

## **Test Item File**

# Chapter 1

## Multiple Choice Questions

1. In the Texas justice system, responsibility for the prosecution of a criminal case lies with the:

- a. police.
- b. district or county attorney.
- c. victim.
- d. Attorney General.

Answer: b

Objective: Explain the four attributes of a crime.

Pages: 5 - 6

Level: Basic

2. Which of the following factors is a required component of a criminal prosecution?

- a. In a crime a specific person must be identified as the victim of the conduct.
- b. The legislature or a court must have declared the conduct to be a crime prior to its occurrence.
- c. The government prosecutor is responsible for moving the case forward.
- d. A human victim must sign a sworn complaint before prosecution may commence.

Answer: c

Objective: Explain the four attributes of a crime

Pages: 6 - 7

Level: Intermediate

3. If, upon conviction, a criminal defendant is ordered to pay a monetary fine, what is the disposition of that fine?

- a. The fine is split 50/50 between the government and the victim of the crime.
- b. The victim of the crime receives all of the fine in property crimes but none of the fine in crimes against the person.
- c. The government receives the entire amount of the fine.
- d. The trial judge decides who will receive the fine money.

Answer: c

Objective: Explain the four attributes of a crime.

Page: 7

Level: Intermediate

4. Which of the following historical legal systems most strongly influenced American criminal law?

- a. English Common Law
- b. German Civil Code
- c. Code of Hammurabi
- d. Ten Commandments

Answer: a

Objective: Identify the sources of American criminal law.

Page: 7

Level: Intermediate

5. An important concept in American criminal law is the principle of *stare decisis*. A synonym for the principle of *stare decisis* is:

- a. the rule of primogeniture.
- b. the rule of legal precedent.
- c. the rule in Shelly's case.
- d. the rule of three.

Answer: b

Objective: Identify the sources of American criminal law.

Page: 9

Level: Intermediate

6. Criminal laws enacted by Texas municipalities are known as:

- a. home rule statutes.
- b. municipal decrees.
- c. collateral offenses.
- d. city ordinances.

Answer: d

Objective: Identify the sources of American criminal law.

Page: 9

Level: Intermediate

7. In classifying crimes, an offense which potentially requires incarceration in a penitentiary is known as a:

- a. breach of the peace.
- b. crime involving moral turpitude.
- c. felony.
- d. misprision offense.

Answer: c

Objective: Explain the ways to classify crime.

Page: 10

Level: Intermediate

8. Which of the following offenses is a form of *malum prohibitum* crime?

- a. arson
- b. shoplifting
- c. perjury
- d. parking violation

Answer: d

Objective: Explain the ways to classify crime.

Pages: 10 - 11

Level: Intermediate

9. An offense that imports an act of baseness, vileness, or depravity which is contrary to usual and accepted rights and duties of a citizen is called a(n):

- a. secular offense.
- b. crime involving moral turpitude.
- c. *ipso facto* offense.
- d. ecclesiastical offense.

Answer: b

Objective: Explain the ways to classify crime.

Page: 11

Level: Intermediate

10. Which of the following is a stated purpose of the Texas Penal Code?

- a. to punish persons who violate the rules of society
- b. to insure the public safety by incarcerating those individuals that reject majority rule.
- c. to guide and limit the exercise of official discretion by law enforcement
- b. to punish corporations who create dangers to the public health and welfare

Answer: c

Objective: Identify and explain the six statutory purposes of the Texas Penal Code.

Page: 14

Level: Intermediate

11. Which of the following is NOT a stated purpose of the Texas Penal Code? Select the exception.

- a. insuring public safety by the rehabilitation of criminal offenders
- b. insuring public safety by incarcerating violent offenders

- c. insuring public safety by deterring criminal conduct
- d. safeguarding conduct that is without guilt from condemnation as criminal

Answer: b

Objective: Identify and explain the six statutory purposes of the Texas Penal Code.

Page: 14

Level: Intermediate

12. The U.S. Constitution specifically prohibits the enactment of:

- a. *ex parte* laws.
- b. *ex post facto* laws.
- c. extraneous laws.
- d. extracurricular laws.

Answer: b

Objective: Identify and explain the practical and legal limitations on the creation of criminal laws.

Page: 16

Level: Intermediate

13. The 8<sup>th</sup> Amendment to the U.S. Constitution prohibits punishment for a crime that is:

- a. disproportionate to the crime committed.
- b. unique to a particular state.
- c. cruel or unusual.
- d. embarrassing to the defendant.

Answer: a

Objective: Identify and explain the practical and legal limitations on the creation of criminal laws.

