

CHAPTER FIVE: *MENS REA*, CONCURRENCE, CAUSALITY

INTRODUCTION

[Article 15](#) of the New York Penal Law concerns mental culpability, which is defined by four levels similar to those provided in the Model Penal Code: intentionally, knowingly, recklessly, and criminal negligence.

The minimum requirement for culpability is a voluntary act or voluntary omission. Mental culpability defines the level at which the actor should be held responsible for the voluntary act. According the Court of Appeals of New York, “[t]he underlying conduct, exclusive of the mental element, is the same.”¹ The evidence and circumstances surrounding the act determines the defendant’s mental state. According to §15.15(2), “a statute defining a crime, unless clearly indicating a legislative intent to impose strict liability, should be construed as defining a crime of mental culpability.” Section 15.10 states that “if any material element of an offense lacks a *mens rea* requirement, it is a strict liability crime.”

The reader may notice some differences between New York State’s mental culpability labels and the Model Penal Code’s. New York uses “intentionally” in place of the Model Penal Code’s purposeful mental state and criminal negligence in place of negligently. The levels of mental culpability are found in [§15.05](#) of the Penal Law.

This chapter will present the statutory provisions of each level of *mens rea* in descending order of culpability. The chapter will also provide case law examples to provide a better understanding of *mens rea*. Finally, this chapter will discuss strict liability and causality as they pertain to *mens rea*.

CHANGES IN THE PENAL LAW

Section 15.05 was meant to add definitional clarity to matters where *mens rea* is an element to an offense. Prior to the 1965 revision of the Penal Law, judicial decisions were hampered by lack of definitive legislative guidance. Under previous statutes, terms such as “willfully,” “intentionally,” “designedly,” “maliciously,” “with culpable negligence,” and “negligently” were so hazy that determining the level of culpability in an offense was very difficult. The new Penal Law, under §15.05 reduced the field of culpable mental states to four.

FOUR LEVELS OF *MENS REA*

Intentionally

According to **Section 15.05(1)**:

A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct.

Intentionally and recklessly have been used interchangeably on occasion in New York State, especially concerning murder. In *People v. Gallagher*,¹ for example, the defendant was charged with both intentional murder, which requires a conscious objective of bringing about that result, i.e., death, according to §15.05(1) and reckless manslaughter, which requires a conscious disregard of a substantial and unjustifiable risk that such a result will occur, according to Penal Law §15.05(3). The Court of Appeals tried to clarify this distinction by stating, “[An] act is either intended or not intended; it cannot simultaneously be both. Guilt of one necessarily negates guilt of the other.” The defendant in this case was a police officer who was charged with the killing of another police officer during an all-night St. Patrick’s Day celebration where large quantities of alcohol were consumed.

The following cases further illustrate the prosecution’s tendency in New York State to charge defendants with both depraved indifference murder and another distinct first-degree category of homicide as a lesser included charge in order to lead juries to convict on one of the top charges. The prosecutions in each case charged depraved indifference and intentional murder and depraved indifference and first-degree manslaughter respectively. The Court of Appeals discussed the two different cases in order to emphasize the extent to which each homicide charge is distinct from the other simultaneous charge.

People v. Suarez
People v. McPherson
Court of Appeals of New York
811 N.Y.S. 2d 267 (2005)

Per Curiam

The Court in these cases will differentiate depraved indifference murder from other categories of homicide.

In the first case, defendant Suarez, in 2000, stabbed his girlfriend, Jovanna Gonzalez, three times: once each in the throat, chest and abdomen. He fled without summoning assistance and Gonzalez eventually bled to death. When defendant was arrested six days later, he claimed that she first lunged at him with a knife, after which he wrestled the knife from her and lunged back. When he pulled back, she was bleeding from the neck. He claimed that he couldn’t remember what happened next. Defendant was indicted for intentional murder, depraved indifference murder, and criminal possession of a weapon in the fourth degree. He testified that he never intended to kill Gonzalez and was suffering from extreme emotional disturbance. The jury acquitted him of intentional murder but convicted him of depraved indifference murder. The Appellate Division affirmed defendant’s conviction.

