

UNIVERSITY OF MARYLAND  
SCHOOL OF LAW

CRIMINAL LAW  
THREE HOURS

DAY DIVISION  
Professor Millemann

DECEMBER 10, 2007  
9:10 a.m.—12:10 p.m.

No. \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Submitted Electronically: Yes \_\_\_\_\_ No \_\_\_\_\_

INSTRUCTIONS:

1. **Honor Code.** Student conduct, during exams and at all other times, is governed by the Student Honor Code.

2. **Your Name, Your Exam Number and Exam Submission.** Sign and print your name in the blanks above. Put the exam number, course title and instructor name on the examination envelope. Indicate whether you are submitting this exam electronically. Submit these examination questions at the conclusion of the examination; do not put the examination questions in the examination envelope.

3. **Time.** Submit your examination answers within the announced time for the examination. If you submit your answers late, you likely will be subject to a penalty.

4. **Computer Exams.** Computers may be used on this exam. This is an Option 2 Exam: Open Mode – access to Exam4 and student computer-based notes; drag and drop prohibited; no Internet access. If you use a computer on this examination, you must use the Exam4 examination-taking software provided by the law school. You must provide your own computer and must have downloaded a copy of the Fall 2007 version of the Exam4 software to your computer. You should have completed this download, tested the software, and be sure the computer is in working order well before the date of this exam.

At the end of the examination, choose the "Submit Electronically" function on the Exam4 software. The software will request your Exam ID (Examination Number). Put the course name on your answer as instructed in the handout, but do not put your name anywhere on your answer. Submit your answer within the time limits for the examination; no allowance for additional time will be given for equipment failure. After submitting your answer electronically, return to the examination room promptly and turn in (but do not seal) the envelope provided, with a notation on the envelope stating "Submitted Electronically." (The administration will print your Exam4 answers and insert them in the exam envelope.) At the same time turn in your examination questions to the proctor.

*Technological Problems:* If you experience a technological problem during the examination period, consider the amount of time remaining and decide whether you should continue (or restart) the examination in blue books. No additional time will be provided for technological problems. Responsibility for submitting your answers on time electronically lies

entirely with you. The Information Technology (IT) Department will assist in retrieving examination files from your computer, and the Office of Registration & Enrollment will accept an IT-certified copy of an examination file retrieved from your computer as a timely submission, as long as there is no evidence of tampering with either your computer or the examination file.

**5. Handwritten Exams.** If you submit handwritten answers to the examination, put the number found above on each of your blue book answers to the examination. Both the envelope and your answers should contain your examination number, the course name, and the instructor's name. Do not put your name anywhere on the envelope or on the blue book answers.

Upon completion of the examination, put your answers in the envelope, fasten the flap, and hand in the envelope to the examination proctor. Be sure to enclose all of your answers in the envelope—you will be graded on only what is inside the envelope. Do not put the examination questions in the envelope. Hand in the questions separately to the examination proctor. You are responsible for ensuring that all of your completed answers and questions are handed in to the examination proctor.

**6. Specific Instructions and Examination Materials.** You may bring into the Exam your text book, your class notes, your outlines (that you have prepared), and the practice questions and answers, but nothing else (including no hornbooks and no commercial outlines). This is a three hour exam.

**7. Appendix.** The Model Penal Code provisions in the Appendix are included for any student who may not have brought his or her book to the exam. They include all of the MPC provisions that we discussed this semester, and therefore they include more than you will need to answer the questions in the exam. That is, there are a number of MPC provisions that are not relevant to the exam questions. Unless you did not bring your book to the exam, you should use the MPC provisions in the back of your book.

