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Yoko's Criminal Liability Under Intoxication Statute (Voluntary Act)
["A" Answer]

ISSUE #1: ACTUS REUS

COMMON LAW

Issue: Whether convicting Yoko would violate the voluntary act requirement, because one of the acts required for conviction under the intoxication statute - that Yoko be found in the driver's seat or front passenger area of the car - was involuntary.

Rule: The voluntary act requirement states that a defendant may be convicted only if her conduct "includes" a voluntary act. If a statute requires proof of more than one act, the requirement is satisfied even if only one of the acts was voluntary.

Application: The intoxication statute at issue in Yoko's case requires proof that Yoko (1) became intoxicated, and (2) was found in the driver's seat or front passenger area of an automobile. George forced Yoko into the front passenger seat and for Yoko, this act clearly was involuntary because it was "not a product of the effort or determination of the actor (Yoko), either conscious or habitual." (Although this language is taken from the Model Penal Code, it was drawn from the common law.)

However, Yoko voluntarily consumed the gin-and-tonics, and thus her intoxication was voluntary. Because only one relevant act needs to be voluntary, convicting Yoko would not violate the voluntary act requirement. This result may seem unfair, because Yoko was acting legally by becoming intoxicated (as far as we know, the State has no statute against public intoxication) and it was the involuntary act, forced upon Yoko by George, that converted actions into illegal conduct. Although the voluntary act requirement itself does not make any exceptions for this kind of fairness consideration, please note in my mens rea analysis that Yoko may still escape criminal liability - and fairness concerns may be assuaged - by consideration of the mens rea requirements that must be proven in order to convict Yoko.

Conclusion: Because one of Yoko's relevant acts was voluntary, convicting her would not violate the voluntary act requirement.

MODEL PENAL CODE

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

ISSUE #2: MENS REA

COMMON LAW

Issue: What mens rea should be applied, if any, under the intoxication statute, and whether Yoko had the required mens rea.

Rule: A court applying common law principles would likely apply a mens rea of recklessness, which requires proof that the defendant was aware of the risk but acted anyway.

Application: The intoxication statute does not include a mens rea term. Under common law principles, a court likely would not treat this as a strict liability crime, as it does not fit into any of the traditional categories for strict liability, e.g., felony murder, and sexual offenses involving minors. Rather, a court would probably "borrow" the mens rea of recklessness that is applied to similar offenses, such as operating vehicles while intoxicated. There is no evidence that Yoko

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acted recklessly, because there is no indication that Yoko was aware of any risk that, if she became intoxicated, George or anyone else would force her into an automobile.

Conclusion: Because Yoko's conduct was not reckless, she cannot be convicted under the intoxication statute.

MODEL PENAL CODE

Issue: What mens rea should be applied, if any, under the intoxication statute, and whether Yoko had the required mens rea.

Rule: If a statute does not specify a mens rea, the mens rea of recklessness will be implied for each element of the statute pursuant to section 2.02(3). To prove recklessness, there must be proof that the defendant was aware of the risk and acted anyway - or, more precisely, "consciously disregard[ed] a substantial and unjustifiable risk."

Application: The intoxication statute does not contain a mens rea term. Applying the mens rea of recklessness from section 2.02(3), the analysis here is the same as under common law principles: There is no evidence that Yoko acted recklessly, because there is no indication that Yoko was aware of any risk that, if she became intoxicated, she would be forced into an automobile.

Conclusion: Because Yoko's conduct was not reckless, she cannot be convicted under the intoxication statute.

Analysis of "A" Answer

This student's answer does a very good job of systematically identifying the issues, describing the relevant rules, and applying the rules to all of the relevant facts. Note that the student analyzes the actus reus and mens reus issues separately, providing a separate IRAC analysis for each. This is usually the best approach when you have a single fact pattern with multiple issues. On criminal law exams, you normally should address actus reus and mens rea issues separately (and similarly with causation issues and defenses, if they come into play).

On the actus reus issue, the student clearly identifies the issue as involving the voluntary act requirement and specifically identifies what aspect of Yoko's conduct is at issue, and why.

In the rule statement, the student gives a succinct statement of the general rule (that the conduct must "include" a voluntary act) as well as the more specific part of the rule that is at issue here (in a multiple-act statute, only one act must be voluntary).

The application discussion begins by specifying the two types of acts that must be proven under the statute (being intoxicated, and being found in the driver's seat or front passenger area of the car). It then proceeds to analyze Yoko's conduct with respect to each element.

Rather than asserting in conclusory fashion that Yoko's being forced into the car was involuntary, the student explains that this was involuntary because it does not meet the "effort or determination" test. Finally, the student provides a brief description of the fairness issues raised by this fact situation. Although issue-spotter questions don't normally call for a discussion of policy issues (such as the fairness issue), there are times when a *brief* discussion can be helpful, especially when - as here, with the anticipation of the mens rea analysis - it allows you to make a perceptive connection with another part of your answer.

The student's conclusion is succinct and parallels the issue statement in that it identifies the issue as involving the voluntary act requirement and the aspect of Yoko's conduct that is at issue.

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The student's mens rea analysis correctly focuses on the two key issues: (1) whether any mens rea should be implied into the statute, given that there is no mens rea specified, and if so, what mens rea should be implied; and (2) whether Yoko had the required mens rea.

In stating the rule, the student makes it clear that the common law and the M.P.C. will arrive at a 'recklessness' standard of the mens rea standard in different ways.

In discussing the common law approach, the student correctly explains that this is not the kind of crime that would traditionally have been treated as a strict liability offense, and then explains why a common law court would likely "borrow" the mens rea of recklessness.

In discussing the M.P.C. approach, the student correctly explains the different rule applied by the M.P.C., which provides a "default rule" for implying mens rea when none is specified in a statute.

In both the common law and M.P.C. discussions, the student does a good job of identifying what the prosecutor would need to prove in order to establish recklessness - actual awareness of the risk - and sensibly concludes that Yoko was not aware of any risk that she would be forced into an automobile.