In the second case, also in 2000, the defendant McPherson went to her former boyfriend’s house where they argued over child support. Her boyfriend, Kirk Wright, pushed defendant and when he raised his hand to hit her, defendant pulled a knife from her purse and swung it at Wright, stabbing him once in the chest. She immediately called 911, but left the scene before an ambulance had arrived. Wright bled to death on the way to the hospital. Defendant had a nonjury trial for depraved indifference murder, first degree manslaughter, and fourth degree weapon possession. Defendant testified that she had long been the victim of domestic violence at the hands of Wright and only acted in self-defense when she killed him. The court rejected this defense and convicted her of depraved indifference murder. The Appellate Division affirmed the conviction.

The Court of Appeals held that there was no depraved indifference murder in either case and reversed both convictions.

The Court further gave a brief history of the five categories of homicide as they were adopted in 1965: intentional murder in the second degree, depraved indifference murder in the second degree, intentional murder in the first degree, reckless manslaughter in the second degree, and criminally negligent homicide. Each is intended to prohibit different conduct, distinguishable by the level of blameworthiness attributable to the actor who commits them. Both intentional and

depraved indifference murder are equivalent in that they are at the highest grade and carry the same penalty, whereas other categories are punished less severely. In recent years, the number of indictments for depraved indifference murder, which is often charged with intentional murder, has increased dramatically. “The proliferation of the use of depraved indifference murder as a fallback theory under which to charge intentional killers reflects a fundamental misunderstanding of the depraved indifference murder statute. [D]epraved indifference murder may not be properly charged in the overwhelming majority of homicides that are prosecuted in New York. Rather...depraved indifference murder properly applies only to a small and finite category of cases where the conduct is at least as morally reprehensible as intentional murder.”

Historically, depraved indifference murder had no application at all to one-on-one killings...Accordingly, this Court held that a conviction for ‘depraved mind’ murder required conduct that endangered many people indiscriminately, reflecting cases in which the defendant did not wish to kill or injure any particular individual, but had no care for whether the life of any particular person was lost or not...Since the enactment of the revised Penal Law, however, we have recognized that in rare circumstances, depraved indifference murder can also be found in certain unintentional killings involving only a single individual. These limited cases are those in which...the defendant’s utter depravity in causing the victim’s death warrants punishment in excess of that available for manslaughter. Such cases will arise only when the acts of the defendant are ‘marked by uncommon brutality—coupled...with depraved indifference to the victim’s plight.’”

“We thus begin by once again underscoring that the use of a weapon can never result in depraved indifference murder when...there is a manifest intent to kill. The “[i]ndifference to the victim’s life...contrasts with the intent to take it.” In both of the current cases, therefore, “The People’s argument is flawed on two grounds. First, a killing (whether intentional or unintentional) is not transformed into depraved indifference murder simply because the killer does not summon aid for the victim...Even more obviously, a killing does not become a depraved indifference murder merely because the killer summons aid and thus reveals an intent that the victim not die.”

“Thus, one who acts with the conscious intent to cause serious injury, and who succeeds in doing so, is guilty only of manslaughter in the first degree.” And “[s]ince a defendant who intends to injure or kill a particular person cannot generally be said to be ‘indifferent’—depravedly or otherwise—to the fate of that person, we underscore [that] ‘a one-on-one shooting or knifing (or similar killing) can almost never qualify as depraved indifference murder.’”

The Court further gave examples of previous cases involving single victims in which depraved indifference murder was properly charged. The first is when “the defendant intends neither to seriously injure, nor to kill, but nevertheless abandons a helpless and vulnerable victim in circumstances where the victim is highly likely to die, the defendant’s utter callousness to the victim’s mortal plight...properly establishes depraved indifference murder. In one case, the defendants, after robbing an intoxicated victim, forced him out of their car on the side of a dark, remote, snowy road, partially dressed and without shoes in subfreezing temperatures, where he was struck by a passing truck and killed. In another case, the defendant, without intent to harm or kill, pushed a young boy into the water, watched him submerge without resurfacing, falsely informed his friends in response to their cries to help the victim that he was in fact swimming away, and abandoned the drowning boy to die.

The second cases involve crimes when a defendant “engages in torture or a brutal, prolonged and ultimately fatal course of conduct against a particularly vulnerable victim.” In one case, the defendant, without intent to kill, caused the death of a 3 ½ year old infant by continually beating the child over a period of five days.