**THE QUESTIONS, WHICH ARE PRINTED ON BOTH SIDES OF THE PAGES THAT FOLLOW, ARE WEIGHTED AS FOLLOWS:**

**Question 1 (Two parts): 90 Minutes (50% of Exam Grade). End both parts by 10:40 a.m.**

**Question 2: 54 Minutes (30% of Exam Grade). End by 11:34 a.m.**

**Question 3: 36 Minutes (20% of Exam Grade). End by 12:10 p.m.**

Relax, read the questions carefully, **stay within the time limits (if you are running out of time, outline the rest of your answer, and move on), and do your best. GOOD LUCK!**

**QUESTION 1: 90 MINUTES (50% OF EXAM GRADE). THERE ARE TWO PARTS TO THIS QUESTION. READ BOTH PARTS BEFORE YOU BEGIN TO ANSWER.**

**PART 1: 45 MINUTES. END BY 9:55 A.M.**

**PART 2: 45 MINUTES. END BY 10:40 A.M.**

V lives with M, the mother of S, age 16. They have lived together for two years on V's farm in State. S's father (M's husband) died when S was 12, and S has never liked V. The only

thing V and S do together is hunt deer. They store their rifles in a locked “hunting cabinet” in the garage.

V believes in physical “discipline.” When S misbehaves, V beats S with a leather strap on his bare back. V says: “My father strapped some sense into me when I needed it.” But, after the strappings, V often apologizes “for going too far.” The strappings leave welts on S’s back for a few days and have left permanent scars.

V is much bigger and stronger than both M and S, and V is angry during the strappings, so neither M nor S try to physically stop him. M instructs S not to talk to others about the strappings, saying: “If you do, Social Services will take you away from me.” Accordingly, S does not report V to the police.

S developed behavioral problems after his father’s death marked by explosive outbursts, i.e., he hit a teacher who criticized his homework and pushed a student who made fun of him down the school stairs. He was suspended from school both times, and reinstated when he acknowledged he was wrong and apologized.

More recently, S has had several episodes, which the school psychologist calls “dissociative states,” during which S becomes acutely anxious because he believes someone is going to hurt him, although, in fact, S is at school and no one is threatening him. The school psychologist believes S suffers from a mental illness. (Assume this is true.)

During the latest strapping, M tries to physically stop V, but V knocks M to the floor. An hour later, V comes in from working outside, finds M and S in the den, and says: “Mr. Jones” (the school principal) “called me and told me you” (speaking to S) “are still having problems at school. After dinner, we will discuss this.” V leaves the den to go into the kitchen.

S sits there for a few seconds, saying nothing, then leaps up, looking agitated, runs into the garage, unlocks the hunting cabinet, grabs a loaded rifle from the cabinet, runs into the kitchen and shoots V once in the head, killing him instantly. M calls the police. While S sits waiting for the police to arrive, he says repeatedly: “I had to do it; I just had to do it.”

### **PART 1: S’S LIABILITY UNDER THE COMMON LAW**

The prosecutor charges S with murder under a State statute that provides: “It is first degree murder to kill a person intentionally and with premeditation. It is second degree murder to kill a person intentionally.” All of State’s other criminal law rules, including those governing manslaughter and possible defenses, are supplied by the common law.

S waives a jury trial. You are the judge assigned to his case. You may apply any of the common law rules that we studied this semester, but **not** the Model Penal Code. (See Part 2.) If there are different common law rules that you could apply, select the ones you think are best, explaining why, and apply them.

You may reach one of four verdicts in S’s case: a) guilty of first degree intentional and premeditated murder; b) guilty of second degree intentional murder; c) guilty of manslaughter; or d) not guilty of any crime.

Write your opinion in which you describe the arguments that the prosecutor and defense lawyers should make, render a decision, and justify your decision. If you need more facts, identify the facts you would like to know and how they would affect your decision.

### **PART 2. S’S LIABILITY UNDER THE MODEL PENAL CODE**

Now assume the prosecutor has charged S with “purposely” and “knowingly” murdering V, in violation of Section 210.2(1)(a) of the Model Penal Code (MPC) (P. 908). Again, S waives

a jury trial, and you are the judge assigned to his case. You may use any of the MPC defenses or partial defenses that we have studied this semester and that you think are relevant. You may reach one of three verdicts in S's case: a) guilty of purposeful and knowing murder under Section 210.2(1)(a); b) guilty of manslaughter under Section 210.3(1)(b); or c) not guilty of any crime.

