"Frankenexam 1 - Question # 1A"

Answer-to-Question-_1_

A. Yes, we can bring charges against Jezebel for (1) violation of § 18-601.1 of the Marvinland Code, Health-Gen., and (2) statutory rape of Chip and (3) rape of Chip.

1)

Violation of § 18-601.1

Whether or not Jezebel may be convicted of a violation of § 18-601.1 may depend heavily on how the statute is interpreted. The offense has several elements:

(a) Any individual
(b) who knowingly engages in intercourse
(c) while HIV positive
(d) and thereby transmits
(e) or attempts to transmit HIV to another individual

Jezebel is an individual, she knowingly engaged in intercourse with Chip, and she was in fact HIV positive when she had intercourse with Chip. We don't yet know whether HIV was in fact transmitted to Chip. Two main issues will be the distribution of the mens rea requirement "knowingly" to Jezebel's HIV-positive status, and whether or not Jezebel attempted to transmit HIV to Chip.

Under the common law, the distribution of mens rea requirements is not as clear as under the MPC, where the presence of one mens rea requirement for one element of the offense by default distributes to all elements of the offense, unless there is a clear purpose to interpret it differently (MPC § 2.02(4)). In the common law, by contrast, "knowingly" has been held to distribute to all elements (*Liparota*), or only one or some elements (*International Minerals & Chemicals*, *Ansaldi*). So, the common law courts will determine how far to distribute such a mens rea requirement by examining several factors (the relevant ones are listed below):

(a) plain meaning
(b) canons of construction
    (i) statutory structure
    (ii) avoiding absurdity
(c) its legislative history and purpose

In examining the plain meaning of the statute, we look at its language structure. On the one hand, there are no commas or clauses between "knowingly" and "while HIV positive," so the element may be seen to distribute. However, one could just as easily see "while HIV positive" as a separate fact, with no knowledge requirement, since the legislature failed to insert another "knowingly" term before it (although one could argue that they failed to do so only to avoid redundancy and awkwardness). The plain meaning is not very helpful, although it leans slightly toward distributing "knowingly."

Without knowing the statute's structure or legislative history, we must look to its purpose and the interest in avoiding absurdity. It may be that the legislature wanted to impose strict liability on anyone who had sex, with or without knowing they were HIV-positive, and thereby transmitted the virus to another individual. We are not concerned with the "attempt" clause here, because one would need to already know they were infected in order to attempt to transmit the virus (more below).

Whether the statute should be interpreted to impose strict liability depends on a number of factors:

(a) the common-law history of the offense
(b) type and degree of punishment
(c) whether the offense is *mala in se* or *mala prohibita*
(d) whether there are heavy barriers of entry into the field of endeavor sufficient to presume the relevant knowledge
(e) whether the conduct is common or ordinary

The offense is essentially mala in se, which cuts against strict liability, because it is morally wrong to expose someone to a deadly virus, although the spread of disease is a highly regulated public health concern as well. The conduct itself (sexual intercourse with an HIV-positive person) is surely quite common, which also cuts against strict liability. However, the type and degree of punishment calls for a fine not to exceed $2,500, or a relatively small imprisonment sentence (not to exceed 3 years), or both. That not-too-severe punishment leans toward strict liability, because if the statute were really attempting to proportion punishment to culpability, the sentence would surely be longer than that for transmitting such a dangerous virus to someone.

There is no common-law history of the offense of transmitting sexual diseases per se, unless perhaps one could analogize to crimes of poisoning. Using that analogy, one could argue that strict liability may apply, since suppliers of medicine or food have been held strictly liable for their poisoned or harmful products without any culpable mens rea (see Dotterweich). Jezebel might be considered just such a supplier, since she supplies her "wares" as a business venture, albeit an illegal one, and this endeavor might arguably have sufficient barriers of entry to impose an epistemic duty on Jezebel to keep up to date with her health status (not official training, mind you, but street training, in the prostitute's own self-interest). However, the statute applies not only to prostitutes, but to every individual, and the normal act of unpaid intercourse requires no heavy barriers of entry sufficient to either alert the individual that his or her behavior may be regulated, or to impose such a heavy epistemic burden on them.