“We therefore make clear that depraved indifference is best understood as an utter disregard for the value of human life—a willingness to act not because one intends harm, but because one simply doesn’t care whether grievous harm results or not...Quintessential examples are firing into a crowd, driving an automobile along a crowded sidewalk at high speed, opening the lion’s cage at the zoo, placing a bomb in a public place, poisoning a well from which people are accustomed to draw water; opening a drawbridge as a train is about to pass over it, and dropping stones from an overpass onto a busy highway.”

In Suarez, defendant’s acts did not constitute depraved indifference murder. In McPherson,

defendant's conduct may have been reckless, but did not fit in the small category of cases involving "utter depravity, uncommon brutality and inhuman cruelty." The Court held that in each case, the order of the Appellate Division should be reversed and the case remitted to that court for further proceedings.

Knowingly

According to **Section 15.05(2)**:

A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists.

The main distinction between intentionally and knowingly committing an offense is that intentionally entails a conscious disregard to cause a result from one's conduct, whereas knowingly entails an awareness that the result is practically certain to result from such conduct.

In *People v. Ryan*,² the issue under consideration for the Court of Appeals was whether "knowingly" applies to the weight of the controlled substance under §220.18(5). According to the Court of Appeals, "had defendant ordered a specific quantity of [psilocybin], plainly that would satisfy the knowledge element. But defendant attempted to possess two pounds of mushrooms, only a small portion of which was pure psilocybin...[T]here was no evidence linking psilocybin weight to mushroom weight...We thus conclude...that there was insufficient evidence to satisfy the knowledge requirement within the meaning of the statute." But, "[t]here is sufficient evidence to sustain a conviction for the lesser-included offense of attempted criminal possession of a controlled substance in the seventh degree, which does not have a weight element."

Recklessly

According to **Section 15.05(3)**:

A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

The following case concerns reckless endangerment. The defendant was convicted of reckless endangerment in the first degree when he tried to kill himself and created an explosion in the apartment building where he lives. Penal Law §120.25, first-degree reckless endangerment, provides that a person violates the statute "when, under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates grave risk of death to another person." The Court of Appeals disagreed that defendant acted with disregard for the lives of others but rather had focused on harming only himself and therefore is guilty of reckless endangerment in the second degree. According to §120.20, a person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person. Reckless endangerment in the second degree is a class A misdemeanor.

People v. Feingold
Court of Appeals of New York
819 N.Y.S.2d 691 (2006)

Opinion By: G.B. Smith

The Appellate Division affirmed defendant's conviction, after a nonjury trial, of reckless endangerment in the first degree. However, for the following reasons, the Court of Appeals reduced the conviction to reckless endangerment in the second degree.

In 2003, the defendant, an attorney working as an administrative law judge, attempted suicide in his 12th floor Manhattan apartment by sealing the apartment door with tape, blowing out the pilot lights of his stove, turning on the gas, taking tranquilizers, and falling asleep in front of the stove. Defendant expected the gas to kill him. Instead, a spark from the refrigerator compressor ignited the gas and caused an explosion that wrecked his apartment as well as neighboring apartments. No one was seriously injured and the defendant himself survived. The Supreme Court found defendant guilty of depraved indifference and sentenced him to five years' probation. The Appellate Division affirmed.

According to the Court of Appeals, "There is no dispute that the term 'depraved indifference' has the same meaning in both the depraved indifference murder statute and reckless endangerment statute. "The concept of depraved indifference was retained in the new statute [adopted in 1965] not to function as a mens rea element, but to objectively define the circumstances which must exist to elevate a homicide from manslaughter to murder...[T]he critical element in depraved indifference murder is not recklessness, but depraved indifference."

Thus, "[W]e cannot affirm the conviction because we cannot conceive that a person may be guilty of a depraved indifference crime without being depravedly indifferent...This defendant was a plainly depressed individual, who committed an extremely reckless and foolish act not because of his lack of regard for the lives of others but because of his focus upon his troubles and himself. While being reckless, the defendant's state of mind was not one of extreme wickedness, or abject moral deficiency, or a mischievous disregard for the near certain consequences of his irresponsible act...That a large number of people were endangered does not mean that defendant was depravedly indifferent."

Further, "This Court has adopted the view...that 'depraved indifference to human life' is a culpable mental state...Accordingly, the order of the Appellate Division should be modified by reducing defendant's conviction to reckless endangerment in the second degree and remitting to Supreme Court for resentencing and, as so modified, affirmed."

