

TABLE OF CONTENTS

CAPSULE SUMMARY OF CRIMINAL LAW	Page 1
PERSPECTIVE	45

PART ONE: INTRODUCTION

I. General Considerations	57
A. Why Study the Common Law?	58
B. Why Study the Model Penal Code?	58
C. The Organization of These Materials	60

PART TWO: THE DEFINITION OF CRIME

II. The Common Law	65
A. Starting the Analysis	66
B. The Actus Reus	66
1. Elements of the Actus Reus	66
a. Act	66
b. Omission	66
1) Sources of a Legal Duty to Act	67
c. Possession	67
2. Problems of Interpretation	67
C. The Mens Rea	68
1. Elements of the Mens Rea	68
a. Specific Intent	68
1) Contemplated Conduct	68
2) Contemplated Impact	68
3) Knowledge That One or More Elements of the Actus Reus Exists ...	69

II. The Common Law—Continued		Page
b.	General Intent	69
1)	Recklessness	69
2)	Negligence	69
c.	Other Mens Rea Terms	70
d.	The Best Approach	70
2.	Strict Liability	70
a.	Public Welfare Offenses	70
1)	Characteristics of Public Welfare Offenses	71
b.	Immoral Behavior	71
c.	Elements Not Central to the Criminality of Behavior	71
1)	Grading vs. Criminality	71
d.	Miscellaneous Crimes	72
3.	Concurrence of Actus Reus and Mens Rea	72
4.	Transferred Intent	72
5.	The Relation of Motive to Mens Rea	73
a.	Establishing a Defense	74
b.	Establishing Specific Intent	74
D.	Causation	75
1.	Cause in Fact	75
a.	Exception: Concurrent Causes	75
2.	Proximate Cause	75
a.	Dependent and Independent Intervening Causes	76
1)	Intervening Cause	76
2)	Dependent Intervening Cause	76
3)	Independent Intervening Cause	76
b.	The Determinative Inquiry	77
E.	Proof of the Elements of Crime	78
1.	Burden of Proof	78
a.	Burden of Production	78
b.	Burden of Persuasion	78
1)	Proof Beyond a Reasonable Doubt	78
2)	Proof By a Preponderance of the Evidence	79
2.	The Order of Trial	79
3.	Proof of the Actus Reus	80
4.	Proof of the Mens Rea	80
a.	Specific Intent	80
b.	General Intent	80
1)	Recklessness	80
2)	Negligence	81
c.	The Presumption of Natural and Probable Consequences	82
1)	Satisfying the Burden of Persuasion	82
2)	Shifting the Burden of Persuasion	83
3)	Shifting the Burden of Production	83
4)	Permissive Inference	84
5.	Proof of Causation	84
F.	Review Questions	85

	Page
III. The Model Penal Code	87
A. Starting the Analysis	88
B. The Actus Reus	88
1. Elements of the Actus Reus	88
a. Conduct	88
1) Act	89
2) Omission	89
3) Possession	90
b. Result	90
c. Circumstances	90
2. Problems of Interpretation	91
C. The Mens Rea	91
1. Elements of the Mens Rea	91
a. Purpose	92
1) Conduct	92
2) Result	92
3) Circumstances	92
b. Knowledge	92
1) Conduct	92
2) Result	92
3) Circumstances	93
c. Recklessness	93
1) The Nature of the Risk	93
2) Awareness of the Risk	94
3) The Ultimate Judgment	94
a) Defendant's Point of View	94
b) Defendant's Situation	94
d. Negligence	95
1) The Nature of the Risk	95
2) Should Be Aware of Risk	96
3) The Ultimate Judgment	96
a) Defendant's Point of View	96
b) Defendant's Situation	96
2. The Analytical Structure	97
a. Element of the Offense	97
b. Material Element of the Offense	98
c. When Culpability Required	98
1) Culpability Not Required for Violations	98
2) Culpability Required for All Crimes	98
d. Separate Consideration of Each Element	98
3. Principles of Construction	99
a. No Culpability Provided	99
b. Culpability Provided	99
1) Culpability Designated for One Actus Reus Element	99
2) Culpability Required in Addition to Actus Reus Elements	101
4. Additional Mens Rea Provisions	103
a. Substitutes for Culpability Terms	103
b. Conditional Purpose	104
c. Wilfulness	104

