be considered obscene and thus underserving of 1st amendment protections:

• Does the material appeal to prurient interests?

o Something more than the tendency to arouse normal, healthy sexual desire

• Does it depict “hard-core” sexual acts previously defined by state law in a patently offensive way? • Does it lack serious literary, artistic, political, scientific, or other value? • Actus Reus: Possession and distribution of obscene matter, harmful to minors • Mens Rea: Knowingly

Child Pornography

• Mere possession of child pornography is a crime

• Virtually any display of prurient nudity, sexual activity, or presence of a child in relation to sexual activity will fall within the definition of child pornography • Texas Penal Code:

o A person commits an offense if:

▫ The person knowingly or intentionally possesses visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct; and ▫ The person

knows that the material depicts the child as described • Actus Reus: Using or

allowing a minor to engage in sexually explicit conduct, producing, possessing, or distributing depictions of such conduct •Mens Rea: Knowingly

Bigamy

- Common law

- oNot a crime, but was considered an offense of ecclesiastical law with punishment in the hands of the ecclesiastical tribunals rather than the common law courts
- oBigamy is having two wives or husbands at the same time

- MPC

- oBigamy. A married person is guilty of bigamy, a misdemeanor, if he contracts or purports to contract another marriage, unless at the time of the subsequent marriage:
 - ⊖The actor believes that the prior spouse is dead; or
 - ⊖The act and the prior spouse have been living apart for five consecutive years throughout which the prior spouse was not known by the actor to be alive; or
 - ⊖A court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the actor does not know that judgment to be invalid; or
 - ⊖The actor reasonably believes that he is legally eligible to remarry

- State Statutes

- oTwo essential elements of the crime of bigamy: a prior marriage, and a second marriage before the first marriage is dissolved
- oThe mens rea varies and in some cases criminal intent is not essentially to bigamy
- oGood faith a defense; however in other states a reasonable belief that the first marriage was dissolved can be an affirmative defense

- Actus Reus:

Marriage, while previous marriage is still legally binding •Mens Rea: Knowing (although in some states it may be strict liability)

Incest

•Common law

oNot a crime, but it was punishable as an offense in the ecclesiastical courts in England
oIn the US, incest is a statutory crime, the object of which is to prohibit sexual intercourse between those within certain degrees of relationships
oIncest is as the intermarriage, or sexual relations without marriage, between a man and woman related to each other in any of the degrees of consanguinity or affinity within which marriage is prohibited

•MPC

oA person is guilty of incest, if he knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant, or brother or sister of the whole or half blood
o“ cohabit” means live together under the representation of appearance of being married
oThe relationships referred to herein include blood relationships without regard to legitimacy, and relationship of parent and child by adoption •State Statutes

oStatutes differ as to the degree of the relationship; however, they are fairly consistent in holding that marriage or sexual relations between father and daughter, mother and son, brother and sister, uncle and niece, and aunt and nephew are prohibited
oSome statutes include first cousins but under other statutes, prohibition of marriage between first cousins does not make their marriage or cohabitation incest •Actus Reus: sexual intercourse or marriage,

between two persons related by proscribed degrees of consanguinity of affinity •Mens Rea: Knowledge (of the relationship) (in most jurisdictions)

Child Endangerment

- Many states have a criminal statute that covers what is considered reckless endangerment of a child
- These statutes typically do not require a mens rea of intent but do require knowing or recklessness, rather than simple negligence
- They cover a wide variety of behavior including, but not limited to, allowing the child to drive, drink, be present when drug use is occurring, be present in sexually charged situations, and so on.