Write your opinion in which you describe the arguments that the prosecutor and defense lawyers should make, render a decision, and justify your decision. If you have made an argument in Part 1 and it applies just as you made it here (in Part 2), you can refer back to it rather than repeating it. If you need more facts, identify the facts you would like to know and how they would affect your decision.

**QUESTION 2: 54 MINUTES (30% OF EXAM GRADE). END BY 11:34 A.M.**

G owns Gun Store in State and a rental unit above the store, which G leases, usually for a month at a time, to low-income transients. The back of Gun Store faces, across an alley, the back door of Local Bank.

G served with A and B in the army and remains friends with them, even though G has heard that A and B sometimes "support themselves" through petty crimes, e.g., illegal gambling, small narcotics sales, etc.

A and B have decided to "go for the big one" by robbing an armored bank truck on December 17<sup>th</sup>. Every Monday at 12:00 (noon), the truck moves deposits from Local Bank to Regional Bank. Two guards take the deposits out the back door of Local Bank and load the truck in the alley behind Gun Store.

On Friday night, December 7<sup>th</sup>, after G has closed the store, A and B call G and ask if they can come see him for "an off-the-record meeting." G agrees. A and B come to the store and ask G what type of rifle and ammunition he recommends for "armor-piercing." G says the best he has is a .50 caliber rifle, designed to penetrate "military aircraft and heavy machinery," and .50 caliber ammunition "that combines armor-piercing and explosive capacity." A says "that's perfect."

B then asks: "Can we rent the upstairs apartment from today through Monday, December 17<sup>th</sup>?"

G laughs and says: "Do I want to know what this is all about?" B smiles and replies: "It concerns a certain armored vehicle that picks up a ton of cash every Monday morning, especially on December 17<sup>th</sup>, across the alley out back." G says "well that's your business, not mine, but I can sell you the rifle and ammunition and rent you the apartment until December 17<sup>th</sup>." A asks: "What time do you open the store?" G says: "10:00 a.m." A says: "December 17<sup>th</sup> might be a good day to open late." G says nothing.

A and B then pay G in cash (full price) for both the rifle/ammunition and apartment. (Assume that G complied with all laws regulating the sale of guns and ammunition and the lease of rental property.)

On Monday, December 10<sup>th</sup>, at noon, A and B watch the armored truck operation (loading of deposits) from the upstairs apartment window, and are dismayed to see that there are three guards not two moving the deposits.

On Monday, December 17<sup>th</sup>, at 10:30 a.m., they return to the apartment above Gun Store, notice the store is closed, and park a getaway car (that they stole Sunday night) behind the store in the alley. However, since stealing the car, A has decided he does not want to commit a crime as serious as bank robbery, and refuses to go forward. B decides that without A, he cannot rob

the armored car. After A and B leave the apartment and drive away in the car, police officers see the stolen car and arrest both A and B. A tells the police all of the above facts, and they arrest G as well.

The State prosecutor charges A, B, and G with attempted robbery under a statute that provides: “A person commits robbery when he takes the property of another by force or the threat of force with the intent to deprive the owner of the property.”

A, B, and G waive a jury trial. You are the judge assigned to their cases. You may apply any of the common law rules that we studied this semester, or the relevant Model Penal Code provisions that we have studied this semester (Sections 2.06, pp. 889-890, and 5.01, pp. 903-904), but not both the common law and MPC. That is, apply the above statute and **either** the common law **or** the relevant MPC provisions. Explain why, as judge, you have selected one set of rules over the other.

Write your opinion in which you describe the arguments that the prosecutor and defense lawyers should make, render decisions, and justify your decisions. If you need more facts, identify the facts you would like to know and how they would affect your decisions.