Criminal Negligence

According to **Section 15.05(4)**:

A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Recklessly and criminal negligence are similar concepts. Their differences are nuanced. Both involve a substantial and unjustifiable risk that a result will occur, although the reckless individual consciously disregards the risk while the criminally negligent individual fails to perceive the risk. Secondly, both involve a gross deviation from the standard of care or conduct that a reasonable person would observe given the same situation which means that both include

subjective and objective elements.

Other cases more clearly distinguish the nuances between recklessness and criminal negligence. In *People v. Gates*³, defendant was convicted of criminally negligent homicide. Defendant struck the rear of a vehicle that was in front of him. He swerved to avoid the car only when the passenger in his car screamed his name and attempted to grab the wheel. Defendant assumed he only clipped the car in front and kept driving. He was arrested 2 ½ hours later at a location about a quarter of a mile from the accident. He was found slumped over his steering wheel. A breathalyzer test administered 3 ½ hours after the accident revealed his blood alcohol to be .15%. Defendant had also killed the passenger of the car he hit. He was convicted for criminally negligent homicide. On appeal, defendant claimed that the evidence did not support the verdict beyond a reasonable doubt.

The Supreme Court of New York held that in order to sustain a verdict of criminally negligent homicide, the prosecution must prove that defendant engaged in conduct that involved a substantial and unjustifiable risk of death and constituted a gross deviation from the standard of conduct or care that a reasonable person would observe in the situation. A defendant's awareness of the risk determines the degree of culpability. In this case, "the jury's verdict is adequately supported by the evidence since 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'"

The following case exemplifies the nuanced shades that differentiate the mental states and the accompanying potential difficulties courts may have in deciding which level to apply to an offense. In the following case, the difficulty between recklessness and criminal negligence is considered.

In [People v. Strong, also known as Omar Ali Shereiff](#),⁴ the jury convicted defendant, leader in the Sudan Muslim faith, of manslaughter in the second degree after performing a religious ritual by plunging knives in the heart of a follower with no injury. In this case, the follower, Kenneth Goings, died of his wounds. The issue in this case, according to the Court of Appeals, concerned whether the trial court should have instructed the jury on the lesser crime of criminally negligent homicide.

In its analysis of the distinction between recklessness and criminal negligence, the Court of Appeals stated that in one instance, "the actor perceives the risk, but consciously disregards it. In the other instance, "he negligently fails to perceive the risk." Additionally, the Court acknowledged, "[c]riminal recklessness and criminal negligence...may...be but shades apart on the scale of criminal culpability." The Court further stated that not every defendant charged with second degree manslaughter is entitled to a jury instruction on criminally negligent homicide. The determination of whether a defendant is entitled to a charge of the lesser crime depends upon the evidence relating to his mental state at the time of the crime. In this case, defendant claimed to have performed the "mind over matter" knife plunging ceremony "countless" times over the past 40 years without causing an injury. Thus, even if the jury did not believe that defendant was capable of performing such a procedure without harm to the victim, it could still determine that defendant was sincere in his belief that he did not perceive any risk of harm to the victim.

In sum, the Court stated that other "objective" indications of defendant's state of mind should be considered to corroborate the defendant's subjective articulation of the facts. The Court reversed the conviction and ordered a new trial.

People v. Conway
Court of Appeals of New York
816 N.Y.S.2d 731 (2006)

Memorandum

In 1999, 16-year old Dantae Johnson and a friend were walking on the sidewalk just after

midnight in the Bronx. Johnson had looked over his shoulder and noticed an unmarked patrol car behind him. The car was being driven by the defendant. One of the two officer passengers in his car stated his suspicion that Johnson was carrying a gun. Although Johnson was aware that the officers were trying to get his attention, he ignored them and kept walking with his friend. After the car stopped, the two passengers exited the car and moved toward Johnson and his friend who both fled in different directions. The officers chased Johnson's friend while defendant pursued Johnson with his vehicle. During the chase, defendant unholstered his gun and transferred it to his right (nondominant) hand. He then reached out of the window with his left hand and grabbed Johnson's right arm while still driving. The gun accidentally discharged inside the car, passed through the driver's side view mirror, and struck Johnson who was severely wounded. No gun was found on Johnson or near the scene of his arrest. Defendant was convicted of negligent assault in the third degree, a misdemeanor, sentenced to 150 hours of community service, and fined \$1,000. The Appellate Division dismissed the indictment for legal insufficiency. The People appealed.

