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## Ringo's Criminal Liability Under the EPA Regulations [“B” Answer]

### ISSUE #1

#### COMMON LAW

Issue: Whether Ringo should be acquitted of removing the storage tank without a permit because he mistakenly believed that his removing the tank without a permit was legal.

Rule: Mistake of law is normally not a defense to a criminal charge. It will provide a defense, however, if the defendant relied on an official interpretation of the law, later determined to be invalid or erroneous, issued by an official responsible for interpreting, administering, or enforcing the law.

Application: It is undisputed that Ringo removed the gas tank without a permit in violation of the EPA's regulations. However, before he removed the tank, Ringo tried to find out if a permit was required. He met with the chief enforcement official in the E.P.A.'s regional office, who issued a letter to Ringo stating that a permit was not required. Although this determination was later found to be erroneous, Ringo was allowed to rely on it.

Conclusion: Ringo should be acquitted due to his reliance on the official's interpretation of the law.

#### MODEL PENAL CODE

Same issue, rule, and analysis as under common law.

### ISSUE #2

#### COMMON LAW

Issue: Whether Ringo should be acquitted of removing the storage tank without a permit because he mistakenly believed that his removing the tank without a permit was legal.

Rule: A defendant should not be acquitted of a criminal charge if his mistake was due to his own misinterpretation of the law.

Application: In addition to visiting the E.P.A. official, Ringo also read the relevant regulation himself and concluded that he did not need to obtain a permit. In order to win a mistake of law defense in this kind of situation, the law in question must actually authorize the defendant's conduct at the time (and later be declared erroneous or invalid (for example, by being declared unconstitutional). In this case, a court later held that the regulation didn't authorize Ringo's conduct.

If the ambiguity in the regulation's language is severe enough, there may be a void for vagueness problem. This is difficult to determine, however, without seeing the exact language of the regulation.

Conclusion: Ringo should not be acquitted due to his own misinterpretation of the law (although he should be acquitted due to his reliance on the E.P.A. official's interpretation).

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### **Analysis of “B” Answer**

Let’s start with the statement of the first issue. Unlike the “A” answer, this student phrased the issue too generally by failing to make clear that this part of the answer will deal with Ringo’s reliance on the E.P.A. official’s letter. In other words, the student doesn’t signal that he is going to talk first about the “reasonable reliance” issue, and will deal separately with the issue of Ringo’s own misinterpretation. This isn’t a big deal, but the clearer you are in signaling the exact issue you’ve spotted, the easier it will be for the professor to follow your answer.

In the rule statement, the student left out something important - that the defendant must “reasonably” rely on the official’s interpretation (the second of the four elements of the defense, as outlined in the analysis of the “A” answer). This omission could be due to the student’s not understanding the rule well enough, or could just be an oversight by a student rushing to get to the next part of the answer. Of course, the professor doesn’t know which of these is the case, and the student will miss points both here and, more importantly, in the application section. Note that this mistake causes the student to cut short the application discussion by noting merely that “Ringo was allowed to rely” on the official’s interpretation - missing the entire discussion of why Ringo’s reliance was reasonable.

Turning to the second issue, note that the student used the exact same language as in the first issue, again by being too general. As noted above, this can make it hard for the professor to see the organization and progression of your answer.

The student’s rule statement again omitted an important point - that the defense fails even if the regulation was ambiguous. This, in turn, caused the student to miss an important part of the application discussion. In reading and marking up the question, the student probably failed to note (or see the importance of) the fact that a court later found the regulation to be “somewhat unclear” and that Ringo’s misreading was reasonable. Although professors sometimes throw in red herrings, usually a fact of this type is included for a reason. When you confront a fact whose significance isn’t immediately apparent, try to reason backwards from the fact to the relevant issue - ask yourself, “what difference might it make that the regulation’s language was ambiguous?” Hopefully, this will help lead you to a more complete answer.

The student’s application discussion also omits the final point made in the “A” answer, namely, the policy reason that explains why reliance on the E.P.A. official’s interpretation provides a defense, but reliance on Ringo’s own misinterpretation does not. As explained in the comment to the “A” answer, you don’t want to discuss policy issues too much in an issue-spotter question, but this kind of brief policy analysis can improve your answer by showing the professor you understand the reason for the difference in result between the first issue and the second issue.

Finally, the student’s discussion of issue #2 neglected to mention the Model Penal Code. Even though the analysis is the same under the Model Penal Code as under common law, you must show your professor that you know the analyses are the same B the professor won’t assume that you know it.

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