**QUESTION 3: 36 MINUTES (20% OF EXAM GRADE). END BY 12:10 P.M.**

State’s rape law provides:

“1. First degree rape: any person, who by force and knowingly without consent, has sexual intercourse with another is guilty of first degree rape, and upon conviction, may be sentenced up to 50 years imprisonment.

2. Statutory rape: any person 18 years of age or older who has sexual intercourse with a person under the age of 18 years shall be guilty of statutory rape, and upon conviction, may be sentenced: (a) to up to 30 years imprisonment if the offender is more than four years older than the victim; and (b) to up to 3 years imprisonment if the offender is four years, or less than four years, older than the victim.”

This law was enacted ten years ago as part of a general effort to codify State’s criminal law, and has never been interpreted by State’s appellate courts. (State has not adopted any provision of the MPC.)

D, 21 years old, meets A, 16 years old, in a bar in State. When the bartender asks A for her identification, A displays (and D sees) a State driver’s license that indicates she is 21. A looks and acts older than 16, and she does not tell D she is not 21 and that her license is a fake.

D takes A to his apartment and they have consensual sexual intercourse.

A’s father learns the above facts, and provides them to the police. The State prosecutor charges D with violating Section 2(a) of the above law, and proves the above facts at trial. D admits the above facts, but argues he reasonably believed A was 18 years of age or older, and therefore is innocent.

D waives a jury trial. You are the judge assigned to his case. Write your opinion in which you describe the arguments that the prosecutor and defense lawyers should make, render a decision, and justify your decision. If you need more facts, identify the facts you would like to know and how they would affect your decision.

**APPENDIX**  
**MODEL PENAL CODE PROVISIONS**

**NOTE: THE FOLLOWING MPC PROVISIONS ARE INCLUDED HERE FOR ANY STUDENT WHO MAY NOT HAVE BROUGHT HIS OR HER BOOK TO THE EXAM. THEY INCLUDE ALL OF THE MPC PROVISIONS THAT WE DISCUSSED THIS SEMESTER, AND THEREFORE THEY INCLUDE MORE THAN YOU WILL NEED TO ANSWER THE QUESTIONS IN THE EXAM. THAT IS, THERE ARE A NUMBER OF MPC PROVISIONS THAT ARE NOT RELEVANT TO THE EXAM QUESTIONS. UNLESS YOU DID NOT BRING YOUR BOOK TO THE EXAM, YOU SHOULD USE THE MPC PROVISIONS IN THE BACK OF YOUR BOOK.**

**§ 1.02. Purposes; Principles of Construction.**

- (1) The general purposes of the provisions governing the definition of offenses are:
  - (a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests;
  - (b) to subject to public control persons whose conduct indicates that they are disposed to commit crimes;
  - (c) to safeguard conduct that is without fault from condemnation as criminal;
  - (d) to give fair warning of the nature of the conduct declared to constitute an offense;
  - (e) to differentiate on reasonable grounds between serious and minor offenses.
- (2) The general purposes of the provisions governing the sentencing and treatment of offenders are:
  - (a) to prevent the commission of offenses;
  - (b) to promote the correction and rehabilitation of offenders;
  - (c) to safeguard offenders against excessive, disproportionate or arbitrary punishment;
  - (d) to give fair warning of the nature of the sentences that may be imposed on conviction of an offense;
  - (e) to differentiate among offenders with a view to a just individualization in their treatment;
  - (f) to define, coordinate and harmonize the powers, duties and functions of the courts and of administrative officers and agencies responsible for dealing with offenders;
  - (g) to advance the use of generally accepted scientific methods and knowledge in the sentencing and treatment of offenders;
  - (h) to integrate responsibility for the administration of the correctional system in a State Department of Correction [or other single department or agency].
- (3) The provisions of the Code shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this Section and the special purposes of the particular provision involved. The discretionary powers conferred by the Code shall be exercised in accordance with the criteria stated in the Code and, insofar as such criteria are not decisive, to further the general purposes stated in this Section.