III. The Model Penal Code—Continued	Page
5. Strict Liability	104
a. Crimes	104
b. Violations	105
1) Decriminalization of Public Welfare Offenses	105
2) Strict Liability for Violations	105
a) Reclassification of Offenses Defined Outside the Criminal Code ..	106
b) Negligent Commission of Violations	106
6. Concurrence of Actus Reus and Mens Rea	106
7. Transferred Intent	106
8. The Relation of Motive to Mens Rea	106
D. Causation	107
1. Cause in Fact	107
a. Exception: Concurrent Causes	107
2. Proximate Cause	107
a. Comparison of Actual Result With Designed, Contemplated, or Risked Result	107
1) Different Person, Different Property, or Lesser Harm	108
a) Different Person	108
b) Different Property	108
c) Lesser Harm	109
2) Similar Injury or Harm	109
b. Strict Liability Offenses	111
E. Proof of the Elements of Crime	111
1. Proof Beyond a Reasonable Doubt	111
2. The Prosecutor's Prima Facie Case	112
3. Defenses and Affirmative Defenses	112
a. Affirmative Defenses	112
1) Definition	113
2) Consequence	113
4. Presumptions	113
a. The "Presumed Fact"	113
b. The Effect of a Presumption	114
1) Sufficient Evidence to Get to the Jury	114
2) Instructions to the Jury	115
F. Review Questions	115

PART THREE: DERIVATIVE DEFENSES

IV. The Common Law	119
A. Introduction	120
B. Involuntary Acts	120
1. Involuntary Act in Voluntary Course of Conduct	121
2. Relation to Other Defenses	121
a. Insanity	121
1) Physical Disease Leading to Recurrent Violence	122
b. Duress	122
c. Self-Defense	123

IV. The Common Law—Continued	Page
C. Mistake of Fact	123
1. Specific Intent	123
2. General Intent	124
a. Mistakes as to Actus Reus Elements of Specific Intent Crimes	124
3. Strict Liability	126
a. Immoral Behavior	126
b. Elements not Central to the Criminality of Behavior	127
1) Application to Specific Intent Offenses	128
D. Mistake of Criminal Law	129
1. The Paradigm Case	130
a. The Meaning of Mens Rea	131
2. Exception: Interpretation of Mens Rea Terms	132
3. Exception: Misled by Official Authority	132
E. Mistake of Non-Criminal Law	133
1. Specific Intent	134
2. General Intent	135
a. Distinguishing Between Mistakes of Fact and Non-Criminal Law	136
b. A Word of Caution	137
F. Intoxication	137
1. Terminology	137
a. Definition of Intoxication	137
b. Definition of Voluntary Intoxication	137
c. Involuntary Intoxication	138
2. Admissibility to Negate Actus Reus	138
a. No Act	138
b. No Voluntary Act	138
3. Admissibility to Negate Specific Intent	138
a. Admissible When Relevant	139
b. Admissible to Show Incapacity	139
c. Inadmissible	139
4. Admissibility to Negate General Intent	139
G. Evidence of Mental Disease	140
1. Diminished Responsibility Defined	140
a. Admissibility to Negate Mens Rea	140
b. Mitigate Grade of Offense	140
c. Avoid Capital Sentence	140
2. Admissibility to Negate Mens Rea	140
a. Issues on Which Evidence of Mental Disease Admissible	142
b. Limitation to Evidence of Mental Disease	142
c. Limitation to Proof of Lack of Capacity	143
H. Review Questions	143
V. The Model Penal Code	145
A. Introduction	146
B. Involuntary Acts	146
1. Involuntary Act in Voluntary Course of Conduct	146
2. Relation to Other Defenses	146

V. The Model Penal Code—Continued	Page
C. Mistake of Fact	146
1. Mistakes That Negate Mens Rea	147
2. Mistakes That Establish a State of Mind Constituting a Defense	148
3. Grading Elements	148
D. Mistake of Criminal Law	150
1. The Paradigm Case	150
2. Exception: Where the Definition of the Offense so Provides	151
3. Exception: Where the Code so Provides	151
a. Law Not Reasonably Made Available	151
b. Reliance Upon Official Statement	152
E. Mistake of Non-criminal Law	153
F. Intoxication	154
1. Terminology	154
a. Definition of Intoxication	154
b. Definition of Self-Induced Intoxication	154
c. Definition of Pathological Intoxication	155
2. Admissibility	155
G. Evidence of Mental Disease	156
H. Review Questions	157