Therefore, proceeding on the assumption that the statute does not impose strict liability, we conclude that it probably distributes the "knowingly" requirement to the individual's HIV-positive status, or at the very least, requires recklessness, which is the base-level mens rea requirement at common law (malice). Jezebel may be convicted under either standard. While the common law is not as clear as the MPC in defining mens rea requirements, when the risk of some harm is so grave, the courts have assumed knowledge from the high risk of such harm. Similarly, if Jezebel was willfully blind or ignorant as to her HIV-status, considering her occupation, that may be sufficient for knowledge as well. Undoubtedly, she was reckless because she admits knowing of the high risk of HIV in her line of work, and her choice to use safe-sex measures only "frequently" instead of "absolutely all the time" constitutes a conscious disregard of that high risk. Whether the risk of transmission is substantial enough from one HIV-positive person to another, that question would have to rely on scientific evidence.

Jezebel might try to claim mistake of fact, since she didn't know she was HIV positive when she had sex with Chip. But her lack of certainty as to this attendant circumstance would probably not remove her from liability because of the arguments above as to her *constructive* knowledge or recklessness as to her HIV status. Jezebel might try to claim mistake of law--that she didn't know of the statute itself--but that is no excuse for its violation under the common law.

Jezebel could be convicted, however, *only if* Chip in fact contracted HIV from their sexual encounter. She would not fall under the "attempted transmission" category because an attempt requires a specific-intent mens rea (conscious object to achieve that result), which Jezebel clearly didn't have. Causation shouldn't be much of a problem if Chip indeed came down with HIV because he seems to be very inexperienced sexually (i.e., no other partners, presumably). So, Jezebel's fate under this statute would depend crucially on whether Chip actually has HIV.

Statutory rape

Jezebel had sex with someone who was not of the age of majority (he was 15). The crime of statutory rape is a common-law strict liability offense (perhaps the only one), and so her professed ignorance as to Chip's age, despite being seemingly honest and even reasonable, considering the stamp on his hand, does not constitute a mistake of fact that relieves her of criminal liability. Statutory rape has been interpreted as a strict-liability offense, despite problems of fair warning, mainly due to policy issues designed to protect young vulnerable girls from the sexual advances of older men, so one might argue that those policy justifications do not apply to this reverse-role situation. However, considering the inherent danger in the actual intercourse (HIV-positive prostitute, naive young boy who didn't know she was a prostitute), I believe Jezebel would be convicted of statutory rape.

Rape

Under the common law, rape is:

(a) Sexual penetration
(b) by a man
(c) of a woman
(d) not his wife
(e) accomplished by force, threat, or artifice
(f) and in the absence of consent

According to this definition, Jezebel did not commit rape because she is a woman, and Chip was a man. However, due to the changing social and sexual landscape, the Marvinland courts may see fit to expand the common-law definition to include this situation, as it might in the case of homosexual rape or other sex crimes by a woman of a man or child. In that case, while Chip clearly evidenced his consent (and even asked explicitly for hers), it is arguable that Jezebel accomplished the sex act by artifice, since she did not spell out that she a prostitute, and Chip did not in fact know that she was. However, under the circumstances, her language to the effect that "this one is on the house" and the other circumstances of the party and their meeting would likely be deemed insufficient to constitute artifice (at the level of actual deception). So, Jezebel, for all those reasons, would not be convicted of rape.

"Frankenexam 1 - Question # 1B"

B. It is possible that the lawyer's argument is based on Article 1, Section 10, barring states from passing ex post facto laws. She would argue that because prostitutes have been free from police interference for over 10 years, it violates the principle of legality enshrined in that article for the police to arrest them now and charge them with prostitution offenses. However, that clause applies only to the legislature, which presumably does have laws on the books in Marvinland prohibiting prostitution. The police's discretion in arresting only manager-level workers in the sex trade does not prohibit them from cracking down on lower-level sex workers at their further discretion constitutionally.

