Criminal Law
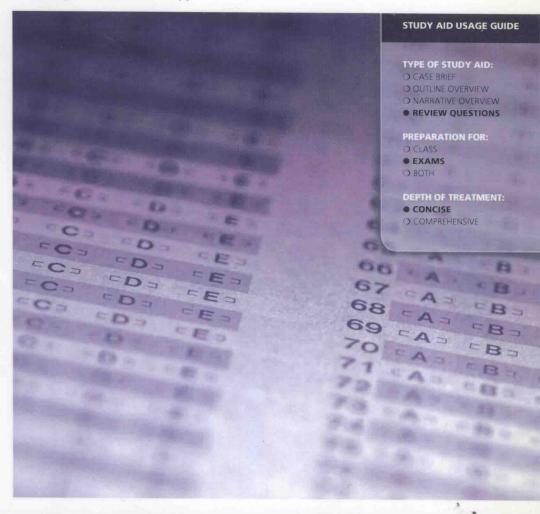
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CRIMINAL LAW

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Exam Pro

Why *Exam Pro/Criminal Law—Objective* will work for *you*:

- *Exam Pro/Criminal Law—Objective* helps you anticipate and become familiar with similar questions that might appear on your own exams, and it gives you the tools to learn how to figure out the correct answer, and which answers are not—and cannot be—correct.

- *Exam Pro/Criminal Law—Objective* contains a range of multiple choice questions that cover most of the specific subject matter areas commonly tested on Criminal Law exams in U.S. law schools.

- *Exam Pro/Criminal Law—Objective* was co-authored by John M. Burkoff and Nancy M. Burkoff, each of whom is a respected and experienced law professor at the University of Pittsburgh. Professor John Burkoff has taught Criminal Law for many years and has published numerous books and articles in the criminal justice area. Professor Nancy Burkoff has taught Legal Analysis & Writing for years and has also published another book and articles in the criminal justice area.

Complementary Study Aids

Exam Pro/Criminal Law—Objective (West) is the companion volume to *Exam Pro/Criminal Law—Essay* (West). For law students who will be taking exams that may contain a combination of essay and multiple choice questions, using both books together can be extremely helpful. Many of the questions in this objective-questions study aid use the same (or similar) facts as questions found in the essay version. Accordingly, using both study aids together can help you see just how to answer *either* type of question, using exactly the same legal principles effectively for both types of questions.

Students should also consider acquiring *Acing Criminal Law* (West), also authored by Professor John M. Burkoff, as an additional study aid for preparing for a Criminal Law examination. This study aid features an innovative method of content organization. It uses a checklist format to lead students through questions they need to ask themselves to fully evaluate the legal problem they are trying to solve. It also synthesizes the material in a way that most students are unable to do on their own and assembles the different issues, presenting a clear guide to analysis that students can draw upon when writing their exams.

In the answers to questions found in both the *Exam Pro/Criminal Law—Objective* and *Exam Pro/Criminal Law—Essay* study aids, cross-references are made to the applicable chapters and sub-sections in *Acing Criminal Law*.

Exam Pro/Criminal Law—Objective
from West

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SPECIFIC SUBJECT MATTER
MULTIPLE CHOICE QUESTIONS

CHAPTER 1
JUSTIFICATIONS FOR CRIMINAL PUNISHMENT

The following facts apply to Questions 1–1 through 1–3 below:

Linda, who is twenty-four years old, was convicted of two counts of armed robbery. She held up two elderly men at knife point and took their wallets, which contained a total of $64. This is Linda's first criminal conviction. She is a single mother of two small children. She is unemployed, having recently lost her part-time secretarial job. The presentence report that was prepared indicates that Linda has used narcotics in the past, but no longer does. Linda claims that she committed the robberies in order to obtain money to buy food for her children.

The sentencing judge has the discretion to sentence Linda to anything from probation to ten years in prison.