PART FOUR: COLLATERAL DEFENSES: JUSTIFICATIONS

VI. The Common Law	161
A. Introduction	162
1. Justifications	162
2. Excuses	162
B. Self Defense	162
1. Elements of the Defense	163
a. Unlawful Force by Aggressor	163
1) Defendant as Aggressor	163
a) Response to Excessive Force	163
b) Withdrawal	163
2) Response to Unlawful Arrest	163
b. Imminence of Force by Aggressor	164
c. Amount of Responsive Force Permitted	164
1) Deadly Force Defined	164
2) Non-deadly Force Defined	164
3) Rules for Use of Deadly Force	164
a) Response to Deadly Force	164
b) Retreat	165
d. Reasonable Belief in Necessity	165
2. Effect of Mistake	165
a. Reasonable Mistakes of Fact or Judgment	165
b. Unreasonable Mistakes; Imperfect Self Defense	165
c. Mistakes of Law	165
1) Mistakes of Criminal Law	165
2) Mistakes of Non-criminal Law	166
C. Defense of Others	166
1. Elements of the Defense	166
a. Limitation: Relationship to Defender	166

VI. The Common Law—Continued	Page
2. Effect of Mistake	166
a. Limitation: Alter Ego Rule	166
D. Defense of Property	167
1. Elements of the Defense	167
a. Necessity to Use Force	167
1) Time to Invoke Law Enforcement	167
2) Request to Desist	167
b. Amount of Responsive Force Permitted	167
1) Limits on Use of Deadly Force	167
a) Personal Property	168
b) Real Property	168
2) Use of Mechanical Devices	168
2. Effect of Mistake	168
E. Arrest, Escape, and Crime Prevention	169
1. Use of Force to Make Arrest	169
a. Use of Deadly Force by Police Officer	169
1) Fleeing Felon	169
2) Fleeing Misdemeanant	169
3) Fleeing Dangerous Felon	169
b. Use of Deadly Force by Private Person	169
2. Use of Force to Prevent Escape	170
3. Use of Force to Prevent Crime	170
a. Use of Deadly Force	170
1) Any Felony	170
2) Dangerous Felony	170
F. Public Authority	170
G. Domestic Authority	170
H. Consent or Condonation	171
I. Necessity; Choice of Evils	171
1. Desirability of General Necessity Defense	171
a. The Case for the Defense	171
b. The Case Against the Defense	172
2. Elements of the Defense	172
a. Emergency	172
b. Defendant Without Fault	172
c. Avoid Greater Harm	172
3. Effect of Mistake	173
J. Review Questions	173
VII. The Model Penal Code	175
A. Introduction	176
B. Structure	176
1. Defendant's Belief	176
2. Effect of Mistake	177
a. Mistake of Fact or Judgment	177
b. Mistake of Law	178
1) Mistake of Criminal Law	178
2) Mistake as to Lawfulness of Force	179
3) Mistake of Non-Criminal Law	179
c. Innocent Party Injured	180

VII. The Model Penal Code—Continued

	Page
C. Self Defense	180
1. Limitations on the Use of Force	180
a. General Limitations	180
1) Unlawful Arrests	180
2) Defense of Property	181
b. Deadly Force	181
1) Defendant Initiates With Intent to Kill or Seriously Injure	181
2) Retreat	181
D. Defense of Others	181
E. Defense of Property	181
1. Defense Against Initial Aggression	182
2. Re-entry or Recapture	182
3. Limitations on the Use of Force	182
a. Request to Desist	182
b. Use of Deadly Force	182
c. Use of Mechanical Devices	182
F. Arrest, Escape, and Crime Prevention	182
1. Use of Force to Make Arrest	183
a. Limits on Non-Deadly Force	183
b. Limits on Deadly Force	183
1) Felony	183
2) Status of Defendant	183
3) Risk to Innocent Persons	183
4) Dangerous Person	183
c. Mistakes as to Lawfulness of Arrest	183
d. Assistance by Private Persons	183
1) Summoned to Assist Peace Officer	183
2) Other Cases	184
2. Use of Force to Prevent Escape	184
a. General Principle	184
b. Deadly Force	184
3. Use of Force to Prevent Crime	184
a. Limitations on the Use of Force	184
1) Other Justification Defenses Applicable	184
2) Deadly Force	184
a) Risk of Death or Serious Bodily Harm	184
b) Suppression of Riot or Mutiny	185
G. Public Authority	185
H. Domestic Authority	185
I. Consent and Condonation	185
1. General Provision on Consent	185
2. Consent to Bodily Harm	186
a. Minor Harm	186
b. Athletic Contests	186
c. Authorized by Article 3	186
3. When Consent Ineffective	186
a. Legal Incompetence	186
b. Incapacity	186
c. Offense Protects Against Improvident Consent	186
d. Force, Duress, or Deception	186