However, she might also be referring to the Due Process clause, which is often interpreted to include the background common-law principles of legality, essentially that the laws must be:

(a) promulgated
(b) publicized
(c) comprehensible
(d) ensure internal consistency
(e) relatively stable
(f) applied constistently (like cases treated alike)
(g) predictably enforced
(h) enforced only prospectively

In this case, elements (f) and (g) would be at issue. The police have not enforced the prostitution laws predictably, and while Jezebel and other sex workers have not reasonably relied on official statements of law officials (sufficient to argue a valid defense of mistake of law by the theory of estoppel), they have relied on the police's patterns of enforcement, and as such, have been denied fair warning that their conduct would be cracked down upon at any time.

This argument might make sense, but no court would likely give it credence on policy reasons alone. To acknowledge that a scattershot enforcement of the state's laws is sufficient to bar the police from ever heightening their alertness or discretion on the matter would allow many defendants to raise such a defense and cripple the executive branch from changing its policies when it chose to, consistent at least with the laws on the books, whether for political reasons (change in office), or any other. Therefore, Jezebel has a colorable claim, but she is unlikely to succeed on this issue.

"Frankenexam 1 - Question # 1C"

C.

Accomplice

Bertha may be held criminally liable as an accomplice in the illegal sex acts perpetrated at her motel. Under the common law, Bertha would have to be shown to:

(a) With intent that [the prostitutes] engage in criminal conduct
(b) while actually or constructively present
(c) Provided
  (i) Actual assistance by act or omission,
  (ii) Encouragement that was received
(d) During the course of the crime
(e) That was completed
(f) Whether or not that assistance or encourageement was necessary or determinative

Bertha must be shown to have specific intent (roughly equivalent to MPC "purpose") that the prostitutes break the law in her motel. Indeed, she was actively present (perhaps not in the room, but in the motel) during those offenses. Bertha surely knew (as everyone in town did) that the prostitutes were frequenting her motel for business purposes, and she did not deny them her services (motel rooms). Like the D in *Hicks*, Bertha must be shown to have intended her actions to be understood by the prostitutes (or the johns) to be an encouragement to act unlawfully. Her statement to Scrub, while denying that she had any "girls," hinted at encouragement because she said she was sure the usual clientele would "show y'all a good time," which may have actually been determinative toward Scrub's reservation of the motel for Biff's bachelor party (although it need not be under the definition of accomplice liability).

While Bertha might concede to knowledge of the illegal acts, she would claim that she had no specific intent that they break the law. However, seeing as she arguably had a real interest in that kind of clientele using her motel, an inference of her specific intent is entirely warranted (unlike the D in *Gladstone*, who merely directed a buyer to another drug dealer). Bertha, after all, would get more room reservations and drinking, paying customers from the motel's reputation as a sex-haven than she would if it didn't have that reputation. By this reasoning, Bertha could very well be convicted as an accomplice.

Conspiracy

Under the common law, a conspiracy requries:

(a) Two or more persons
(b) reach an agreement
(c) to perform an unlawful act, achieve an unlawful goal, or pursue a lawful goal through unlawful means

While Bertha may not have explicitly made an agreement with the prostitutes or johns to provide them a safe haven for their illegal activities, such an explicit agreement is not necessary where there is parallel action and evidence of a tacit agreement. Clearly the prostitutes knew of the motel's reputation and safe haven, and Bertha also apparently knew and let it go on. The common-law court in *Lauria* set out the criteria for inferring specific intent (the mens rea for conspiracy) from knowledge when a purveyor of legal goods or services (like motel rooms) sells them to users who put them to illegal uses:

(a) purveyor has stake in the venture
(b) no legitimate use for the services exists
(c) volume of business is grossly disproportionate to legitimate demand, or sales for illegal use amount to high proportion of seller's total business

In this case, Bertha has a stake (see above), unlike the D in *Lauria*, although clearly a legitimate use for her services exists. In addition, though, the sales for illegal use do amount to an unusually high proportion of her clientele, also unlike the D in *Lauria*. So, one can probably infer that Bertha had specific intent from her knowledge of these factors. For these reasons, Bertha could also be convicted of conspiracy with the prostitutes, and under common-law *Pinkerton* liability, may be held liable for the prostitutes' other offenses as long as they were reasonably foreseeable, done in the course of the conspiracy, and done in furtherance of the conspiracy (for instance, if Jezebel is found guilty under the statute against HIV-transmission, or for statutory rape, Bertha may also arguably be found liable, since Jezebel was arguably within the conspiratorial agreement, performing her sex services at the party at Bertha's motel, under their tacit agreement). (As an aside, the MPC would limit Bertha's liability to the extent of her participation (and she probably would not have agreed to statutory rape or HIV-transmission)).