"A person is guilty of third-degree assault when '[w]ith criminal negligence, he causes physical injury to another person by means of a deadly weapon or dangerous instrument' (Penal Law §120.00[3]). Because defendant obviously caused 'physical injury' by using his gun, a 'deadly weapon,' only the *mens rea* of criminal negligence is in dispute in this case. 'A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.'"

"Here...defendant tried to jockey himself into position to apprehend a suspect fleeing on foot from his patrol care by simultaneously manipulating a gun, with his finger on the trigger, and the steering wheel with his right (nondominant) hand while reaching out of the open window of the moving car and grappling with the suspect with his left hand. This 'blameworthy' conduct creat[ed] or contribut[ed] to a substantial and unjustifiable risk."

Thus, the order of the Appellate Division should be reversed and the matter remitted to that Court for consideration of the facts.

STRICT LIABILITY

In New York, an offense that does not include an element of culpability in its definition is a strict liability offense. The Court of Appeals has held that offenses of strict liability are those where the statute specifies only an *actus reus* and where the legislative history indicates that the offense was one of strict liability. These offenses are rare since most offenses are defined by one of the four culpable mental states. Strict liability offenses typically include those that promote the public health.

In *People v. Ben Nemadi, Sharok Jacobi and Shaben Realty Associates, Inc.*⁵ the Criminal Court of the City of New York, New York County supported the violation of the window guard law as a strict liability offense. Failure to provide window guards in apartments inhabited by children under the age of 11 is a violation of law. According to the court, this offense requires no *mens rea* "since effective enforcement of a program designed to protect the lives of young children from accidental death and injury resulting from window falls would be illusory if intent were made an element of the offense." The court also enumerated other strict liability offenses, including those controlling the exposure of workers to industrial hazards, the crowding and conditions of living quarters, the mass distribution of food and drugs, and mechanized transportation.

In another case concerning the welfare of children, the Criminal Court of the City of New York, Kings County upheld the strict liability offense of endangering the welfare of a child when it ruled that the father of a child abused by her drug addicted mother should have removed the child from her mother until the mother was no longer a danger to the child.⁶

CAUSALITY

Unlike the Model Penal Code, the New York Penal Law does not define causation by statute. But the issue of causality comes into question especially during felony murder cases which will be discussed in greater detail in Chapter 11. Prior to 1965, New York followed the agency theory adopted under the common law. The agency theory asserted that felons would be responsible for homicide only if they committed the final act. After the murder statutes were revised in 1965, the proximate cause theory was imposed in the Penal Law. Murder in the second degree (§125.25(3)) was rewritten with a provision that a person is culpable for felony murder when, during the commission of an enumerated felony or attempt, either the defendant or an accomplice “causes the death of a person other than one of the participants” in the original felony.

In the following case, the Court of Appeals makes the distinction between the common law and current causality interpretations.

People v. Hernandez
People v. Santana
Court of Appeals of New York
82 N.Y. 2d 309 (1993)

Opinion By: Simons, J.

The issue before the Court in this case concerns whether a conviction of felony murder under Penal Law §125.25(3) should be sustained where the homicide victim, a police officer, was shot not by one of the defendants but by a fellow officer during a gun battle following defendants' attempted robbery.

The defendants conspired to ambush and rob a man who was coming to a New York City apartment building to buy drugs. They planned to lure him into the building stairwell where Hernandez waited with a gun. In fact, the man meeting them at the building was an undercover state trooper who wore a transmitter and had a backup team waiting outside. Once the trooper was inside the building, Hernandez accosted him and pointed a gun at his head. An altercation ensued where the trooper announced that he was the police, pulled out his service revolver, and began firing. Hernandez, still armed, ran from the building into a courtyard where he was confronted by members of the backup team. They ordered him to stop. He aimed his gun at one of the troopers and continued toward the trooper. The troopers then began firing and one, Trooper Joseph Aversa, was fatally shot in the head. Hernandez was apprehended after being wounded and Santana was arrested inside the building.

Both defendants were convicted of felony murder and other charges. On appeal, defendants argued that their murder charges should have been dismissed since neither fired the fatal shot. The Appellate Division rejected that argument and held that they were responsible for felony murder because their conduct forged a “critical link in the chain of events that led to Trooper Aversa's death.”