Question 1–1: Which of the following is true:

(a) The sentencing judge must consider the following rationales for the imposition of criminal punishment in deciding on a sentence: general deterrence; specific deterrence; incapacitation; rehabilitation; retribution; and the expression of community values.

(b) The sentencing judge must consider general deterrence, specific deterrence, incapacitation, rehabilitation, and retribution in deciding on a sentence, but need not consider the expression of community values.

(c) The sentencing judge must consider general deterrence, specific deterrence, incapacitation, rehabilitation, and the expression of community values in deciding on a sentence, but need not consider retribution.

(d) None of the above.

Question 1–2: Which of the following is most accurate:

(a) If the judge focuses upon the rationale of general deterrence in deciding on an appropriate sentence for Linda, she will be most

concerned about ensuring that Linda "learns her lesson" and does not engage in criminal conduct in the future.

(b) If the judge focuses upon the rationale of specific deterrence in deciding on an appropriate sentence for Linda, she will be most concerned about ensuring that other people in Linda's specific situation do not engage in criminal conduct like Linda's in the future.

(c) If the judge focuses upon the rationale of specific deterrence in deciding on an appropriate sentence for Linda, she will be most concerned about ensuring that other people in Linda's specific situation do not engage in criminal conduct like Linda's in the future.

(d) None of the above.

Question 1–3: Which of the following is most accurate:

(a) If the judge considers the rationale of rehabilitation in deciding on an appropriate sentence for Linda, she must include some jail time to make sure that Linda has an opportunity while incarcerated to be rehabilitated.

(b) If the judge focuses upon the rationale of retribution in deciding on an appropriate sentence for Linda, a serious punishment may be warranted for Linda's offenses.

(c) If the judge focuses upon the rationale of expression of community values in deciding on an appropriate sentence for Linda, the punishment should be severe in order to reaffirm our strong abhorrence of this sort of antisocial behavior.

(d) All of the above.

Question 1–4: You are a legislative aide to a state legislator who is trying to decide whether or not to introduce a bill seeking to require veterinarians to report to the police any evidence they come across of "serious" cruelty to animals and to criminalize the failure of veterinarians to report such observations. Aside from the merits of this proposal as a matter of public policy, which of the following is most accurate:

(a) Whether this legislation would serve to generally deter veterinarians from failing to report such cruelty animals depends in large part on the certainty and severity of any proposed punishment.

(b) Passing legislation like this would likely serve the goals of specific deterrence and incapacitation.

(c) Neither the goals of rehabilitation nor retribution is a sensible justification for passing legislation like this.

(d) All of the above.

CHAPTER 2
ACTUS REUS

VOLUNTARY ACT

The following facts apply to Questions 2–1 and 2–2 below:

Sergio has a sleep disorder that causes him occasionally to wander around his home late at night and to make other movements without being aware that he is doing so. One night, Sergio, while sleepwalking in his living room, tripped over an electrical cord and fell onto and seriously injured a friend, Ilsa, who was sleeping on the living room couch.

Question 2–1: Which of the following is most accurate:

(a) Sergio did not commit a criminal act because his actions were involuntary since he was sleepwalking at the time he injured Ilsa.

(b) Sergio did commit a criminal act if but only if the crime with which he is charged is a strict liability offense.

(c) Both (a) and (b) are correct.

(d) Neither (a) nor (b) is correct.

Question 2–2: Which of the following is most accurate:

(a) If Sergio had realized that he possessed this sleep disorder, his actions which resulted in injuring Ilsa may not have been involuntary.

(b) Even if Sergio had realized that he possessed this sleep disorder, his actions which resulted in injuring Ilsa were still involuntary.

(c) If Sergio's sleepwalking on the night in question was shown not to have been a direct result of his sleep disorder, but resulted instead from drunkenness resulting from the fact that he had drunk a great quantity of tequila before going to bed, his actions were still involuntary.