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**§ 1.12. Proof Beyond a Reasonable Doubt; Affirmative Defenses; Burden of Proving Fact When Not an Element of an Offense; Presumptions.**

(1) No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is assumed....

**§ 1.13. General Definitions.**

In this Code, unless a different meaning plainly is required:

- (1) "statute" includes the Constitution and a local law or ordinance of a political subdivision of the State;
- (2) "act" or "action" means a bodily movement whether voluntary or involuntary;
- (3) "voluntary" has the meaning specified in Section 2.01;
- (4) "omission" means a failure to act;
- (5) "conduct" means an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions;
- (6) "actor" includes, where relevant, a person guilty of an omission;
- (7) "acted" includes, where relevant, "omitted to act";
- (8) "person," "he" and "actor" include any natural person and, where relevant, a corporation or an unincorporated association;
- (9) "element of an offense" means (i) such conduct or (ii) such attendant circumstances or (iii) such a result of conduct as
  - (a) is included in the description of the forbidden conduct in the definition of the offense; or
  - (b) establishes the required kind of culpability; or
  - (c) negatives an excuse or justification for such conduct; or
  - (d) negatives a defense under the statute of limitations; or
  - (e) establishes jurisdiction or venue;
- (10) "material element of an offense" means an element that does not relate exclusively to the statute of limitations, jurisdiction, venue, or to any other matter similarly unconnected with (i) the harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or (ii) the existence of a justification or excuse for such conduct;
- (11) "purposely" has the meaning specified in Section 2.02 and equivalent terms such as "with purpose," "designed" or "with design" have the same meaning;
- (12) "intentionally" or "with intent" means purposely;
- (13) "knowingly" has the meaning specified in Section 2.02 and equivalent terms such as "knowing" or "with knowledge" have the same meaning;
- (14) "recklessly" has the meaning specified in Section 2.02 and equivalent terms such as "recklessness" or "with recklessness" have the same meaning;
- (15) "negligently" has the meaning specified in Section 2.02 and equivalent terms such as "negligence" or "with negligence" have the same meaning;

(16) "reasonably believes" or "reasonable belief" designates a belief that the actor is not reckless or negligent in holding.

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## **§ 2.02. General Requirements of Culpability.**

(1) Minimum Requirements of Culpability. Except as provided in Section 2.05, a person is not guilty of an offense unless he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.

(2) Kinds of Culpability Defined.

(a) Purposely. A person acts purposely with respect to a material element of an offense when:

- (i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and
- (ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

(b) Knowingly. A person acts knowingly with respect to a material element of an offense when:

- (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and
- (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(c) Recklessly. A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(d) Negligently. A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

(3) Culpability Required Unless Otherwise Provided. When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly or recklessly with respect thereto.

(4) Prescribed Culpability Requirement Applies to All Material Elements. When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(5) Substitutes for Negligence, Recklessness and Knowledge. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts

purposely.

(6) Requirement of Purpose Satisfied if Purpose Is Conditional. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.

(7) Requirement of Knowledge Satisfied by Knowledge of High Probability. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist.

(8) Requirement of Wilfulness Satisfied by Acting Knowingly. A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

(9) Culpability as to Illegality of Conduct. Neither knowledge nor recklessness or negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such offense, unless the definition of the offense or the Code so provides.

(10) Culpability as Determinant of Grade of Offense. When the grade or degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly or negligently, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

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#### **§ 2.04. Ignorance or Mistake.**

(1) Ignorance or mistake as to a matter of fact or law is a defense if:

- (a) the ignorance or mistake negatives the purpose, knowledge, belief, recklessness or negligence required to establish a material element of the offense; or
- (b) the law provides that the state of mind established by such ignorance or mistake constitutes a defense.

(2) Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense had the situation been as he supposed. In such case, however, the ignorance or mistake of the defendant shall reduce the grade and degree of the offense of which he may be convicted to those of the offense of which he would be guilty had the situation been as he supposed.