Abortion

•Common Law

oAbortion was not a crime under the common law

oIn fact, the fetus had virtually no legal protection because it was not

defined as a person apart from the mother oAbortion: is the expulsion of the fetus at so early a person of uterogestation that it has not acquired the power of sustaining an independent life •Roe vs. Wade

oPurposely and unjustifiably terminating the pregnancy of another other than birth was a crime oThe elements of abortion (prior to Roe vs. Wade)

⊖An intent to produce a miscarriage

⊖Unlawful administration of drugs or noxious substances or using an instrument; and ⊖A resulting in miscarriage

•MPC

oVery complex and is patterned after the Roe v. Wade decision oElements:

- ⊖(1) Prohibits unjustified termination of the pregnancy of another • This requires actual termination of the pregnancy
- ⊖(2) Defines what constitutes justifiable abortion and exceptions • A licensed physician believes there is substantial risk that continuance of pregnancy would impair the physical or mental health of the other
- ⊖(3) Requires that two physicians certify in advance their belief as to the circumstances justifying the abortion • but violation of this requirement would not itself make the abortion unlawful
- ⊖(4) Deals with the self-abortion in late pregnancy
- ⊖(5) Contains a provision relating to one who represent that he is performing an abortion although he may know or believe that the woman is not pregnant
- ⊖(6) deals with the distribution of anything specifically designed to terminate a pregnancy or held out by the actor as useful for that purpose
- ⊖(7) Designed to make it clear that the use of contraceptive devices or drugs to prevent pregnancy do not come within the ambit of the offense • State Statutes

o When the decision in the case of Roe vs. Wade was announced, many state abortion statutes became invalid o Many of these were also challenged as violating the woman's right to privacy • Cases

o Planned Parenthood v. Casey

- ⊖ The act requires that a woman seeking an abortion notify her husband prior to the abortion procedure, and that she be provided with certain information at least 24 hours before the abortion is performed
- ⊖ For a minor to obtain an abortion, the Act requires the informed consent of one of the

minor's parents, but provides for a judicial bypass option if the minor does not wish to or cannot obtain a parent's consent ☞ Another provision requires, unless certain exceptions apply, a married women seeking an abortion must sign a statement indication that she has notified her husband about the intended abortion oGonzales v. Carhart

☞ The Supreme Court heard an appeal regarding the federal Partial Birth Abortion Ban, signed by President Bush in 2003 ☞ Both the 8th and 9th circuits had overturned the federal act, ruling that it was unconstitutional under the reasoning of Stenberg v. Carhart ☞ The Supreme court evaluated the arguments that the Act was vague and did not give physicians due notice as to whether their actions would be criminal; was overbored in that it included behaviors that might have been inadvertent and, that it posed an undue burden on the women's right to abortion in that it did not provide an exception for the women's health (only life) • Actus Reus: unlawful conduct

- Mens Rea: unlawful intention

Disorderly Conduct

- Disorderly conduct statutes have, in many instances, been declared unconstitutional as either too vague or as infringing on 1st amendment rights oFighting words are NOT protected by the 1st amendment

- Disorderly conduct:

- oSwearing in public

- oWearing offensive t-shirts

- oYelling at a police officer

- Common Law

- oThere was no offense known as “ disorderly conduct” although misconduct that was of such a nature as to constitute a public nuisance was indictable

- MPC

- oA person is guilty of disorderly conduct if, with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he:

- ⊖Engages in fighting or threatening, or in violent or tumultuous behavior

- ⊖Makes unreasonable noise or offensively coarse utterance, gesture, or display, or address abusive language to any person present; or

- ⊖Creates a

- hazardous or physically offensive condition by any act which serves no

- legitimate purpose of the actor •Actus Reus: fighting, offensive language

- (either obscenity or fighting words), or other hazardous or dangerous actions

- all must tend to incite an immediate breach of the peace •Mens Rea:
Intent, Knowing or Reckless

Riot

- Riot: either an actual beginning of the execution of an unlawful common purpose, or the execution of an unlawful purpose by an assembly that was lawful when its members first assembled; in each case, force and violence are used to engender terror •Common Law