"Frankenexam 1 - Question # 1D"

D.

The next issue is whether we may charge Scrub with the death of Bob. It is very possible that we can charge Scrub with murder under both the MPC and the common law.

Under the common law, to establish a murder charge we must prove that Scrub committed an unlawful killing of another wiht malice aforethought. The actus reus is satisfied because he killed Bob. However, the question is whether he had malice aforethough in doing so. Scrub overheard Fred and Ted talking, and thought it was about him, so he reacted by throwing a stool at Fred intending to commit grievous bodily harm. However, the chair missed Fred, but under the doctrine of transferred intent, Scrub's intent to commit grevious bodily harm on Fred may be transferred to Bob sicne the harm that occurred to Bob was the harm Scrub intended to inflict on Fred.

Malice aforethought may be satisfied through a cold hearted planned murder, a homicide with abandoned or maligant heart, murder with only slight or no provocation, a killing with intent to cause grevious bodily harm, or killing one person when you mean to kill another. This murder was not planned and in cold heart. However, it is likely the categories of killing with slight or no provocation, killing with intent to cause grievous bodily harm, and killing one person when you mean to kill another may all apply in this situation.

ALthough Scrub will try to defend this ,urder charge with duress defense stating that he was provoked by Fred and TEd, provocation is measured from an objective-subjective standpoint. For provocation to be sufficient Scrub must prove that the provocation would cause a reasonable man to act out of heat of passion, without a reasonable time to cool off. However, this is meaured from an objective reasonable person standard. AN objective reasonable person would not have been provoked to inflict grievous bodily harm on somebody in response to two people talking about him. Therefore, provocation will not suffice to mitigate this charge to manslaughter under the common law. Scrub intended to cause grievous bodily harm, whihc would have been sufficient to prove murder if he had hit and killed Fred. He acted by throwing the chair and had intent to harm him seriously. However, since he missed him, and instead hit bob, common law malice aforethought can still be satisfied by a killing of one when you mean to do so to another. Since he hit bob, he may be charged with his murder.

Under the MPC, Scrub may be charged with the second degree extreme indifferenc to human life murder of Bob. By throwing a chair across a crowded bar, Scrub acted with callous disregard for human life and the consequences of his actions. This callous disregard distinguishes second degree murder from manslaughter. Under MPC 2.01b, murder is not only to kill someone purposely or knowlingly but also recklessly where there is exxtreme indifference to human life. Scrub intended for Fred to be hurt, but once again his intent may transfer as the reasons stated before.

Scrub may also be charged with the attempted infliction of grievous bodily harm. In terms of the MPC, the substantial step was satisfied by Scrub throwing the charir towards Fred. MPC 5.01 allows for a substantial step though an act that is strongly corroborative of the criminal purpose. Throwing a chair at someone is strongly corroborative of the intent to inflict severe bodily harm.Had the chair hit him, his pursued result would have been obtained. However, the result must have also been specifically intended. Specific intent can be inferred if seriosu bodily harm would have been the natural and probable result of Scrubs conduct, which it was. Therefore Under the MPC, Scrub could be charged with intentional inflication of grievous bodily harm.

Under the common law, Scrub may also be charged as such. There was once again specfic intent for to seirously injure Fred. Actus reus must be shown through Scrubs commission of the last step. The last step must be proximate, unequivocal, and have a high likelihood of success. All of these are met since Scrub act was the act required to inflict bodily harm, excpet for his misdirected throw preventing the actual harm to Fred, the act was unequivocally an attempt to ahrm Fred, and there was high likelihood of success, since he threw the chair from a short distance but luckily missed Fred.