VII. The Model Penal Code—Continued

	Page
J. Necessity; Choice of Evils	186
1. Elements of the Defense	187
a. Belief in Necessity	187
b. Avoid Greater Harm	187
c. No Explicit Provision	187
d. Contrary Legislative Purpose	187
2. Effect of Fault in Bringing Situation About	187
3. Effect of Mistake	188
K. Review Questions	188

PART FIVE: COLLATERAL DEFENSES: EXCUSES**VIII. The Common Law** **193**

A. Introduction	194
B. Infancy	194
1. Age of Capacity	194
a. Under Seven	195
b. Between Seven and Fourteen	195
c. Over Fourteen	195
d. Rape	195
e. Statutory Revisions of Common Law Structure	195
2. Juvenile Court Legislation	195
C. Insanity	196
1. The Traditional Formulations	196
a. Mental Disease or Defect	197
b. Relation of Disease to Behavior	197
1) The M'Naghten Rules	198
a) Rationale for First Branch	198
b) Rationale for Second Branch	199
c) Meaning of "Unable to Know"	199
d) Meaning of "Know"	200
e) Meaning of "Wrong"	200
2) Irresistible Impulse	200
a) Rationale for Control Inquiry	201
3) The "Product" Test	202
2. Trial of the Insanity Defense	203
a. Burden of Production	203
b. Bifurcated Trial	203
c. Burden of Persuasion	204
d. Verdict	204
1) Traditional Verdict Options	204
2) Guilty but Mentally Ill	205
3. Effect of Insanity Acquittal	205
4. Efforts to Restrict or Abolish Insanity Defense	206
a. Consider Only at Sentencing	206
b. Consider Only on Mens Rea Issues	206
c. Verdict of Guilty but Mentally Ill	206
d. Eliminate Control Inquiry	206
5. Note on Diminished Responsibility	207
D. Involuntary Intoxication	207

VIII. The Common Law—Continued	Page
E. Duress	207
1. Elements of the Defense	208
a. Coercion By Another Person	208
b. Threat of Imminent Death or Serious Bodily Harm	208
c. Reasonable Person Would Have Been Coerced	208
d. Defendant Not at Fault	208
e. Intentional Killing	208
f. Wife Presumed Coerced by Husband	208
g. Special Statutes	208
2. Guilt of Person Who Coerces	209
3. Rationale of Defense	209
a. Justification	209
b. Excuse	209
c. Ethical Gaps in the Law?	210
1) Justification	210
2) Excuse	211
F. Entrapment	211
1. Competing Rationales	211
a. Subjective Inquiry	211
1) Defendant's Predisposition in Issue	212
2) Trial to Jury	212
b. Objective Inquiry	212
1) Defendant's Predisposition Inadmissible	212
2) Trial to Court	213
2. General Limitations	213
a. Serious Crimes Excluded	213
b. Burden of Proof	213
c. Limitation to Law Enforcement Agents	213
3. Constitutional Status	213
G. Review Questions	214
IX. The Model Penal Code	215
A. Introduction	216
B. Infancy	216
C. Insanity	216
1. Elements of the Defense	216
a. Mental Disease or Defect	216
b. Relation of Disease to Behavior	217
1) Lacked Substantial Capacity	217
2) Rationale for Cognitive Branch	217
3) Rationale for Omitting "Nature and Quality of Act" Branch	218
4) Rationale for Control Branch	218
2. Trial of the Insanity Defense	218
a. Burden of Production	218
b. Burden of Persuasion	219
c. Verdict	219
3. Effect of Insanity Acquittal	219
4. Note on Diminished Responsibility	219
D. Involuntary Intoxication	219