Page: 17

Level: Intermediate

14. For a Texas criminal statute to apply to an individual's conduct, the conduct must have:

- a. occurred within the state.
- b. occurred outside the state but caused a harmful result within the state.
- c. either a or b above.
- d. both occurred within the state and caused a harmful result within the state.

Answer: c

Objective: Identify and explain the criminal jurisdiction of the State of Texas.

Page: 21

Level: Intermediate

15. A Texas criminal statute can apply to conduct that occurred in another state or foreign country:

- a. never.
- b. only if the offender is a Texas resident.
- c. only if the offender returns to Texas after commission of the crime.
- d. only if the conduct or result that is an element of the offense occurred in Texas.

Answer: d

Objective: Identify and explain the criminal jurisdiction of the State of Texas.

Pages: 21 - 22

Level: Intermediate

### **True/False Questions**

1. In Texas, all crimes are created and defined by some level of governmental entity.

Answer: True

Objective: Explain the four attributes of a crime.

Page: 4

Level: Basic

2. No crime may be prosecuted without the consent of the human victim of the illegal conduct.

Answer: False

Objective: Explain the four attributes of a crime

Page: 5

Level: Basic

3. The primary historical foundation of Texas criminal law is the Code Napoléon used in 19<sup>th</sup> century Spain.

Answer: False

Objective: Identify the sources of American criminal law.

Page: 7

Level: Basic

4. The unwritten Common Law crimes have been statutorily abolished in Texas.

Answer: True

Objective: Identify the sources of American criminal law.

Page: 8

Level: Basic

5. Murder and theft are examples of *malum in se* crimes.

Answer: True

Objective: Explain the ways to classify crime.

Page: 10

Level: Basic

6. For a crime to be categorized as a breach of the peace, sufficient noise must be created that would disturb the reasonable person under same or similar circumstances.

Answer: False

Objective: Explain the ways to classify crime.

Page: 11

Level: Basic

7. The use of enhanced punishments for repeat offenders is based on the specific deterrence theory of criminal law.

Answer: True

Objective: Identify and explain the six statutory purposes of the Texas Penal Code.

Page: 13

Level: Basic

8. The primary purpose of the Texas Penal Code is to punish individuals who violate the statutes contained in the code.

Answer: False

Objective: Identify and explain the six statutory purposes of the Texas Penal Code.

Page: 14

Level: Basic

9. One stated objective of the Texas Penal Code is to insure the public safety through the rehabilitation of offenders.

Answer: True

Objective: Identify and explain the six statutory purposes of the Texas Penal Code.

Page: 14

Level: Basic

10. The use of discretion by the police when enforcing the criminal law is legally permissible.

Answer: True

Objective: Identify and explain the six statutory purposes of the Texas Penal Code.

Page: 15

Level: Basic

11. If a particular criminal law lacks the support of the bulk of the population, the courts will generally ignore the law.

Answer: False

Objective: Identify and explain the practical and legal limitations on the creation of criminal laws.

Page: 15

Level: Basic

12. The 8<sup>th</sup> Amendment requires the states to formally adopt a set of sentencing goals and then adhere to those goals when imposing criminal sentences.

Answer: False

Objective: Identify and explain the practical and legal limitations on the creation of criminal laws.

Page: 17

Level: Basic

13. Texas asserts jurisdiction over any crime committed against a resident of Texas no matter where in the United States the crime occurred.

Answer: False

Objective: Identify and explain the criminal jurisdiction of the State of Texas.

Page: 21

Level: Basic

14. The extent of Texas' criminal jurisdiction into the Gulf of Mexico is limited by federal law to three miles from the mean high tide line.

Answer: False

Objective: Identify and explain the criminal jurisdiction of the State of Texas.

Page: 21

Level: Basic

15. For Texas to exercise jurisdiction over a crime, only a single element of the offense need occur with the state.

Answer: True

Objective: Identify and explain the criminal jurisdiction of the State of Texas.

Page: 21

Level: Basic

### **Fill-in-the Blank**

1. The principle of \_\_\_\_\_ means that no crime occurs without the existence of a previously enacted law.

Answer: legality

Objective: Explain the four attributes of a crime.

Page: 4

Level: Intermediate

2. By state constitutional mandate, the specific phrase \_\_\_\_\_ (8 words) must appear in all Texas indictments.

Answer: against the peace and dignity of the state

Objective: Explain the four attributes of a crime.

Page: 5

Level: Intermediate

3. Texas was an early participant in the 19<sup>th</sup> century \_\_\_\_\_ movement to clearly spell out in written form the definition of criminal offenses.

Answer: codification

Objective: Identify the sources of American criminal law.