Scrub could defend himself based on the involuantry intoxication defense in an attempt to mitigate his killing to manslaughter. The intoxication defense is an excuse defense that mitigates the punishment for the crime and regards the volitional capacities of the agent. Scrub was volunatrily intoxicated to a small level at the time he involuntarily received the long island iced teas. He did not intend to consume them, and since them. Therefore, involutnary intoxication could potentially be a defense. However, in line with Regina v. Kingston, this involuntary intoxication merely shortened his fuse, but he was still aware of the act he was committing. He did it in direct response to statements he thought were being made about him. If he were sober he probably owuld have thought through his act, but he still was able to form the proper intent. He intended to hit fred with the chair in response to his statements. However, there is a line between intocication limiting the ability to control conduct and intoxication that alters D's ability to form and maintain mens rea. In this sitauation, he was able to form a specific intent to injure fred, he was just rendered unable to control his emotions. Therefore there is no defense of involuntary intoxication.It may also be argued that his involuntary intoxication was a result of him being voluntarily intoxicated. He had had drinks throughout the night, but was not extremely drunk. If he had been sober he would have liekly caught the bartenders mistake and owuld have rejected the long island iced tea. EIther way, the intoxication would not be a defense for his actions.

Scrubs actions were both the but for and proximate cause of the infliction of harm upon Bob. But for his throwing of the chair, Bob would never have been injured and subsequently killed. The legal cause is easily established. However the proximate cause is a more complex issue.

"Frankenexam 1 - Question # 1E"

E. Legal omissions have definitely been held to be sufficient causes of resulting harms, where other requirements were met, so causation is not an issue. The law of omissions require that Rick was aware of the opportunity to act (indeed he was), and that he had a legal duty to act, which can arise in several ways:

(a) Statute imposes duty
(b) Status relationship
(c) Contractual duty
(d) Voluntary assumption of care such that the person is secluded from receiving aid from others
(e) One is responsible for creating situation of peril

We may need to research the statutes of Marvinland, and whether they impose a duty on emergency health workers (EMTs in particular) to help someone in an emergency situation, whether or not they are on duty. There is doubtful any status relationship conferring a legal duty (those are reserved usually for relationships among people who at least know each other--work for someone, take care of someone, family members). Or there is also a distant possibility that Rick's EMT employment contract requires him to help people even when he is off duty (perhaps for the good of the reputation of the employer). Without that legal research, it is doubtful that Rick had a duty to come to Bob's aid, and therefore he could not be held liable for Bob's death.

"Frankenexam 1- Question # 2"

Answer-to-Question-2___

To: Professor Ko G. Tayson
From: Ace Terp
RE: Amendments to the Model Penal Code

There are some very significant differences in the proposed changes to the Model Penal Code, including the introduction of retributive theory, and the expansion of utilitarian ideals. Overall, while broad, I think the proposed changes are positive.

The former Article 1.02(2)(a)-(c) is brief, focusing on deterrence, rehabilitation, and safeguarding against disproportionate punishment. I will go through each section of the proposed modifications (i) - (iii) individually.

Section (i) introduces retributive theory into the almost exclusively utilitarian MPC. Retributivists generally look to the culpability of individual actors rather than the likely effect of deterrence. In general, retributive theory looks backward, saying that punishment is justified because people deserve it, that when one person acts in a morally culpable way, they shift the moral compass. The purpose of punishment is thus that the moral compass is upright, achieved by the imposition of the natural consequences of the criminal's actions upon the criminal himself (Kant). Section (i)'s mention of proportionality to the blameworthiness of offenders precisely mirrors this idea, and serves to blend retributive theories in with the utilitarian ideals of the Code at large.

Section (ii) expands upon the deterrence and rehabilitation objectives already outlined in the the current 1.02. However, its expansion is critical. Its commitment to the restoration of crime victims and communities is crucial to foster a healthier society. Its mention of reintegration of offenders into the law-abiding community addresses one of the most serious problems of our criminal justice system today - recidivism. The proposal of adding in reintegration practices to the existing framework of the system may substantially help to address this problem. Like drug addicts who are thrown back into their prior lives after rehabilitation stints, former prisoners go back into their lives with a stigma attached, and it is often difficult to escape the vicious cycle of criminality. With increased reintegration practices which actually help a former criminal restructure and change his life from its prior state, recidivism may be substantially reduced.