(3) A belief that conduct does not legally constitute an offense is a defense to a prosecution for that offense based upon such conduct when:

- (a) the statute or other enactment defining the offense is not known to the actor and has not been published or otherwise reasonably made available prior to the conduct alleged; or
- (b) he acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in (i) a statute or other enactment; (ii) a judicial decision, opinion or judgment; (iii) an administrative order or grant of permission; or (iv) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense.

(4) The defendant must prove a defense arising under Subsection (3) of this Section by a preponderance of evidence.

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**§ 2.06. Liability for Conduct of Another; Complicity.**

- (1) A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.
- (2) A person is legally accountable for the conduct of another person when:
  - (a) acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or
  - (b) he is made accountable for the conduct of such other person by the Code or by the law defining the offense; or
  - (c) he is an accomplice of such other person in the commission of the offense.
- (3) A person is an accomplice of another person in the commission of an offense if:
  - (a) with the purpose of promoting or facilitating the commission of the offense, he
    - (i) solicits such other person to commit it, or
    - (ii) aids or agrees or attempts to aid such other person in planning or committing it, or
    - (iii) having a legal duty to prevent the commission of the offense, fails to make proper effort so to do; or
  - (b) his conduct is expressly declared by law to establish his complicity.
- (4) When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.
- (5) A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.
- (6) Unless otherwise provided by the Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:
  - (a) he is a victim of that offense; or
  - (b) the offense is so defined that his conduct is inevitably incident to its commission; or
  - (c) he terminates his complicity prior to the commission of the offense and
    - (i) wholly deprives it of effectiveness in the commission of the offense; or
    - (ii) gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.
- (7) An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

**§ 2.08. Intoxication.**

- (1) Except as provided in Subsection (4) of this Section, intoxication of the actor is not a defense unless it negatives an element of the offense.
- (2) When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.
- (3) Intoxication does not, in itself, constitute mental disease within the meaning of Section 4.01.
- (4) Intoxication that (a) is not self-induced or (b) is pathological is an affirmative defense if by

reason of such intoxication the actor at the time of his conduct lacks substantial capacity either to appreciate its criminality [wrongfulness] or to conform his conduct to the requirements of law.

(5) Definitions. In this Section unless a different meaning plainly is required:

(a) "intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body;

(b) "self-induced intoxication" means intoxication caused by substances that the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of crime;

(c) "pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible.

...

### **§ 2.09. Duress.**

(1) It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, that a person of reasonable firmness in his situation would have been unable to resist.

(2) The defense provided by this Section is unavailable if the actor recklessly placed himself in a situation in which it was probable that he would be subjected to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.

(3) It is not a defense that a woman acted on the command of her husband, unless she acted under such coercion as would establish a defense under this Section. [The presumption that a woman acting in the presence of her husband is coerced is abolished.]

(4) When the conduct of the actor would otherwise be justifiable under Section 3.02, this Section does not preclude such defense.

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### **§ 3.02. Justification Generally: Choice of Evils.**

(1) Conduct that the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that:

(a) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and

(b) neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and

(c) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this Section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

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### **§ 3.04. Use of Force in Self-Protection.**

(1) Use of Force Justifiable for Protection of the Person. Subject to the provisions of this

Section and of Section 3.09, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

(2) Limitations on Justifying Necessity for Use of Force.

(a) The use of force is not justifiable under this Section:

(i) to resist an arrest that the actor knows is being made by a peace officer, although the arrest is unlawful; or

(ii) to resist force used by the occupier or possessor of property or by another person on his behalf, where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:

(1) the actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest; or

(2) the actor has been unlawfully dispossessed of the property and is making a re-entry or recaption justified by Section 3.06; or

(3) the actor believes that such force is necessary to protect himself against death or serious bodily injury.