Page: 8

Level: Intermediate

4. In addition to its Anglo-American legal heritage, the laws of Texas have been somewhat influenced by the laws of the countries of \_\_\_\_\_ and \_\_\_\_\_.

Answer: Spain, Mexico

Objective: Identify the sources of American criminal law.

Page: 8

Level: Intermediate

5. In America, criminal offenses are generally divided into two categories based on severity: felonies and \_\_\_\_\_.

Answer: misdemeanors

Objective: Explain the ways to classify crime.

Page: 10

Level: Intermediate

6. A \_\_\_\_\_ (2 words) offense is one that is NOT naturally evil but is made unlawful solely by legislation.

Answer: *malum prohibitum*

Objective: Explain the ways to classify crime.

Page: 10

Level: Intermediate

7. One goal of the Texas Penal Code is      (2 words)     , which seeks to encourage conformance with the law by threatening a penalty for violating the law.

Answer: general deterrence

Objective: Identify and explain the six statutory purposes of the Texas Penal Code.

Pages: 12, 14

Level: Intermediate

8. Because of concerns by elected officials that newly enacted laws enjoy popular support, it is accurate to say the lawmaking is a \_\_\_\_\_ process.

Answer: political

Objective: Identify and explain the practical and legal limitations on the creation of criminal laws.

Page: 15

Level: Intermediate

9. The \_\_\_\_\_ doctrine is whereby a higher level government entity assumes total authority for lawmaking responsibility regarding a particular topic.

Answer: preemption

Objective: Identify and explain the practical and legal limitations on the creation of criminal laws.

Page: 18

Level: Intermediate

10. If a criminal statute fails to provide the kind of notice that will enable the ordinary person to understand what the law prohibits, the statute violates the      (3 words)      doctrine.

Answer: void-for-vagueness

Objective: Identify and explain the practical and legal limitations on the creation of criminal laws.

Page: 17

Level: Intermediate

11. With the exception of \_\_\_\_\_ cases, courts have generally deferred to legislative bodies to determine the appropriate penalty for criminal offenses.

Answer: death

Objective: Identify and explain the practical and legal limitations on the creation of criminal laws.

Page: 18

Level: Intermediate

12. The land, water, and airspace above the land and water where Texas statutes are enforceable is known as the \_\_\_\_\_ jurisdiction of the state.

Answer: territorial

Objective: Identify and explain the criminal jurisdiction of the State of Texas.

Page: 21

Level: Intermediate

13. The territorial waters of Texas extend three \_\_\_\_\_ into the Gulf of Mexico.

Answer: leagues

Objective: Identify and explain the criminal jurisdiction of the State of Texas.

Page: 21

Level: Intermediate

### **Essay**

1. List and explain the primary attributes of a crime.

Answer: The primary attributes of a crime are:

- Government defines the illegal conduct.
- Government is the victim of crime.
- Government prosecutes case.
- Judgment is payable to the government.

Answer should demonstrate a clear understanding of the four concepts.

Objective: Explain the four attributes of a crime.

Pages: 4 – 6

Level: Difficult

2. List and briefly describe the three objectives of the Texas Penal Code that seek to insure the public safety.

Answer: The three objectives of the Texas Penal Code that seek to insure the public safety are:

- General deterrence
- Rehabilitation
- Specific deterrence

Answer should clearly explain the concepts.

Objective: Identify and explain the six statutory purposes of the Texas Penal Code.

Pages: 11 – 15

Level: Difficult

3. Identify and briefly discuss three legal limits on the creation of a criminal statute.

Answer: The legal limits on the creation of a criminal statute include:

- Statute cannot conflict with U.S. and Texas constitutional provisions.
- Statute must relate to conduct, not to status or thoughts.
- Statute cannot lend itself to arbitrary enforcement.
- Statute's punishment must be proportionate to the crime.
- Statute's subject matter may not be preempted by superior governmental entity.

Objective: Identify and explain the practical and legal limitations on the creation of criminal laws.

Pages: 16 - 19

Level: Difficult

### **Critical Thinking/Discussion Questions**

1. One purpose of criminal law is to deter the commission of criminal offenses. In your view, how much does the threat of punishment deter you from engaging in undesirable social behavior?

Answer: Student responses will vary but should refer to the assumptions that underlie general deterrence theory and how their own behavior is influenced by those assumptions.

Objective: Identify and explain the six statutory purposes of the Texas Penal Code.

Pages: 11 - 15

Level: Difficult

2. Select one of the statutory purposes of the Texas Penal Code. Discuss how well this purpose is achieved in day-to-day society.