- oRiot: a tumultuous disturbance of the peace by three persons or more, assembling together of their own authority, with an intent mutually to assist another against any who shall oppose them in execution of some enterprise of a private nature and afterward actually executing the same in a violent

and turbulent manner, to the terror of the people, whether the act intended was, of itself, lawful or unlawful •MPC

oRiot. A person is guilty of riot, a felony of the 3rd degree, if he participates with [two] or more others in a course of disorderly conduct: ☞With purpose to commit to facilitate the commission of a felony or misdemeanor; ☞With purpose to prevent or coerce official action; or

☞When the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon •Actus Reus: three or more persons, undertake a common action, that is unlawful or lawful but done in an unlawful manner, that is violent and tumultuous, and that obstructs orderly government •Mens Rea: General Intent

Vagrancy and Loitering

- Laws relating to vagrancy and loitering have been declared unconstitutional
- State legislators have been forced to draft statutes that are more narrowly worded so as to protect the constitutional right of individuals
- oVagrancy referred to the status of being homeless, penniless and on the street or simply being an unsavory character
- oLoitering typically was defined as being someplace in public without purpose •Common Law

oA person was deemed a “vagrant” who went from place to place without visible means of support, was idle and, although able to work for his maintenance, refused to do so and lived without labor or on the charity of others •MPC

oRecognizing that statutes that were too broad violated the due process clause of the 14th amendment and in some instances the 1st amendment recent legislation is more definite and contains more limiting language oNote that the “ status” of being a vagrant can never be penalized, so modern statutes must identify specific behaviors that are against public interest oThe actor must loiter or prowl in a place, at a time, or in a manner not usual for law abiding individuals and under circumstances that warrant alarm for the safety of persons or property in the vicinity •Hiibel v. Sixth Judicial District of Nevada

oOne of the element that might lead to a charge of loitering is the failure to identify oneself and the nature of one’s business oSome states, however, have created separate “ failure to identify statutes” oThe crime occurs when a police officer, with reasonable suspicion that a crime has been or is about to be committed, requests a person’s identity and they refuse to give it o Mr. Hiibel believed that the Constitution gave him the right to refuse the answer, he was wrong.

Drunkenness

•While being a “ drunk” cannot be a crime; being drunk in public can be. These statutes are justified under the police power of the state. •Common Law

oDrunkenness was not an offense under the common law of England, but was punishable in the ecclesiastical courts •Powell v. Texas

oa self-confessed alcoholic was convicted of being drunk in a public place oon appeal, he contended that he was compelled to drink, and once drunk,

would lose control over his behavior and that it was cruel and unusual punishment to impose criminal sanctions on him for appearing drunk in a public place. He relied on the reasoning in the case of *Robinson v. California*, which held that an individual could not be branded a criminal or subjected to penal sanctions, no matter how slight, simply because he occupied the status or condition of being a "known drug addict." The US Supreme Court rejected the defendant's argument, explaining that although the state of Texas could not punish him for being status of being an alcoholic, the *Robinson* decision did not establish a constitutional doctrine of diminished criminal responsibility for addicts and other similarly affected. Penalizing a person for appearing in public for appearing in public while intoxicated does not violate the U. S. constitution because it punishes an act, not a status.

- Actus Reus: voluntary alcoholic intoxication (sometimes includes drugs), in a public place (sometimes private with other conditions, i. e., offensive behavior); sometimes offensive behavior is required even in a public place
- Mens Rea: Intentional, reckless (mens rea goes to decision to drink)

Drugs

- Common Law

o There were no drug laws under the common law

- MPC

o The MPC does not have any provisions for drug possession or possession with intent to sell. o Drug intoxication is included with public drunkenness.