IX. The Model Penal Code—Continued

	Page
E. Duress	219
1. Relationship Between Duress and Necessity	220
2. Elements of the Defense	220
a. Coercion By Another Person	220
b. Threat of Imminent Death or Serious Bodily Harm	220
c. Reasonable Person Would Have Been Coerced	220
d. Defendant Not at Fault	220
e. Intentional Killing	221
f. Wife Presumed Coerced by Husband	221
3. Guilt of Person Who Coerces	221
4. Rationale of Defense	221
F. Entrapment	221
1. Rationale	221
2. Elements of the Defense	221
a. Limitation to Law Enforcement Agents	222
b. Serious Crimes Excluded	222
c. Substantive Standards	222
1) Knowingly False Representations of Legality	222
2) Substantial Risk That Innocent Persons Will Commit Offense	222
d. Burden of Proof	222
G. Review Questions	222

PART SIX: PARTIES

X. The Common Law	227
A. Introduction	228
B. Liability as an Accessory	228
1. The Terminology	228
a. Principal in the First Degree	228
1) Innocent Agent Cases	228
2) Use of Animals or Inanimate Objects	229
b. Principal in the Second Degree	229
1) Constructive Presence	229
c. Accessory Before the Fact	229
d. Accessory After the Fact	229
1) Persons Incapable of Being an Accessory After the Fact	229
e. Treason	229
f. Misdemeanors	229
2. Consequences of Classification	230
a. Place of Trial	230
b. Variance Between Allegations and Proof	230
c. Prior Conviction of Principal in the First Degree	231
3. Current Law	231
a. Principal in the Second Degree and Accessory Before the Fact	231
b. Accessory After the Fact	232

X. The Common Law—Continued	Page
4. Elements of Liability as an Accessory	232
a. The Actus Reus	232
1) Affirmative Aid	232
2) Omissions	233
3) Ineffective Aid; Principal Unaware of Aid	233
a) Actual Help	233
b) Communicated Encouragement	233
4) Immunity From Conviction for Object Offense	233
5) Conduct Inevitably Incident to a Crime	234
6) Incapacity to Commit Object Offense	234
b. The Mens Rea	234
1) Mens Rea for Object Offense	234
2) Purpose to Promote or Facilitate	235
3) Knowledge That Crime Will Be Promoted or Facilitated	235
a) Require Purpose in All Cases	236
b) Permit Conviction Based on Knowledge	236
c) Intermediate Position	236
d) Facilitation Offense	237
4) Recklessness or Negligence as to Results	238
5) Negligence: Unanticipated Offenses	238
c. The Principal's Behavior: Conduct or Guilt	239
1) Guilt of the Principal	239
2) Aiding and Abetting an Attempt	239
3) Conduct by the Principal	239
4) Attempting to Aid and Abet; No Conduct by Principal	240
d. Grading of Accessory's Crime	240
1) Traditional View	240
2) Exception for Homicide	240
3) Departures From the General Rule	241
e. Withdrawal of Aid	241
1) Communicate Repudiation	241
2) Render Prior Aid Ineffective	241
3) Act in a Timely Manner	242
5. Accessories After the Fact	242
a. Elements of the Common Law Offense	242
1) The Actus Reus	242
2) The Mens Rea	242
3) Persons Excluded From Conviction	242
b. Modern Statutory Treatment	242
1) Accessory After the Fact	243
2) Obstructing Justice	243
C. Vicarious Liability	243
1. When Imposed	243
2. Why Imposed	243
3. Relation to Strict Liability	244
a. Nature of Vicarious Liability	244
b. Nature of Strict Liability	244
c. Imposition of Strict and Vicarious Liability	244
4. Criticisms of Its Use	244