Section (iii) speaks to proportionality in general, which was addressed in the current provision. The calculus of the risk and reward need to get to just the right tipping point in punishment and sentencing - if juries are not willing to convict because the punishment is too harsh, it does us no good. Similarly, if the punishment is too low, it does not deter. Therefore a commitment to proportionality is crucial, but it is already proposed in a more limited fashion in the current Code.

As generally stated above, the most significant changes are the introduction of retributive theory and the increased focus on rehabilitation and reintegration. These propose theories mirror the goals laid out in Simon v. US regarding the purpose of punishment when imposing a sentence - the sentence must "reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense; afford adequate deterrence to criminal condut; protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other treatment in the most effective manner." These are admirable goals, and I would highly encourage you to support these changes. We must have a firm commitment not only to punish offenders for what they have done wrong, deter them and others from committing similar offenses, but provide them with the framework in which to do so. A criminal justice system that fosters an easier reintroduction into society, enhanced opportunities for former offenders to avoid re-entry into criminal activity, and restoration of high-crime communities will have the best chance of preventing recidivism and future crimes by young offenders.

"Frankenexam 1 - Question # SA1"

1. Self-Defense and Necessity are justification defenses while duress, intoxication, and insanity are excuse defenses. In the case of a justification defense, the defendant admits all the elements of the crime, yet claims that he was justified in doing so. In Self-Defense, the defendant admits that he killed the victim, but he presents a defense which justifies his actions. Under all the circumstances, killing the victim was the right thing to do because he was an aggressor who put the defendant in actual and reasonable fear of death or severe bodily harm, and the defendant had no means of a reasonable escape of which he was aware. In the case of a necessity defense, the defendant similarly admits all the elements of the crime, but claims that he was justified in comitting it under all the circumstances, because it was the right thing to do. With necessity, the defendant has been presented with a choice of evils and he or she acted to prevent imminent harm, in a way that was likely to prevent the harm, and had no viable legal alternatives, and did not recklessly create the circumstances that necessitated his commission of the criminal act.

Duress, intoxication, and insanity are different. In these cases the defendant admits that he did all the elements of the crime, but that he should be excused anyway. The excuse is basically derived from an inability to form mens rea as to the act committed, or could possibly be seen as rendering the defendant's act "involuntary". With duress, an outside force is compelling the defendant to act by threats of grievous bodily harm or death to himself or another, and therefore the defendant can claim duress, implying that he did not actually "intend" to do what he did. As for intoxication and insanity, the defendant claims that he should be excused because he was rendered out of control of his mind and incapable of forming the minimum level of intent. In these cases the defendant claims he should be excused because he did not know the nature of his act or that what he was doing was wrong.

2. Gore and Perrin

As an advocate for Gore, I would argue that U.S. v. Perrin would not control this case. In Gore's case, there was an altercation between Gore and correctional officers (when Wegman patted Gore down after the evening meal). Gore argues that he had a right to self-defense to use non-deadly force against excessive force of the correctional officers (Lt. Jensen) as a defense to violating the 18 U.S.C. 111 (a) and (b). There are disputed facts as to who started the altercation; however, the issue here is whether the *Perrin* case controls.

The Perrin test has four factors regarding the use of self-defense: imminence, instigation, retreat, and proportionality. In *Perrin*, the case was also in the Fourth Cir. Ct. of App. in 1995; however, the issue was regarding the unlawful use of a firearm, which is a deadly weapon. Additionally, the main issue in the case was about immediacy, in that the harm was inevitable instead of immediate. In Gore's case, the issue is not about immediacy, which is a required element of self-defense. Additionally, the use of an unlawful fire arm in *Perrin* is unlike the use of non-deadly force in *Gore.*

I would argue that the case *U.S. v. Black* is the controlling case since self-defense is a common law defense and *Black*, although a D.C. case itnerpreting a D.C. statute (very similar to the U.S.C. statute), applies the common law in looking at self-defense. *Black* also is more similar in the factual situation in that Black ws housed in a D.C. correctional facility and used self defense against a correctional officer (although with a knife instead of fists).