Answer: Any of the statutory purposes listed in Sec. 1.02 of the Texas Penal Code may be chosen. Student answers should relate that purpose to their own views of the day-to-day justice system. For example, if the specific deterrence objective is chosen, the student might point out recidivism rates as an example of the objective's effectiveness. Other answers should similarly relate the statutory material to their knowledge and perceptions of the justice system.

Objective: Identify and explain the six statutory purposes of the Texas Penal Code.

Pages: 11 - 15

Level: Difficult

3. What would be the likely result of enactment of a criminal law that is not supported by the bulk of the population? Provide an example to support your answer.

Answer: Student response should note that laws that lack popular support tend to be ignored or knowingly broken. Student might use the historical examples of the prohibition era or the 55 mile per hour speed limit. Or, the student might cite the current laws on marijuana possession or underage consumption of alcohol.

Objective: Identify and explain the practical and legal limitations on the creation of criminal laws.

Pages: 15–16

Level: Difficult

## Chapter 2

### Multiple Choice Questions

1. Which of the following is an element that must be proven in every criminal offense?

- a. conduct
- b. intent
- c. motive
- d. malice

Answer: a

Objective: Identify the six factors that constitute the basic elements of a crime.

Page: 31

Level: Intermediate

2. Which of the following is an element that must be proven in every criminal offense?

- a. intent
- b. causation
- c. injury
- d. motive

Answer: b

Objective: Identify the six factors that constitute the basic elements of a crime.

Page: 31

Level: Intermediate

3. Which of the following is one of the six traditional factors that are contained within all crimes?

- a. malice
- b. motive
- c. blame
- d. penalty

Answer: d

Objective: Identify the six factors that constitute the basic elements of a crime.

Page: 31

Level: Intermediate

4. An offense which punishes the individual for being something rather than doing something is known as a:

- a. victimless crime.
- b. *de facto* crime.
- c. punitive crime.
- d. status offense.

Answer: d

Objective: Define the three forms of conduct that are criminalized under Texas law.

Page: 32

Level: Intermediate

5. Under the Texas Penal Code, a person who fails to act under particular circumstances commits a criminal offense only if:

- a. he could have acted without potential harm to himself.
- b. an existing law required him to act under those circumstances.
- c. his failure to act results in personal injury or death to another.
- d. the reasonable man would have acted under the same or similar circumstances.

Answer: b

Objective: Define the three forms of conduct that are criminalized under Texas law.

Page: 36

Level: Intermediate

6. When an individual has dominion over an object without the item being in his or her actual presence, this is known in the law as:

- a. collateral possession.
- b. constructive possession.
- c. simulated possession.
- d. reactive possession.

Answer: b

Objective: Define the three forms of conduct that are criminalized under Texas law.

Page: 36

Level: Intermediate

7. Lawful conduct may become unlawful conduct simply because of:

- a. when the conduct occurs.
- b. where the conduct occurs.
- c. who engages in the conduct.
- d. any of the above depending on the specifics of the statute.

Answer: d

Objective: Explain the concept of attendant circumstances as an element of a crime.

Pages: 36-38

Level: Intermediate

8. Assume the City of El Paso enacts a curfew ordinance declaring it unlawful for an unaccompanied minor to remain in a public place after 11:00 P.M. The three elements of the offense that limit its application to minors, in public places, after 11:00 P.M. are examples of:

- a. behavioral circumstances.
- b. attendant circumstances.
- c. status circumstances.
- d. extenuating circumstances.

Answer: b

Objective: Explain the concept of attendant circumstances as an element of a crime.

Pages: 36-38

Level: Intermediate

9. The most common attendant circumstance that determines whether behavior is an offense is:

- a. the location of the offense.
- b. the age of the victim of the offense.
- c. the time of day the offense occurs.
- d. the motive for the offense.

Answer: a

Objective: Explain the concept of attendant circumstances as an element of a crime.

Pages: 36-38

Level: Intermediate

10. The term *actus reus* is related to conduct as the term *mens rea* is related to:

- a. attendant circumstances.
- b. culpable mental state.
- c. causation.
- d. harm.

Answer: b

Objective: Define the four forms of culpable mental state found in the Texas Penal Code.

Page: 39

Level: Intermediate

11. If an offender is aware that her conduct is reasonably certain to cause a result, the offender has acted with the culpable mental state of:

- a. intent.
- b. knowledge.
- c. recklessness.
- d. criminal negligence.

Answer: b

Objective: Define the four forms of culpable mental state found in the Texas Penal Code.

Pages: 41-42

Level: Intermediate

12. If an offender is aware of but consciously disregards a substantial and unjustifiable risk that a result will occur, the offender has acted with the culpable mental state of:

- a. intent.
- b. knowledge.
- c. recklessness.
- d. criminal negligence.