X. The Common Law—Continued	Page
5. Limits on Its Use	245
a. Common Law Limits	245
b. Constitutional Limits	245
D. Enterprise Liability	245
E. Review Questions	247
XI. The Model Penal Code	249
A. Introduction	250
B. Liability as an Accessory	250
1. The Terminology	250
a. Offense Committed by Conduct of Defendant	250
b. Offense Committed by Conduct of Another for Which Defendant Is Legally Accountable	250
1) Innocent Agent	250
2) Made Accountable by Law	250
3) Accomplice of Another Person	251
2. Consequences of Classification	251
a. Place of Trial	251
b. Variance Between Allegations and Proof	251
c. Prior Conviction of Principal	251
3. Elements of Liability as an Accessory	251
a. The Actus Reus	251
1) Affirmative Aid	251
2) Omissions	252
3) Ineffective Aid; Principal Unaware of Aid	252
4) Immunity From Conviction for Object Offense	252
5) Conduct Inevitably Incident to a Crime	252
6) Incapacity to Commit Object Offense	252
b. The Mens Rea	253
1) Mens Rea for Object Offense	253
2) Purpose to Promote or Facilitate	253
3) Knowledge That Crime Will Be Promoted or Facilitated	254
4) Recklessness or Negligence as to Results	254
5) Negligence; Unanticipated Offenses	255
c. The Principal's Behavior: Conduct or Guilt	255
1) Guilt of the Principal	256
2) Aiding and Abetting an Attempt	256
3) Conduct by the Principal	256
4) Attempting to Aid and Abet: No Conduct by Principal	256
d. Grading of the Accessory's Crime	257
e. Withdrawal of Aid	257
4. Accessories After the Fact	258
a. Hindering Apprehension or Prosecution	258
b. Supplementary Offenses	258
C. Vicarious Liability	258
D. Enterprise Liability	258
1. Liability of a Corporation	259
2. Liability of Partnership or Unincorporated Association	259
3. Due Diligence Defense	259
4. Liability of Employee	260

XI. The Model Penal Code—Continued	Page
E. Review Questions	260

PART SEVEN: INCHOATE CRIMES

XII. The Common Law	265
A. Introduction	266
B. Attempt	266
1. The Mens Rea	266
a. The Specific Intent Requirement	266
b. The Meaning of Specific Intent	267
c. Recklessness, Negligence, and Strict Liability	268
2. The Actus Reus	268
a. The Common Law Tests	268
1) The Last Proximate Act	269
2) The Physical Proximity Tests	269
a) The Indispensable Element Test	269
b) The Dangerous Proximity Test	270
3) The Probable Desistance Tests	270
a) The Res Ipsa Loquitur Test	270
b. Conclusion	271
3. Impossibility	271
a. True Legal Impossibility	271
b. Legal and Factual Impossibility	271
c. Primary and Secondary Intent	272
d. Proper Analysis of Legal and Factual Impossibility Cases	272
1) Mens Rea	273
2) Actus Reus	273
a) The Physical Proximity Tests	273
b) The Probable Desistance Tests	274
4. Abandonment	274
5. Grading	274
6. Cumulative Punishment	275
7. Assault with Intent	275
C. Conspiracy	275
1. The Actus Reus	276
a. Overt Act	276
b. More Than One Agreement	276
1) The "Wheel With Spokes"	277
2) The "Chain"	277
c. Bilateral or Unilateral Agreement	278
d. Wharton's Rule: Object Crimes Requiring Concerted Action	278
1) Third-Party Exception	278
2) Use of Wharton's Rule as Principle of Statutory Construction	278
e. Immunity From Conviction for Object Offense	279
f. Incapacity to Commit Object Offense	279
g. Agreement With Unknown Parties	279
h. Husband and Wife	280
2. The Mens Rea	280
a. Intent to Agree	280
b. Intent to Achieve Common Prohibited Objective	280

XII. The Common Law—Continued	Page
c. Proof of Intent	280
d. Corrupt Motive	281
3. Impossibility	281
a. True Legal Impossibility	281
b. Legal and Factual Impossibility	281
4. Abandonment as a Defense	283
5. Duration: Accomplishment, Abandonment, or Withdrawal	283
a. Why Duration Matters	283
1) Statute of Limitations	283
2) Hearsay Exception	283
3) Venue	284
4) Liability for Substantive Offenses	284
b. How Duration Is Determined	284
1) Accomplishment	284
a) The Usual Case	284
b) An Agreement to Conceal	284
2) Abandonment	285
3) Withdrawal	285
6. Liability for Substantive Offenses	285
a. Offenses Agreed to	285
b. The Pinkerton Extension	285
7. Grading	286
8. Cumulative Punishment	286
D. Solicitation	287
1. The Actus Reus	287
a. Offenses It Is a Crime to Solicit	287
b. Immunity From Conviction for Object Offense	287
2. The Mens Rea	288
3. Impossibility	288
a. True Legal Impossibility	288
b. Legal and Factual Impossibility	288
4. Abandonment	289
5. Liability for Substantive Offenses	289
6. Grading	289
7. Cumulative Punishment	289
a. Solicitation and the Object Offense	289
b. Solicitation and Attempt	289
c. Solicitation and Conspiracy	289
E. Other Inchoate Offenses	290
F. Review Questions	290
XIII. The Model Penal Code	293
A. Introduction	294
B. Attempt	294
1. The Mens Rea	295
a. Mens Rea Towards Elements of Object Offense	295
1) Conduct Elements of Object Offense	295
2) Result Elements of Object Offense	295
3) Circumstance Elements of Object Offense	295
4) Additional Mens Rea Requirements of Object Offense	295

