

Preparing for and Taking Final Examinations  
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**FINAL EXAM ANSWER OUTLINE**

1. Clark liability for Section 963
  - a. Elements
    1. Place into stream of commerce (actus reus)
    2. Prescription drug (attendance circumstance)
    3. Mislabeled in a material manner (attendance circumstance)
    4. Knowingly
  - b. Interpretation –
    1. Actus reus, MPC 2.01(1) – are his voluntary actions – supervision of others, signing off on shipments – sufficient actus reus; are they “placing” the drugs into stream of commerce?
    2. If not, could he be liable for his OMISSION – failing to stop others from placing the drugs into the stream of commerce? MPC 2.01(3)(b) – not unless he has some special duty under the law. Maybe some notion of duty arises b/c of commerce . . . putting people into harm’s way.
    3. Mes rea – knowingly applies to all elements, MPC 2.02(4). [Arg that this is public welfare offense fails because (1) has knowledge MR; (2) penalty is up to 10 years in prison; AND facts said MPC – which doesn’t recognize PWO – applies.] No issue as to MR on first two elements. But does he “know” the QDT is mislabeled?
      - A. MPC – know means “is aware” (2.02(2)(b)(i); but can be satisfied if he’s aware of “high probability” as long as he doesn’t actually believe it isn’t the case (MPC 2.02(7)).
      - B. High probability? Facts: unexplained QDT, expired QDT lock, never sees it destroyed; overhears Seed talk about “re-labeling.” Clearly he is aware of substantial risk and consciously disregards it, thus reckless under MPC 2.02(2)(c), but state may have hard time proving knowledge, even under high prob test.
      - C. Willful blindness? No, b/c this is CL doctrine only.

2. Liability for death of AA

- a. Murder – no evidence of purposeful or knowing murder under MPC 210.2.
- b. Murder – recklessness plus extreme indifference to value of human life
  1. Actus reus – same issue as above – are his voluntary actions sufficient?
  2. Reckless? He knows QDT is used in life-threatening situations. He's AWARE of risk that recycled QDT might cause someone to get "seriously hurt." SUBSTANTIAL risk? He knows that potentially 1000s of bottles of bad QDT might be going out. That magnifies risk of harm to someone. He doesn't know rate at which QDT deteriorates, etc. so hard to determine how big a risk of death it is fair to say he contemplates. SEVERITY of risk – very high: possible multiple deaths. UNJUSTIFIABLE? Absolutely, no justification here but greed. Gross deviation of law abiding citizen? Close call.
  3. Extreme indifference? Can argue both sides. Prosecution can argue that letting potentially bad drugs go out – means that people whose life depends on drug may die – because it's "none of his business" shows EI. Defense can argue that, given real doubts about what was going on, hearing Seed talk about efficacy of even old QDT, negates EI.