"Frankenexam 1 - Question #SA3"

3. No, a judge does not have to dimiss as a matter of law a charge of accessory to manslaughter. Let me count (some of) the ways:

First of all, one may be an accessory after the fact to manslaughter, such that he knew that the person committed manslaughter, and with intent that the killer evade detection, arrest, or prosecution, he provided protection, assistance, aid, encouragement, or succor to the killer.

I sense the reluctance to declare one as an accessory to manslaughter is rooted in the specific-intent mens rea of accomplice liability, which is apparently at odds with the uninentional nature of a classic manslaughter offense. However, one may be any kind of accomplice to manslaughter simply because the specific intent for accomplice liability applies *either* to the principal's result *or* the principal's conduct. So one could egg on the principal to fight with someone, perhaps with a weapon, and since a death might be a "natural and probable" consequence of such conduct, he may be held liable as an accomplice for the reckless killing.

While some jurisdictions do not follow the "natural and probable consequences" rule, there are still other ways, even under the MPC, that one could be an accomplice to manslaughter. For instance, if one has a legal duty to prevent such an offense (manslaughter), and fails to make proper effort to do so, then he is an accomplice to manslaughter under Section 2.06(3)(iii).

Similarly, one could be an accessory to someone who took another's life out of imperfect necessity or perfect duress (under the common law, where a valid duress defense for murder results only in mitigation to manslaughter instead of full exculpation).

There are probably other ways yet, but I'm going to move on to bigger and better things! :)

"Frankenexam 1 - Question # SA4"

4. The cognitive approach (the common-law M'Naghten test) requires that, in order for D to be afforded a defense of legal insnity, D must at the time of committing the act have been suffering from a mental defect or disease, such as to either (1) not know the nature or quality of his act (e.g., strangling someone while thinking he is squeezing a lemon), or (2) if he did know it, that he did not know the difference between right and wrong (e.g., the crime was perfectly justified in his distorted mind).

The volitional test, the "irresistable impulse" theory, applies where D knew that what he was doing was wrong, and formed all the necessary mens rea elements required for the offense, but as a result of mental defect or disease, simply could not control himself from committing the crime.

The MPC incorporates both tests:

Cognitive: "If at the time of such conduct as a result of mental disease or defect he lacks substantial capacity...to appreciate the criminality [wrongfulness] of his conduct"

Volitional: "Lacks substantial capacity...to conform his conduct to the requirements of law"

In addition, the MPC, by the use of the word "appreciates" allows for affective disorders to be included as well, where D may "know" that what he is doing is wrong, but does not assign emotional or moral importance to that wrongness (e.g., narcissists, antisocial personality disorder, sociopaths). Finally, the MPC is a more forgiving standard, even on the cognitive prong, since it requires only the lack of "subtantial capacity", not total disorientation or alienation from reality.

5. False: Ignorance of the law, while it generally provides no excuse, may be in fact an instance of mistake of fact, disguised as a mistake of law. For instance, where D makes a mistake as to the legal status of an *material element* of an offense (e.g., the D in *Morissette* not knowing that the brass casings were considered "property" of the U.S. government, or the D in *Cheek* not knowing whether his wages were "taxable"), that mistake is actually a mistake of fact, which is sufficient to relieve D of liability since it negatives a crucial element of the offense.

However, where the legal status at issue is *not* one of the stated elements of the offense, as in *Marrero*, in which the definition of "peace officers" was only relevant as an exception to the rule of the offense, and it was defined in a separate legal source, a mistake as to that legal status will not be a mistake of fact, and so it is simply a mistake of law, and provides no excuse.

Additionally, a mistake of law may be an excuse where D reasonably relies on official statements of law by government officials or courts, by the principle of estoppel. However, this rule is not always followed (see *Hopkins*).