XIII. The Model Penal Code—Continued	Page
b. Recklessness, Negligence, and Strict Liability	296
2. The Actus Reus	297
a. Substantial Step	297
b. Strongly Corroborative of Actor's Criminal Purpose	297
c. Illustrative Substantial Steps	297
3. Impossibility	298
a. True Legal Impossibility	298
b. Legal and Factual Impossibility	298
c. Rationale for Model Code Solution	299
d. Innocuous Behavior	299
e. Redefinition of Receiving Stolen Property	299
f. Criticism of Model Code Approach	299
4. Abandonment	300
a. Effective Abandonment	300
b. Complete Renunciation	301
c. Voluntary Renunciation	301
5. Grading	302
6. Cumulative Punishment	302
7. Assault With Intent	303
C. Conspiracy	303
1. The Actus Reus	303
a. Overt Act	303
b. More Than One Agreement	304
c. Bilateral or Unilateral Agreement	304
d. Wharton's Rule: Object Crimes Requiring Concerted Action	304
e. Immunity From Conviction for Object Offense	305
f. Incapacity to Commit Object Offense	305
g. Agreement With Unknown Parties	305
h. Husband and Wife	305
2. The Mens Rea	305
a. Purpose to Promote or Facilitate Object Offense	305
b. Proof of Intent	307
c. Intent to Agree	307
d. Corrupt Motive	307
3. Impossibility	307
a. True Legal Impossibility	307
b. Legal and Factual Impossibility	307
4. Abandonment as a Defense	308
a. Thwart Success of Conspiracy	308
b. Complete and Voluntary Renunciation	308
5. Duration: Accomplishment, Abandonment, or Withdrawal	308
a. Why Duration Matters	308
1) Statute of Limitations	308
2) Hearsay Exception	309
3) Joinder and Venue	309
4) Liability for Substantive Offenses	309
b. How Duration Is Determined	309
1) Accomplishment	309
2) Abandonment	309
3) Withdrawal	309

XIII. The Model Penal Code—Continued	Page
6. Liability for Substantive Offenses	310
7. Grading	310
8. Cumulative Punishment	310
D. Solicitation	311
1. The Actus Reus	311
a. Offenses It Is a Crime to Solicit	312
b. Immunity From Conviction for Object Offense	312
2. The Mens Rea	312
3. Impossibility	312
a. True Legal Impossibility	312
b. Legal and Factual Impossibility	312
4. Abandonment	313
a. Prevent Commission of Crime	313
b. Complete and Voluntary Renunciation	313
5. Liability for Substantive Offenses	313
6. Grading	313
7. Cumulative Punishment	313
E. Other Inchoate Offenses	314
F. Review Questions	314

PART EIGHT: CRIMINAL HOMICIDE

XIV. The Common Law	319
A. Introduction	320
1. Justification and Excuse	320
2. Person	320
a. Birth	320
b. Death	321
3. Causation	321
a. Year and a Day Rule	321
B. Murder	321
1. Meaning of “Malice Aforethought”	321
a. Intent to Kill	321
1) Deadly Weapon Presumption	322
b. Intent to Inflict Serious Injury	322
c. Extreme Recklessness	322
1) Actual Awareness of Risk	322
d. Felony Murder	322
2. History	323
a. Manslaughter	323
b. The Degree Structure	323
1) “Wilful, Deliberate, and Premeditated”	323
2) Second Degree Murder	324
c. Discretionary Death Penalty	324
d. Note on Model Penal Code and the Death Penalty Decisions	324
3. Felony Murder	324
a. Rationale for the Rule and for Its Limitations	324
b. “Inherently Dangerous Felony” Limitation	325
c. “Proximate Cause” Limitation	326
d. “Independent Felony” Limitation	326