Answer: c

Objective: Define the four forms of culpable mental state found in the Texas Penal Code.

Pages: 42-43

Level: Intermediate

13. Roger is late for work. As he approaches an intersection in his car he observes that the traffic signal is red. Not seeing any other cars, Roger decides to proceed through the intersection without stopping. As he enters the intersection, Terry, riding a motorcycle, comes over the hill into the intersection and strikes the side of Roger's automobile. Terry is thrown from the motorcycle and seriously injured. Under these facts it would be accurate to say that Roger:

- a. has no criminal responsibility because Terry hit him; he did not hit Terry.
- b. was acting recklessly when he ran the red signal.
- c. knowingly caused Terry's injuries as he should have anticipated cross-traffic.
- d. is responsible for Terry's injuries due to the doctrine of transferred intent.

Answer: b

Objective: Define the four forms of culpable mental state found in the Texas Penal Code.

Pages: 42-43

Level: Intermediate

14. George learns that Randy has been secretly having sexual relations with his wife Kate. George grabs his pistol, gets in his car, and drives to Randy's house intending to shoot Randy. Randy, who is sitting on his front porch, sees George exit his car with pistol in hand. Fearing the worst, Randy jumps off the porch in an effort to escape. However, Randy hits the ground awkwardly and breaks his ankle. Meanwhile, George, seeing Randy writhing in pain, changes his mind and returns home. In this instance:

- a. George has criminal responsibility for Randy's injury because his motive was to hurt or kill Randy.
- b. George is criminally responsible for Randy's injury because but for George's conduct, Randy would not have broken his ankle.
- c. George is not criminally responsible for Randy's injury because an intervening cause (jumping from the porch), not George's conduct, produced the injury.
- d. George is criminally responsible for Randy's injury due to the doctrine of transferred intent.

Answer: c

Objective: Explain the "but for" test of causation.

Pages: 47-48

Level: Intermediate

15. Assume Adam purposefully fires a pistol at Baker. The bullet misses Baker but strikes and kills Charlie, an innocent bystander. At his trial for murdering Charlie, Adam argues that he is not guilty because he did not intend to shoot Charlie; he was trying to kill Baker. Which of the following is the most likely outcome of this situation?

- a. Adam will be found not guilty of murdering Charlie because he lacked the necessary culpable mental state.
- b. Adam will be found guilty of recklessly killing Charlie because he was aware that the shot might miss Baker.
- c. Adam will be found guilty of murdering Charlie due to application of the doctrine of transferred intent.
- d. Adam will be found not guilty of murdering Charlie but will be found guilty of attempting to murder Baker.

Answer: c

Objective: Define the phrase "transferred intent."

Page: 47

Level: Intermediate

16. Joe purposely sets fire to Bill's house. The wind shifts and the fire spreads to Becky's home, destroying it. As to the destruction of Becky's house, Joe:

- a. has no criminal responsibility because he did not intend to destroy Becky's house.
- b. is criminally responsible because of the Pinkerton Rule.

- c. is criminally responsible because of the doctrine of primogeniture.
- d. is criminally responsible because of the doctrine of transferred intent.

Answer: d

Objective: Define the phrase “transferred intent.”

Page: 47

Level: Intermediate

17. In addition to a possible fine, the penalty for commission of a first degree felony in Texas is incarceration in the state prison for a term of years between:

- a. 2 and 20.
- b. 5 and 99.
- c. 3 and 5.
- d. 2 and 10.

Answer: b

Objective: Identify the penalty ranges for the various levels of felony and misdemeanor offenses in Texas.

Page: 51

Level: Intermediate

18. Suppose John, a previously convicted felon, assaults his neighbor Juanita, a recent immigrant from Honduras, by threatening to cut her with a razor. Upon conviction for aggravated assault, the sentence John receives could be increased beyond the statutory norm if the court determines:

- a. he used a deadly weapon.
- b. he has a prior felony conviction.
- c. his conduct constituted a hate crime.
- d. all of the above are possible reasons for a sentence to be increased.

Answer: d

Objective: Identify the penalty ranges for the various levels of felony and misdemeanor offenses in Texas.

Page: 51

Level: Intermediate

19. The minimum term of imprisonment for a felony conviction in Texas is:

- a. 180 days.
- b. 2 years.
- c. 5 years.
- d. 366 days.

Answer: a

Objective: Identify the penalty ranges for the various levels of felony and misdemeanor offenses in Texas.

Page: 51

Level: Intermediate

20. In Texas, the penalty category with the most serious punishment is called a:

- a. Class Z felony.
- b. First degree felony.
- c. Capital felony.
- d. XXX felony.