(b) The use of deadly force is not justifiable under this Section unless the actor believes that such force is necessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat; nor is it justifiable if:

(i) the actor, with the purpose of causing death or serious bodily injury, provoked the use of force against himself in the same encounter; or

(ii) the actor knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstain from any action that he has no duty to take, except that:

(1) the actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be; and

(2) a public officer justified in using force in the performance of his duties or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape is not obliged to desist from efforts to perform such duty, effect such arrest or prevent such escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed.

(c) Except as required by paragraphs (a) and (b) of this Subsection, a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used, without retreating, surrendering possession, doing any other act that he has no legal duty to do or abstaining from any lawful action.

(3) Use of Confinement as Protective Force. The justification afforded by this Section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

**§ 3.09. Mistake of Law as to Unlawfulness of Force or Legality of Arrest; Reckless or Negligent Use of Otherwise Justifiable Force; Reckless or Negligent Injury or Risk of Injury to Innocent Persons.**

(1) The justification afforded by Sections 3.04 to 3.07, inclusive, is unavailable when:

(a) the actor's belief in the unlawfulness of the force or conduct against which he employs protective force or his belief in the lawfulness of an arrest that he endeavors to effect by force is erroneous; and

(b) his error is due to ignorance or mistake as to the provisions of the Code, any other provision of the criminal law or the law governing the legality of an arrest or search.

(2) When the actor believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under Sections 3.03 to 3.08 but the actor is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief that is material to the justifiability of his use of force, the justification afforded by those Sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(3) When the actor is justified under Sections 3.03 to 3.08 in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those Sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons....

**§ 3.11. Definitions: Relevant To Use of Force in Self-Protection.**

In this Article, unless a different meaning plainly is required:

(1) "unlawful force" means force, including confinement, that is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or actionable tort or would constitute such offense or tort except for a defense (such as the absence of intent, negligence, or mental capacity; duress; youth; or diplomatic status) not amounting to a privilege to use the force. Assent constitutes consent, within the meaning of this Section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily injury.

(2) "deadly force" means force that the actor uses with the purpose of causing or that he knows to create a substantial risk of causing death or serious bodily injury. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force.

(3) "dwelling" means any building or structure, though movable or temporary, or a portion thereof, that is for the time being the actor's home or place of lodging.

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**§ 4.01. Mental Disease or Defect Excluding Responsibility.**

(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.

(2) As used in this Article, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

**§ 4.02. Evidence of Mental Disease or Defect Admissible When Relevant to Element of the Offense; [Mental Disease or Defect Impairing Capacity as Ground for Mitigation of Punishment in Capital Cases].**

(1) Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind that is an element of the offense.

[(2) Whenever the jury or the Court is authorized to determine or to recommend whether or not the defendant shall be sentenced to death or imprisonment upon conviction, evidence that the capacity of the defendant to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect is admissible in favor of sentence of imprisonment.]

**§ 4.03. Mental Disease or Defect Excluding Responsibility Is Affirmative Defense; Requirement of Notice; Form of Verdict and Judgment When Finding of Irresponsibility Is Made.**

(1) Mental disease or defect excluding responsibility is an affirmative defense.

(2) Evidence of mental disease or defect excluding responsibility is not admissible unless the defendant, at the time of entering his plea of not guilty or within ten days thereafter or at such later time as the Court may for good cause permit, files a written notice of his purpose to rely on such defense.

(3) When the defendant is acquitted on the ground of mental disease or defect excluding responsibility, the verdict and the judgment shall so state.

...

