

CRIMINAL LAW

Professor Alexander

Required Readings

Dressler, Ch. 10

Model Penal Code § 2.02; and materials available online in PDF format at www.sandiego.edu/~larrya.

Problem Set 4

1. Read the following:

Model Penal Code § 2.02(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.

Model Penal Code § 224.4

Tampering with Records

A person commits a misdemeanor if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

Hypotheticals: Tampering with Records

Under §§ 224.4 and 2.02(3), would an actor be liable if he:

- (a) removes a record believing that he probably has the authority (privilege) to do so?
- (b) as a joke on a fellow student also working in the registrar's office, changes the student's official university grade card to an "F" in criminal law, and shows it to the student?
- (c) surreptitiously changes a student's official grade to a "B" because he honestly but negligently believes that it had been incorrectly recorded as an "A"?

Model Penal Code § 2.02(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.

More Hypotheticals: Tampering with Records

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Using § 2.02(4) (instead of § 2.02(3)), would the defendant be liable for violation of § 224.4 under hypotheticals (a) through (c) given earlier...? Would he be liable under the following hypotheticals?

(d) The defendant surreptitiously changes another student's official grade from an "A" to a "B," honestly believing that the "A" grade was probably incorrect but being aware of a chance that it might be correct.

(e) To earn money for tuition, the defendant surreptitiously changes another student's official grade from a "D" to an "A." He has great remorse over his act but does not reveal the change because he hopes that the change will be discovered by others before any official transcripts are prepared.

Write a one and one-half page memo answering questions (a)-(e).

2. The Jackal, a notorious political assassin, is hired by the O.A.S., a French terrorist group fighting French withdrawal from Algeria, to assassinate President Charles DeGaulle. The Jackal, now living a life of luxury on the proceeds from his past assassinations, is reluctant to take much of a chance of getting caught, so he says that he'll either (a) drop a banana peel on a sidewalk that DeGaulle sometimes walks on, or (b) take a shot from the top of the Eiffel Tower in the direction of DeGaulle's office. Both acts have a 1 in 1,000,000 chance of killing DeGaulle. If DeGaulle dies from either, the O.A.S. agrees to pay the Jackal \$1,000,000.

Assume the Jackal does (a), (b), or both, and DeGaulle in fact dies from slipping on the banana peel or from the shot. Is the Jackal guilty under the Model Penal Code of "purposely" killing DeGaulle?

Answer in one-half page.

3. Look at the example from Katz, Bad Acts and Guilty Minds, pp. 165-69 (in the supplemental materials), of the man who killed another man believing the latter to be an evil spirit. Write a one-half page memo analyzing the mental state in that case under the Model Penal Code. (Or, alternatively, do a one-half page memo on #6 below.)

4. Ghouls, Inc., offers \$1 million to anyone who can remove a heart from a person without the person's dying. Dr. Frankenstein removes the heart from one of his patients, hoping to win the prize, but also believing that the experiment is justified in the cause of advancing medical knowledge. Alas, the patient dies, as Dr. Frankenstein was pretty certain he would. Has Dr. Frankenstein committed a "purposeful," a "knowing," or a "reckless" homicide as the MPC defines those terms? Who has the burden of proof regarding whether the experiment is justified? Answer in a one-half page memo.

5. Thelma and Louise agree that if the next guys they pick up turn out to be jerks, and if they don't inherit big money in the meantime, they will go on a robbery spree in order to be independent of men. Their agreement is overheard by a cop, and they are arrested for conspiracy to commit robbery. Conspiracy requires an agreement to commit a crime "with the purpose that

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the crime be committed.” Are Thelma and Louise guilty if their agreement expresses their true purposes? Compare Thelma and Louise to Roger, who enters the Metropolitan Museum of Art to admire the collection, but vowing that if he sees an Andy Warhol there -- which he believes is highly unlikely -- he will steal it. Is he guilty of the crime of burglary, defined here as “entering any building with the purpose of committing a felony therein”? And compare Thelma, Louise, and Roger to Agnes, who points a gun at Sam and says, “Your money or your life,” intending to shoot him if he fails to give her his money, but hoping and believing that she’ll get the money. Is she guilty of “assault with intent to rob” or “assault with intent to kill”?

Answer in one page.

6. (Alternative to #3 -- one-half page)

Question: Has defendant in either case “knowingly” committed actus reus?

Case 1

Statute: “It is illegal to smuggle A, B, C, aka ‘heroin.’”

Defendant believes:

- (1) He has X, Y, Z.
- (2) It is illegal to smuggle X, Y, Z.
- (3) The street name for X, Y, Z is “heroin.”

In fact:

Defendant has A, B, C.

Case 2

Statute: “It is illegal to smuggle heroin, which is chemically A, B, C.”

Defendant believes:

- (1) He has X, Y, Z.
- (2) X, Y, Z is heroin.
- (3) It is illegal to smuggle heroin (X, Y, Z).

In fact:

Defendant has A, B, C.