Answer: c

Objective: Identify the penalty ranges for the various levels of felony and misdemeanor offenses in Texas.

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Level: Intermediate

### **True/False Questions**

1. For conduct to be considered a crime, a penalty must be affixed.

Answer: True

Objective: Identify the six factors that constitute the basic elements of a crime.

Page: 31

Level: Basic

2. Under modern criminal law, the term “*mens rea*” is a synonym for “intent.”

Answer: False

Objective: Identify the six factors that constitute the basic elements of a crime.

Page: 39

Level: Basic

3. American criminal law punishes only voluntary conduct.

Answer: True

Objective: Define the three forms of conduct that are criminalized under Texas law.

Page: 33

Level: Basic

4. The most common form of conduct subject to criminal liability is an affirmative act by the offender.

Answer: True

Objective: Define the three forms of conduct that are criminalized under Texas law.

Page: 34  
Level: Basic

5. An omission to act is a crime only if a reasonable person under same or similar circumstance would have acted.

Answer: False  
Objective: Define the three forms of conduct that are criminalized under Texas law.  
Page: 35  
Level: Basic

6. Some conduct may constitute a crime only when it occurs at a particular time of day.

Answer: True  
Objective: Explain the concept of attendant circumstances as an element of a crime.  
Page: 37  
Level: Basic

7. Behavior may or may not constitute a crime depending solely on the location where it occurs.

Answer: True  
Objective: Explain the concept of attendant circumstances as an element of a crime.  
Page: 37  
Level: Basic

8. With limited exceptions, motive – the “why” a crime occurs – is NOT an element of a criminal offense that needs to be proven.

Answer: True  
Objective: Explain the concept of attendant circumstances as an element of a crime.  
Pages: 37-38  
Level: Basic

9. The culpable mental state known as criminal negligence is identical to the standard used for proving negligence in a civil lawsuit.

Answer: False  
Objective: Define the four forms of culpable mental state found in the Texas Penal Code.  
Pages: 43-44  
Level: Basic

10. In cases where the statute fails to mention a culpable mental state, unless the definition of the offense plainly dispenses with a culpable mental state, proof of at least recklessness must be established in order to convict the accused.

Answer: True

Objective: Define the four forms of culpable mental state found in the Texas Penal Code.

Page: 46

Level: Basic

11. “Concurrence” is the legal term used to describe the necessary time-based linkage of the *mens rea* and the *actus reus* of a crime.

Answer: True

Objective: Explain the requirement of concurrence in the criminal law.

Pages: 46-47

Level: Basic

12. For a crime to occur, a time-based connection must exist between the conduct element and the culpable mental state.

Answer: True

Objective: Explain the requirement of concurrence in the criminal law.

Pages: 46-47

Level: Basic

13. An accused is criminally responsible if the harmful result would not have occurred but for his conduct.

Answer: True

Objective: Explain the “but for” test of causation.

Page: 47

Level: Basic

14. The “but for” test is used by Texas courts to determine whether a convicted criminal defendant will receive the death penalty or life without parole.

Answer: False

Objective: Explain the “but for” test of causation.

Page: 47

Level: Basic

15. Texas law uses the “when and where” test of causation in criminal prosecutions.

Answer: False

Objective: Explain the “but for” test of causation.

Page: 47

Level: Basic

16. The doctrine of transferred intent is used by courts to determine whether an accused is eligible for probation after conviction.

Answer: False

Objective: Define the phrase “transferred intent.”

Page: 47

Level: Basic

17. “Transferred intent” is a necessary element of proof in every criminal homicide prosecution.

Answer: False

Objective: Define the phrase “transferred intent.”

Page: 47

Level: Basic

18. An accused may be held criminally responsible even if his victim’s resultant injuries are more serious than the accused intended.

Answer: True

Objective: Define the phrase “transferred intent.”

Page: 47

Level: Basic

19. A criminal defendant convicted of a Class A misdemeanor could receive a longer sentence of incarceration than she would have received if convicted of a state jail felony.

Answer: True

Objective: Identify the penalty ranges for the various levels of felony and misdemeanor offenses in Texas.

Page: 51

Level: Basic

20. Under Texas law, a person convicted of a Class A or Class B misdemeanor may be sentenced to either jail time or a monetary fine or both penalties.

Answer: True

Objective: Identify the penalty ranges for the various levels of felony and misdemeanor offenses in Texas.

Page: 51

Level: Basic

### **Fill-in-the Blank**

1. The various components that make up a criminal offense are known as the \_\_\_\_\_ of the crime.

Answer: elements

Objective: Identify the six factors that constitute the basic elements of a crime.