The Court of Appeals began its analysis by defining the term “causes the death” in §125.25(3). “The term is used consistently throughout article 125 and has been construed to mean that homicide is properly charged when the defendant's culpable act is ‘a sufficiently direct cause’ of the death so that the fatal result was reasonably foreseeable.” The Court supported the prosecution's view that “it was highly foreseeable that someone would be killed in a shootout when Hernandez refused to put down his gun and instead persisted in threatening the life of one of the back-up officers.” Hernandez thus caused the death of Aversa, and “because his attempt to avoid arrest was in furtherance of a common criminal objective shared with Santana,” the prosecution also attributed the murder to Santana under the principle of accomplice liability.

Further, according to the Court, the causal language used in the felony murder provision is one “where we held that the accused need not commit the final, fatal act to be culpable for causing death.” “Unlike defendants and those courts adopting the so-called agency theory, we believe New York's view of causality, based on a proximate cause theory, to be consistent with fundamental

principles of criminal law. Advocates of the agency theory suggest that no culpable party has the requisite *mens rea* when a nonparticipant is the shooter. We disagree. The basic tenet of felony murder liability is that the *mens rea* of the underlying felony is imputed to the participant responsible for the killing. By operation of that legal fiction, the transferred intent allows the law to characterize a homicide, through unintended and not in the common design of the felons, as an intentional killing. Thus, the presence or absence of the requisite *mens rea* is an issue turning on whether the felon is acting in furtherance of the underlying crime at the time of the homicide, not on the proximity or attenuation of the death resulting from the felon's acts. Whether the death is an immediate result or an attenuated one, the necessary *mens rea* is present if the causal act is part of the felonious conduct."

The Court further articulated that the prosecution still retains the "significant obstacle" in proving that the felons should be held responsible for causing the death beyond a reasonable doubt. And both defendants have an affirmative defense. The defense is available to defendants who do not cause the death, are unarmed, have no reason to believe that the co-felon is armed, and have no reason to believe that the co-felon will engage in conduct likely to result in death or serious physical injury.

The Court concluded that the trial court properly instructed the jury as to Santana's culpability. "The jury was properly charged that more than 'but for' causation was required; that it must find the fatal result was the sufficiently direct and foreseeable result of Hernandez's acts...Foreseeability does not mean that the result must be the most likely event. Undoubtedly, in planning the robbery, defendants did not anticipate that their victim would be a State Trooper... Yet, it was foreseeable that police would try to thwart crime, and Hernandez was aware that police were on the scene at the point he resisted arrest and remained armed."

The Court of Appeals affirmed the order of the Appellate Division.

REVIEW QUESTIONS

1. A day after arguing with his roommate, a man tells his friends that he's going to kill the roommate. The man then takes a shotgun without permission from another friend's house, buys three shotgun shells from yet another friend, goes home, shoots and kills his roommate. The man can be charged with what crime?
 - A. intentional murder
 - B. reckless murder
 - C. depraved indifference murder
 - D. criminally negligent homicide
2. A strict liability offense does **not** consider which of the following elements?
 - A. *actus reus*
 - B. *mens rea*
 - C. voluntariness
 - D. criminal negligence

3. The managers of a petroleum transport corporation allow an employee to clean a tank containing petroleum waste without adequate ventilation. The vapors explode while the employee is inside and kill him. The managers can be charged at what level of mental culpability?
- A. intentionally
 - B. knowing
 - C. reckless
 - D. criminal negligence
4. A pub employee grabs a helplessly intoxicated patron and throws him outside from the top of a flight of stairs whereupon the patron becomes airborne, hits his head on the pavement at the bottom of the stairs, and subsequently dies. The employee can be charged with what crime?
- A. intentional murder
 - B. reckless murder
 - C. depraved indifference murder
 - D. criminally negligent homicide
5. A convenience store owner who sells outdated milk and causes the illness of several customers is acting with _____ culpability.
- A. intentional
 - B. knowing
 - C. reckless
 - D. strictly liable

REFERENCES

¹ 69 N.Y.2d 525 (1987)

² 82 N.Y.2d 497 (1993)

³ 504 N.Y.S. 2d 538 (1986)

⁴ 37 N.Y. 2d 568 (1975)

⁵ 531 N.Y.S. 2d 693 (1988)

⁶ People v. Scully (513 N.Y.S. 2d 625 (1987))

ANSWERS

1. A; 2. B; 3. C; 4. D; 5. D