XIV. The Common Law—Continued	Page
e. When the Felony Begins and Ends	326
f. “Killing Committed by Felon” Limitation	326
1) “Proximate Cause” Theory	327
2) “Agency” Theory	327
3) Prevailing View	327
4) Competing Rationales	327
5) Independent Liability for Murder	328
g. “Culpability” Limitation	328
h. “Liability of Accomplices” Limitation	328
1) Judicial Limitations	328
2) New York Limitation	328
C. Manslaughter	329
1. Voluntary Manslaughter	329
a. Provocation	329
1) “Heat of Passion”	329
a) Defendant Actually Provoked	329
b) Provocation Legally Adequate	330
c) Defendant’s Reaction Must Have Been Reasonable	330
2) Cooling Time	330
3) The Effect of Mistake	331
b. Imperfect Justification	331
c. Presumption of Malice	331
2. Involuntary Manslaughter	331
a. Recklessness or Negligence	331
b. Misdemeanor Manslaughter	332
D. Diminished Responsibility	332
1. Mitigation of First Degree Murder to Second Degree	332
2. Mitigation of Murder to Voluntary Manslaughter	333
E. Review Questions	333
XV. The Model Penal Code	335
A. Introduction	336
1. Justification and Excuse	336
2. Person	336
3. Causation	336
B. Murder	336
1. Treatment of Cases Included in “Malice Aforethought”	336
a. Intent to Kill	336
b. Intent to Inflict Serious Injury	337
c. Extreme Recklessness	337
d. Felony Murder	337
2. Rationale for Rejection of Degree Structure	338
C. Manslaughter	338
1. Provocation	338
a. Source of Provocation	338
b. Eliminate “Adequacy” Limitation	338
c. Moderate Objectivity of Standard	339
d. Eliminate Separate “Cooling Time” Inquiry	339
e. Effect of Mistake	339
2. Diminished Responsibility	339

XV. The Model Penal Code—Continued	Page
D. Capital Punishment	340
1. The Nature of the Proceeding	340
a. Bifurcation	340
b. Criteria for Decision	340
1) Diminished Responsibility	341
a) Preclusion of Death Penalty by Court	341
b) Extreme Mental or Emotional Disturbance	341
c) Cognitive or Volitional Impairment	341
E. Review Questions	342

PART NINE: CONCLUSION

XVI. Constitutional Limits on Punishment for Crime	345
A. Introduction	346
B. The Definition of Crime	346
1. Vagueness	346
2. An Act	347
3. A Voluntary Act	348
4. Mens Rea	349
C. Proportionality	350
1. Capital Punishment	350
a. Required Procedures	350
1) Mandatory Death Penalty Unconstitutional	350
2) Unguided Discretion	351
3) Mitigating Factors	351
b. Offenses for Which Death Penalty May Be Imposed	351
1) Murder	351
2) Rape	351
3) Accomplices to Murder	352
2. Imprisonment	352
D. Proof	353
1. Proof Beyond a Reasonable Doubt	353
2. Presumptions	354

APPENDICES

App.	
A. Answers to Review Questions	357
Part Two: The Definition of Crime	
Chapter II: The Common Law	357
Chapter III: The Model Penal Code	358
Part Three: Derivative Defenses	
Chapter IV: The Common Law	361
Chapter V: The Model Penal Code	364
Part Four: Collateral Defenses: Justifications	
Chapter VI: The Common Law	368
Chapter VII: The Model Penal Code	370
Part Five: Collateral Defenses: Excuses	
Chapter VIII: The Common Law	372
Chapter IX: The Model Penal Code	373

Part Six: Parties	
Chapter X: The Common Law	374
Chapter XI: The Model Penal Code	377
Part Seven: Inchoate Crimes	
Chapter XII: The Common Law	382
Chapter XIII: The Model Penal Code	385
Part Eight: Criminal Homicide	
Chapter XIV: The Common Law	388
Chapter XV: The Model Penal Code	390
B. Practice Examination Questions	393
C. Analysis of Practice Examination Questions	399
D. Glossary	407
E. Text Correlation Chart	423
F. Table of Model Penal Code References	427
G. Table of Cases	433