Page: 31

Level: Intermediate

2. The Common Law tradition holds that all crimes contain the structural elements of \_\_\_\_\_, culpable mental state, concurrence, causation, required result, and penalty.

Answer: conduct

Objective: Identify the six factors that constitute the basic elements of a crime.

Page: 31

Level: Intermediate

3. The Common Law tradition holds that all crimes contain the structural elements of conduct, culpable mental state, concurrence, \_\_\_\_\_, required result, and penalty.

Answer: causation

Objective: Identify the six factors that constitute the basic elements of a crime.

Page: 31

Level: Intermediate

4. The Latin term *actus reus* refers to the \_\_\_\_\_ element of an offense.

Answer: conduct

Objective: Define the three forms of conduct that are criminalized under Texas law.

Page: 32

Level: Intermediate

5. The three forms of conduct that are criminalized under Texas law are acts, omissions to act, and \_\_\_\_\_.

Answer: possession

Objective: Define the three forms of conduct that are criminalized under Texas law.

Page: 33

Level: Intermediate

6. Under Texas law, for an individual to be guilty of an offense based on the individual's failure to take action, the state must prove the existence of a legal \_\_\_\_\_ to act.

Answer: duty

Objective: Define the three forms of conduct that are criminalized under Texas law.

Page: 35

Level: Intermediate

7. Criminal possession of contraband may take either of two forms, actual possession or \_\_\_\_\_ possession.

Answer: constructive

Objective: Define the three forms of conduct that are criminalized under Texas law.

Page: 33

Level: Intermediate

8. A factor that limits the application of a criminal law to a particular time, place, or person is known as an \_\_\_\_\_ circumstance.

Answer: attendant

Objective: Explain the concept of attendant circumstances as an element of a crime.

Page: 37

Level: Intermediate

9. If a statute criminalizes conduct only if it occurs in a public place or within public view, this limitation would be considered to be an \_\_\_\_\_ circumstance.

Answer: attendant

Objective: Explain the concept of attendant circumstances as an element of a crime.

Page: 37

Level: Intermediate

10. Consensual sexual intercourse with a person under age 17 constitutes the crime of sexual assault of a child. Consensual sexual intercourse with a person 17 or older is not an offense. In this situation, it would be correct to say that the age of the victim is an \_\_\_\_\_ circumstance of the elements of the offense.

Answer: attendant

Objective: Explain the concept of attendant circumstances as an element of a crime.

Page: 37

Level: Intermediate

11. The four forms of culpable mental state recognized under Texas law are intent, knowledge, recklessness, and \_\_\_\_\_.

Answer: criminal negligence

Objective: Define the four forms of culpable mental state found in the Texas Penal Code.

Page: 46

Level: Intermediate

12. The four forms of culpable mental state recognized under Texas law are intent, \_\_\_\_\_, recklessness, and criminal negligence.

Answer: knowledge

Objective: Define the four forms of culpable mental state found in the Texas Penal Code.  
Pages: 41-42  
Level: Intermediate

13. Offenses committed with the culpable mental state of \_\_\_\_\_ are generally viewed as the most serious in society.

Answer: intent

Objective: Define the four forms of culpable mental state found in the Texas Penal Code.  
Page: 41  
Level: Intermediate

14. If an individual makes the conscious decision to engage in risky behavior, the law views his conduct as falling under the culpable mental state of \_\_\_\_\_.

Answer: recklessness

Objective: Define the four forms of culpable mental state found in the Texas Penal Code.  
Page: 43  
Level: Intermediate

15. The word “concurrency” as an element of a criminal offense refers to the relationship in \_\_\_\_\_ between the conduct and the culpable mental state.

Answer: time

Objective: Explain the requirement of concurrency in the criminal law.  
Pages: 46-47  
Level: Intermediate

16. The temporal connection between the culpable mental state and the conduct element of a criminal offense is called \_\_\_\_\_.

Answer: concurrence

Objective: Explain the requirement of concurrence in the criminal law.  
Pages: 46-47  
Level: Intermediate

17. To determine the cause-in-fact in a criminal prosecution, Texas uses the two words test.

Answer: but for

Objective: Explain the “but for” test of causation.  
Page: 47  
Level: Intermediate

18. If John intends to kill Marsha by poisoning her wine but Wanda inadvertently drinks the poison beverage and dies, John is still responsible for Wanda's death because of the doctrine of   (two words)  .

Answer: transferred intent

Objective: Define the phrase "transferred intent."

Page: 47

Level: Intermediate

19. The Texas Penal Code classifies most criminal offenses into one of \_\_\_\_\_ penalty classifications ranging from a Class C misdemeanor to a capital felony.