**§ 5.01. Criminal Attempt.**

(1) Definition of Attempt. A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

- (a) purposely engages in conduct that would constitute the crime if the attendant circumstances were as he believes them to be; or
- (b) when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or
- (c) purposely does or omits to do anything that, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

(2) Conduct That May Be Held Substantial Step Under Subsection (1)(c). Conduct shall not be held to constitute a substantial step under Subsection (1)(c) of this Section unless it is strongly corroborative of the actor's criminal purpose. Without negating the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purpose, shall not be held insufficient as a matter of law:

- (a) lying in wait, searching for or following the contemplated victim of the crime;
- (b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;
- (c) reconnoitering the place contemplated for the commission of the crime;
- (d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;

(e) possession of materials to be employed in the commission of the crime, that are specially designed for such unlawful use or that can serve no lawful purpose of the actor under the circumstances;

(f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, if such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;

(g) soliciting an innocent agent to engage in conduct constituting an element of the crime.

(3) Conduct Designed to Aid Another in Commission of a Crime. A person who engages in conduct designed to aid another to commit a crime that would establish his complicity under Section 2.06 if the crime were committed by such other person, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by such other person.

(4) Renunciation of Criminal Purpose. When the actor's conduct would otherwise constitute an attempt under Subsection (1)(b) or (1)(c) of this Section, it is an affirmative defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of such defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

Within the meaning of this Article, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, that increase the probability of detection or apprehension or that make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

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## **§ 210.0. Definitions: Criminal Homicide.**

In Articles 210-213, unless a different meaning plainly is required:

(1) "human being" means a person who has been born and is alive;

(2) "bodily injury" means physical pain, illness or any impairment of physical condition;

(3) "serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ;

(4) "deadly weapon" means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

## **§ 210.1. Criminal Homicide.**

(1) A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being.

(2) Criminal homicide is murder, manslaughter or negligent homicide.

## **§ 210.2. Murder.**

(1) Except as provided in Section 210.3(1)(b), criminal homicide constitutes murder when:

- (a) it is committed purposely or knowingly; or
  - (b) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life. Such recklessness and indifference are presumed if the actor is engaged or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape or deviate sexual intercourse by force or threat of force, arson, burglary, kidnapping or felonious escape.
- (2) Murder is a felony of the first degree [but a person convicted of murder may be sentenced to death, as provided in Section 210.6].

**§ 210.3. Manslaughter.**

- (1) Criminal homicide constitutes manslaughter when:
- (a) it is committed recklessly; or
  - (b) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be.
- (2) Manslaughter is a felony of the second degree.

**§ 210.4. Negligent Homicide.**

- (1) Criminal homicide constitutes negligent homicide when it is committed negligently.
- (2) Negligent homicide is a felony of the third degree.

**SEXUAL OFFENSES**

**§ 213.0. Definitions.**

In this Article, unless a different meaning plainly is required:

- (1) the definitions given in Section 210.0 apply;
- (2) "Sexual intercourse" includes intercourse per os or per anum, with some penetration however slight; emission is not required;
- (3) "Deviate sexual intercourse" means sexual intercourse per os or per anum between human beings who are not husband and wife, and any form of sexual intercourse with an animal.

**§ 213.1. Rape and Related Offenses.**

- (1) Rape. A male who has sexual intercourse with a female not his wife is guilty of rape if:
- (a) he compels her to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or
  - (b) he has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or
  - (c) the female is unconscious; or
  - (d) the female is less than 10 years old.

Rape is a felony of the second degree unless (i) in the course thereof the actor inflicts serious bodily injury upon anyone, or (ii) the victim was not a voluntary social companion of the actor upon the occasion of the crime and had not previously permitted him sexual liberties, in which

cases the offense is a felony of the first degree.

(2) Gross Sexual Imposition. A male who has sexual intercourse with a female not his wife commits a felony of the third degree if:

- (a) he compels her to submit by any threat that would prevent resistance by a woman of ordinary resolution; or
- (b) he knows that she suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct; or
- (c) he knows that she is unaware that a sexual act is being committed upon her or that she submits because she mistakenly supposes that he is her husband.

**§ 213.6. Provisions Generally Applicable to Article 213.**

(1) Mistake as to Age. Whenever in this Article the criminality of conduct depends on a child's being below the age of 10, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than 10. When criminality depends on the child's being below a critical age other than 10, it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the child to be above the critical age.

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