

Notice: The "A" answer is one to which most professors would very likely give a grade of "A." The grades assigned to the non-A answers indicate our opinion of their relative merit; however, given the great variation in grading practices, professors will almost certainly not universally agree on what grades they would give the answers. What is important is not the grade, but why the answers fall progressively short of the "A" answer.

Yoko's Criminal Liability Under Intoxication Statute (Voluntary Act)
[“C” Answer]

ISSUE #1: ACTUS REUS

COMMON LAW

Issue: Whether convicting Yoko would violate the voluntary act requirement.

Rule: The Model Penal Code, drawing on the common law, defines a voluntary act by listing what is not considered voluntary: (a) a reflex or convulsion; (b) a bodily movement during unconsciousness or sleep; (c) conduct during hypnosis or resulting from hypnotic suggestion; (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

By turning around the language in (d), we can develop a positive definition of voluntary act, namely conduct that is the product of the effort or determination of the actor. If a statute requires proof of more than one act, the voluntary act requirement is satisfied if only one of the acts was voluntary, and it doesn't matter what order the voluntary and involuntary acts are in, or whether an act was foreseeable or not. Furthermore, you should only consider relevant acts, in other words, acts that are made relevant by the definition of the offense.

Application: The intoxication statute provides: "It is an offense for any person to be found, while intoxicated, in the driver's seat or front passenger area of any automobile." There are serious policy issues in a case like this, where the last act was involuntary. A better rule might be to allow a conviction if the last act were voluntary, but not if the last act were involuntary. Or we might provide that a defendant could be convicted, if the last act were involuntary, only if it were reasonably foreseeable to the defendant that the involuntary act would occur. Another alternative would be to reverse the rule, so that a defendant could be convicted only if all of the relevant acts were voluntary. Under any of those more fair tests, Yoko would probably have a good defense.

Conclusion: Yoko can be convicted.

MODEL PENAL CODE

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

ISSUE #2: MENS REA

COMMON LAW

Issue: Whether Yoko had the required mens rea for conviction under the intoxication statute.

Rule: There has to be proof that the defendant was aware of the risk but acted anyway.

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Application: Because Yoko wasn't aware of any risk that she would be forced into an automobile, she wasn't reckless.

Conclusion: Yoko can't be convicted.

MODEL PENAL CODE

Issue: Whether Yoko had the required mens rea for conviction under the intoxication statute.

Rule: To prove recklessness, there must be proof that the defendant was aware of the risk but acted anyway.

Application: There is no evidence that Yoko acted recklessly, because there is no indication she was aware of the risk.

Conclusion: Yoko can't be convicted.

Analysis of "C" Answer

As with the "B" answer, there is little that is actually wrong in the student's answer, but much of the necessary detail and analysis is missing, and the student wastes valuable time providing unnecessary information.

In the actus reus discussion, the issue statement is pitched at too general a level, failing to give any indication as to why there is an issue with respect to Yoko's conduct and the voluntary act requirement.

The rule statement is a classic "brain dump" of everything the student knows about the voluntary act requirement. There is no need to list all of the types of involuntary conduct, or how we can derive an affirmative statement of the rule from the negative examples given in the M.P.C.'s definition, or that only "relevant" acts should be considered; the question does not put any of those parts of the rule into play.

Your professor may conclude that you really don't understand what issues are relevant, and you waste precious time discussing issues and rules that are unlikely to get you any points. This is one of the most common blunders made by first-year students. You need to spend most of your time not on the rule statement, but in the application discussion; that's where most of the points are.

This student's application discussion, as with the "B" answer, unnecessarily quotes the statute in full, and then veers into a discussion of the policy issues, ignoring the actual rule and how it applies to Yoko. As indicated in the analysis of the "A" answer, a brief and focused discussion of the fairness issues is warranted, but not the extensive and unfocused policy discussion provided here. This student's answer would make a good introduction to a policy-oriented question, but not this kind of issue-spotter question.

The mens rea discussion is much too brief and conclusory. The issue statement fails to flag the issue of whether any mens rea should be implied into the statute (and if so, what mens rea), the rule statement does not even mention the term *recklessness* and provides only a cursory statement of what must be proven, and the application discussion barely makes use of the facts provided in the question. Furthermore, the student shows no understanding that the mens rea analysis is different under the common law than under the M.P.C., even though the end result is similar. The common law discussion is virtually a carbon copy of the M.P.C. discussion.