Answer: eight

Objective: Identify the penalty ranges for the various levels of felony and misdemeanor offenses in Texas.

Page: 51

Level: Intermediate

20. A convicted criminal defendant who receives a sentence of one year in the county jail has been convicted of a Class \_\_\_\_\_ misdemeanor.

Answer: A

Objective: Identify the penalty ranges for the various levels of felony and misdemeanor offenses in Texas.

Page: 51

Level: Intermediate

## **Essay**

1. Explain the concept of attendant circumstances as used as an element of a crime.

Answer: An attendant circumstance is a factual condition limiting the application of the *actus reus* of a criminal statute. The behavior is not unlawful unless the attendant circumstance also exists. This limitation may take the form of restricting the application of a statute to certain persons, places, times, locations, reasons, or methods, i.e., who, what, when, where, why, or how.

Objective: Explain the concept of attendant circumstances as an element of a crime.

Pages: 36-38

Level: Difficult

2. Identify and briefly explain the four culpable mental states used in Texas criminal law.

Answer: Texas criminal law uses the following four culpable mental states:

- Intent – The offender’s conscious desire or goal is to engage in the behavior or cause the result.
- Knowledge – The offender is aware of his behavior or that his behavior is reasonably likely to cause the result. The offender is aware of the circumstances surrounding his situation.
- Recklessness – The offender’s conscious desire is to engage in the behavior but is also aware of, but disregards, the risk that the behavior may cause a harmful result. Such harmful result is unintended.
- Criminal negligence – The offender ought to have been aware that his conduct would produce a harmful result.

Objective: Define the four forms of culpable mental state found in the Texas Penal Code.

Pages: 38-44

Level: Difficult

3. Explain the concept of the doctrine of transferred intent. How does the doctrine apply in Texas?

Answer: The doctrine of transferred intent is a Common Law doctrine that holds that a person is nonetheless criminally responsible if a different victim than he intended is harmed. According to the doctrine, the *mens rea* to harm the intended victim is transferred to the actual victim. Texas statute expands the principle to hold that an offender is criminally responsible even if a different victim or property than intended is harmed or a different crime than intended is committed.

Objective: Define the phrase “transferred intent.”

Pages 47-48

Level: Difficult

### **Critical Thinking/Discussion Questions**

1. Which element of an offense - the culpable mental state, the conduct, or the resultant harm – is most important to you in determining an offender’s penalty? Does your answer differ if the offense is a crime against the person? A crime against property?

Answer: Answers will vary.

- Student answers should note that intentional behavior is regarded as more morally wrong than criminally negligent conduct.
- Students may note that Anglo-American law has long focused on a sliding scale of *mens rea* and resulting harm to determine offense severity.

- Some students may argue that the intentions of the offender are more important than the resultant harm while others will suggest that the harmful outcome should be the focus.
- The resultant harm is likely to be the primary concern in crimes against person.
- The culpable mental state is likely the primary concern in crimes against property.

Objective: Identify the six factors that constitute the basic elements of a crime.

Pages: Entire content of Chapter 2.

Level: Difficult

2. Should harm caused by criminal negligence best be left to civil court remedies instead of the criminal sanction?

Answer: Answers will differ.

- Responses should focus upon a policy discussion of where the line is drawn between individual citizen responsibility and the state's responsibility to act for its citizens.
- Students might argue that acts of gross negligence that are not criminalized are handled adequately in civil court, so why is a similar form of negligence made a crime in only certain cases?
- Others might argue that since general deterrence is a primary goal of the criminal law, deterring negligent conduct is unrealistic.

Objective: Define the four forms of culpable mental state found in the Texas Penal Code.

Pages: 43-44

Level: Difficult

3. Does the Texas penalty structure provide too much discretion to the judge and jury in sentencing a criminal offender?

Answer: Answers will differ.

- Student may argue that every case is factually different and the sentencing authority needs discretion to accomplish its particular sentencing goals.
- Students may argue that every offender is different and the sentencing authority needs discretion to fit the penalty to the person, particularly if rehabilitation is the primary goal.
- Students may argue that a wide sentencing range gives prosecutors leverage for plea bargaining.
- Students may argue that specific sentences would have a greater deterrent effect, using the death penalty argument as an example.

- Students may observe that Texas has a history of harsh sentences but rather generous use of probation and parole.
- Students may raise the basic issue of how well the sentencing structure accomplishes the traditional goals of the criminal law discussed in Chapter 1.

Objective: Identify the penalty ranges for the various levels of felony and misdemeanor offenses in Texas.

Pages: 50-51

Level: Difficult