- State Statutes

o Uniformed Controlled Substances Act

• Create a coordinated and codified system of drug control, similar to that utilized at the federal level

• The act sets out prohibited activities in detail, but vests the authority to administer the Act in an agency to be established by the state legislator

• The Act follows the federal controlled substances law and lists all of the controlled substances in 5 schedules that are identical to federal law

• In categorizing the substances, eight criteria were followed:

- The actual or relative potential for abuse
- Scientific evidence of pharmacological effects
- The state of current scientific knowledge regarding the substance
- Its history and pattern of abuse
- The scope, duration, and significance of abuse
- What, if any, risks there are to the public health
- Its psychic or psychological dependence liability
- Whether the substance is an immediate precursor of a substance already controlled

• Possession

o Actus Reus: Actual of constructive possession

o Mens Rea: Knowing

• Possession with Intent to Deliver

o Actus Reus: Actual of constructive possession; with circumstances

indicating intent is to deliver (i. e., quantity) o Mens Rea: Knowing (goes to possession); specific intent (goes to deliver/distribute)

• Trafficking

oActus Reus: Actual or constructive possession; transfer or delivery (does not have to be for money) oMens Rea: Knowing (goes to possession); general intent (goes to delivering) Counter Terrorism

- Following the terrorist attacks of 9/11 many state legislatures recognized the necessity of enacting state legislation to make it less difficult to prevent terrorist attacks and to apprehend terrorist
- Common Law

oThere was no common law crime of terrorism

- MPC

oThe MPC does not have a provision for terrorism

- State Statues

oNew York Law provides penalties for those who:

- ☞Provide material support for terrorism

- ☞Engage in terroristic threats

- ☞Engage in terrorism; and

- ☞Render assistance to a terrorist

oModified existing laws and added new counterterrorism statutes to

California Penal Code. These included: ☞Weapons of mass destruction;

possession, transfer, use, etc.; penalties ☞False of facsimile weapons of

mass destruction; transfer, delivery, placement, possession, etc.; penalties

- ☞Threats to use weapons of mass destruction; penalties

- ☞Possession of restricted biological agents; penalties; exceptions

Polk vs. Virginia (Obstruction of Justice)

- Polk made a verbal threat to kill, which was sufficient to constitute an

obstruction of justice •When the words are threats knowingly made in an attempt to intimidate or impede law enforcement officers who are performing their duties; that the evidence was sufficient to demonstrate Polk's criminal intent; and that Polk cannot avoid criminal liability

•Conviction affirmed

Papachristou et al vs. City of Jacksonville

•The supreme court ruled on a city ordinance that defined vagrants as including rogues or vagabonds, dissolute persons who beg, common gamblers, jugglers, or those who engage in unlawful games or play, common drunkards, common night walkers, thieves, pilferers, or pickpockets, traders in stolen property, lewd, wanton, and lascivious persons, and keepers of gambling places, among other descriptions •The supreme court held that such an ordinance did not give a person of ordinary intelligence fair notice that his conduct was criminal and it also allowed for arbitrary enforcement, thereby violating the due process clause

Perjury

•Common Law

oThe necessity of guaranteeing the integrity of a sworn statement in a judicial proceeding was recognized at common law oPerjury was limited to the false oath in a judicial proceeding oPerjury was:

☞The willful; giving false testimony; on a material point; in a judicial proceeding; by a person to whom a lawful oath had been administered •MPC oA person is guilty of perjury if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the

truth of a statement previously made, when the statement is material and he does not believe it to be true •State Statutes

oElements

☞Made an Intentional False Statement

- A false statement must relate facts and must also be susceptible to proof as to its truth or falsity

☞That was Material

- Must reflect on a matter under consideration during the action or proceeding in which it is made

☞In a Judicial Proceeding under Oath

☞For the Purpose of Misleading the Court

- Mens rea: specific intent

- The defendant intended to make the false statement and intend the statement to mislead the court •Actus Reus: False statement (testimony), under oath, about a material element, in a judicial proceeding •Mens Rea: Specific Intent

- Subornation of Perjury

oThe procuring of one person by another to commit the crime of perjury

oThis crime has two essential elements:

☞one person must have willfully procured another to commit perjury, and

☞the second person must have, in fact, committed the offense •If the person does not actually commit perjury, then the proper charge would be solicitation or attempted subornation oActus Reus: Entice, encourage,

reward another to commit perjury and perjury did occur
oMens Rea: Specific Intent

Bribery

•Common Law

oBribery: the receiving by a judge or other officer connected with the administration of justice, of “ any undue reward to influence his behavior in his office”
oElements:

⊖Receiving or soliciting (and later, offering or giving)

⊖A thing of value

⊖With intent to influence the recipients action

⊖The recipient is a public official

•MPC

oIt applies to full-time government employees, plus consultants to government, bribery of votes and political party officials, and bribery of anyone who exercises official discretion in a judicial or administrative proceeding
oA person is guilty of bribery if he offers, confers, or agrees to confer upon another, or solicits, accepts or agrees to accept from another:
⊖Any pecuniary benefit as consideration for the recipients decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or
⊖Any benefit as consideration for the recipients decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or
⊖Any benefit as consideration for a violation of a known legal duty as public servant or party official
•State Statutes

oElements:

☞Offering, Giving, Receiving, or Soliciting

- Committed by one who offers a bribe or offers to accept one ☞Thing of Value

- Almost anything may serve as a bribe as long as it is of sufficient value in the eyes of the person bribed to influence his official conduct ☞With Intent to Influence Public Duties

- The intent must be to corruptly influence an official in the discharge of his or her duty; and/or intent to receive (by a public official) in return for being influenced ☞Of Public Official

- Includes any public officer, agent, servant, or employee •Public official includes police officers, sheriffs, and deputy sheriffs (under most state statutes)

Obstruction of Justice

- Common Law

- oThe phrase “ obstructing justice” means impeding or obstructing those who seek justice in a court, or those who have duties or powers of administering justice therein •MPC

- oThe purpose of the MPC was to make it possible to punish those who did not come within the technical definitions of bribery, threat, perjury, or escape, but did perform acts with the intent to subvert the justice process oThe offense punishes anyone who “ obstructs, impairs, or perverts the administration of law, or other governmental function” •State Statutes

oElements

☞Intentionally

- It must be specific intent

☞Impede, Prevent, Obstruct, Delay

- The actus reus of obstruction is broad and can cover a range of different types of behavior ☞A Public Official from Performing an Official Duty in the Administration of Justice
- Police officers, prosecutors, attorney generals, and the like

Escape

- Common Law

oEscape was broadly defined as the voluntary departure of a person, without force, from the lawful custody of an officer or from any place where he is lawfully confined oThe person cannot escape unless he has actually been arrested •MPC

oEscape. A person commits an offense if he unlawfully removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period o“ official detention” means arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or found to be delinquent, detention for extradition or deportation •State Statutes

o“ Custody” means restraint by a public servant pursuant to a lawful arrest, detention, or an order of a court for law enforcement purposes, but does not include supervision of probation or parole or constraint incidental to release on bail oIn some cases, prisoners have used the defense of necessity when

charged with escape 🍷 They have argued that they needed to escape to avoid being seriously injured or killed by other inmates • Actus Reus: Voluntary departure, from custody, with intent not to return • Mens Rea: Knowing (one is in custody), intent (not to return)

Question #49:

- Resistance: C. Running

False Report to Officers

- Whoever knowingly gives false information to any law enforcement officer concerning the alleged commission of any crime, commits a misdemeanor of the 1st degree
- Whoever knowingly gives false information to a law enforcement officer, concerning the alleged commission of a capital felony, commits a felony of the 3rd degree

Question #51:

- Protesting

Houston vs. Hill

- A municipal ordinance made it unlawful to “oppose, molest, abuse, or interrupt any policeman in the execution of his duty”
- However the ordinance was challenged on 1st amendment grounds and overturned