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(d) Both (b) and (c) are correct, and (a) is incorrect.

Question 2–3: Maria was driving her car at a lawful rate of speed down a crowded, residential street when she suffered an unprovoked seizure, lost consciousness, and the car careened out of control, hitting and killing a small child who was playing in her front yard. Maria had never had a seizure previously and her doctors have not been able to determine for sure why she had this one. Which of the following is most accurate:

(a) Maria did not commit a criminal act because her act of losing control of the car was involuntary.

(b) Maria committed a criminal act because people are responsible for the proximate consequences of their own medical conditions.

(c) Maria committed a criminal act because an act is not involuntary when it is the product of a person's external body movement.

(d) Both (b) and (c) are correct, and (a) is incorrect.

POSSESSION

The following facts apply to Questions 2–4 and 2–5 below:

Estelle was driving her car on an interstate highway, when she was stopped by a state trooper for speeding. After asking Estelle for her driver's license and car registration, the trooper believed from her slurred speech that she was drunk and had her get out of the car and perform some simple sobriety tests, all of which she failed. Estelle was then arrested for driving while intoxicated. Her car was subsequently towed to an impound lot and an inventory search of its contents was performed.

The inventory search turned up two, small baggies containing crack cocaine, both of which were found inside a backpack that was in the trunk of the car. The backpack belonged to Estelle's friend, Thomas.

Question 2–4: Assume that Estelle did not know that Thomas had left crack cocaine in his backpack in her car. Which of the following is most accurate:

(a) Estelle is nonetheless guilty of possession of narcotics because the narcotics were in her car.

(b) Estelle is nonetheless guilty of possession of narcotics due to the doctrines of joint and constructive possession.

(c) Both of the above are true.

(d) None of the above is true.

Question 2–5: Assume that Estelle did know that Thomas had left crack cocaine in his backpack in her car, but it was not her cocaine and she had no plans to use any of it. Which of the following is most accurate:

(a) Estelle is guilty of possession of narcotics because the narcotics were in her car.

(b) Estelle is guilty of possession of narcotics because she had control over them.

(c) Both of the above are true.

(d) None of the above is true.

The following facts apply to Questions 2–6 and 2–7 below:

Doc and Andrea were at home asleep in bed in their second-floor bedroom when police officers executed a search warrant on their house, looking for stolen jewelry. During the course of the search, the executing officers discovered a growing marijuana plant in plain view on the kitchen table downstairs. When the marijuana was found, Doc and Andrea were nowhere near it; they were both still upstairs in their bedroom. The officers did not know whose marijuana plant it was, but arrested both Doc and Andrea for possession of marijuana.

Question 2–6: Assume that the marijuana belonged only to Doc, not to Andrea, but that Andrea knew that the marijuana was there. Which of the following is most accurate:

(a) Doc can be found guilty of possession of marijuana, but Andrea cannot.

(b) Both Doc and Andrea can be found guilty of possession of marijuana.

(c) Neither Doc nor Andrea can be found guilty of possession of marijuana because they were not in control of it at the time that it was seized.

(d) Neither Doc nor Andrea can be found guilty of possession of marijuana because, although they were in control of the marijuana, two people cannot both be convicted of possessing only a single contraband item.

Question 2–7: Assume that the prosecution discovers that the marijuana was left at the house by Doc's and Andrea's friend, Annie, who told the couple that she would return and pick it up the next day. Which of the following is most accurate:

(a) Neither Doc nor Andrea cannot be found guilty of possession of Annie's marijuana because they were not in control of it at the time that it was seized.

(b) Neither Doc nor Andrea can be found guilty of possession of Annie's marijuana because, although they were in control of the marijuana, they cannot be convicted of possessing another person's contraband.

(c) Doc and Andrea can be found guilty of possession of Annie's marijuana.

(d) Answers (a) and (b) are both true, and answer (c) is not true.

OMISSIONS

Question 2–8: Deidre believed that her next-door neighbor, Olivia, was mistreating her—Olivia's—two children, Dorita and Ella, who were two and three years old respectively. Deidre had heard rumors from some of her other neighbors that Olivia often locked the children in a small, unheated room for hours at a time, without food or access to a toilet. She had also heard screams from the children late at night from time to time. And while she had rarely seen the children outside their home, on the few occasions when Deidre had spotted them, they both looked to her to be excessively gaunt and malnourished.

Ella subsequently died of complications from an untreated kidney infection. An investigation that followed resulted in criminal charges being filed against Olivia for child abuse of both Dorita and Ella. Which of the following is most accurate:

(a) Deidre can be prosecuted successfully as Olivia's accomplice for failing to report to the authorities her belief that the children were being abused.

(b) Deidre cannot be prosecuted successfully as Olivia's accomplice for failing to report to the authorities her belief that the children were being abused.

(c) Deidre can be prosecuted successfully as Olivia's accomplice for failing to report to the authorities her belief that child abuse was taking place, but only with respect to Ella.

(d) Deidre can be prosecuted successfully as Olivia's accomplice for failing to report to the authorities her belief that child abuse was taking place, but only if it can be proved that she actually knew about Ella's kidney infection.

Question 2–9: Bill, a summer lifeguard at a municipal swimming pool, failed to notice that Cindy, a six-year old child who was swimming in the crowded pool, had slipped off the flotation devices that had been on her

arms, and was drowning. Bill failed to notice this because he was preoccupied with flirting with two young women wearing skimpy swimsuits who were standing next to him, busy flirting with him. By the time Bill was finally alerted by others to Cindy's distress and jumped into the water to rescue her, it was too late. Cindy never regained consciousness.

Bill has been charged with involuntary manslaughter in the death of Cindy. His defense counsel claims that he is not guilty of these charges, *inter alia*, because he committed no criminal act. Rather, Bill simply failed to act—an omission, which is not deemed to be culpable in criminal law. Which of the following is most accurate:

(a) Bill's failure to act does not satisfy the actus reus element of involuntary manslaughter.

(b) Bill's failure to act satisfies the actus reus element of involuntary manslaughter.

(c) Bill's failure to act satisfies the actus reus element of involuntary manslaughter, but only if he was related to Cindy.

(d) Bill's failure to act satisfies the actus reus element of involuntary manslaughter, but only if a statute created a duty for lifeguards to act to save distressed swimmers.

CHAPTER 3
MENS REA

DISTINGUISHING MENS REA ELEMENTS

Question 3–1: Sandy knew that the brakes on his truck were failing. He simply did not have the money to get them repaired for a couple of weeks, until after he got paid. Finally, payday came and Sandy had enough money in the bank to take his truck to a service station for repair. Unfortunately, on his way to the service station, his brakes failed completely as he tried to come to a complete stop at a red light and he rolled right through the intersection and smashed into the passenger side of a car, killing the front-seat passenger, Tim.

Sandy has been charged with first degree murder. In the jurisdiction where these events took place, first degree murder has a mens rea element of "purposeful" conduct, i.e. to be guilty of first degree murder, the prosecution must prove, *inter alia*, that the accused had the "conscious object to cause" the resulting death of the victim. Which of the following is most accurate:

(a) Sandy acted purposefully in killing Tim.

(b) Sandy did not act purposefully in killing Tim.

(c) Sandy did not act purposefully in killing Tim if but only if it is true that he did not have the money to repair the truck's brakes prior to the accident.

(d) Sandy did not act purposefully in killing Tim if but only if his actions were reckless.

Question 3–2: Diana anonymously telephoned a false bomb threat to a public high school. The school was evacuated and searched top to bottom, but, of course, nothing was found as there was no bomb there. Diana's role in making the call was discovered when her brother overheard her talking about it with one of her friends, and he turned her in for the

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