The examination is three hours long. Each question counts 20 points. Write on one side of the page. The Kentucky statutes (handout) are applicable.

Honor Code notice and pledge

The College of Law Honor Code prohibits cheating on examinations. The Code requires students to report cheating. Failure to report cheating is a violation of the Honor Code.

By turning in this examination, I pledge that I have neither given nor received any unauthorized aid on the examination.

Question one

Vernon suffered from cancer which had spread to his spine. He was in extreme pain. His condition was terminal with a life expectancy of no more than a few weeks. Vernon was aware of his condition. He was cared for at home by his wife Debbie. According to Debbie Vernon several times said he wanted to die to ease the pain.

Dr. Kramer, the attending physician, prescribed codeine but it was ineffective in relieving Vernon's pain. On April 24 Debbie called Dr. Kramer, related Vernon's condition, and asked Dr. Kramer for a stronger prescription. Dr. Kramer prescribed morphine "as needed for pain." That afternoon Debbie picked up the prescription consisting of a bottle of twenty pills labeled "morphine to be taken as needed for pain."

Debbie put the pills and a pitcher of water by Vernon's bed and told Vernon they were pain pills to be taken as needed. He took two pills and drifted off to sleep.

About two hours later Debbie called Dr. Kramer to report that Vernon was resting
quietly. As Dr. Kramer came on the line, Debbie heard Vernon cry out in pain from the bed. Sobbing hysterically, Debbie said to Dr. Kramer, "I thought he would be quiet for a while. He just woke up and is crying for me. I'm at my wit's end. I don't know how much more of this I can stand. I hope this is over soon."

Dr. Kramer responded, "Debbie, it will be okay. If he takes more than five of those pills in a twelve hour period it will be over."

Debbie to Vernon's bedside. He said, "Are the pills morphine?" She replied "Yes, they're morphine for pain." He took two pills.

She stayed at his bed and watched him take two more pills half an hour later, and two more pills an hour later. They did not converse. He drifted off to sleep and did not wake up.

The prosecutor is considering indicting Debbie for murder and/or assisting or facilitating a suicide. Discuss the issues.

Question Two

Darlene, a nineteen year old non-drinker, went to an office Christmas party at which Doug gave her a number of cups of punch which he assured her was not "spiked." In fact the punch was heavily spiked with vodka. Darlene thought the punch tasted a little strange and later sensed that something was wrong -- her speech was starting to slur and her face felt numb. She began to experience double vision. She thought she was

Darlene refused Doug's invitation to dinner and left the party. She had about a twenty mile drive on the interstate to get home. Conscious of the fact she was seeing double she drove as carefully as she could in the slow lane. Nevertheless she was unable to avoid rear-ending a car as it slowed suddenly to avoid striking a slow-moving truck.

The cars were not badly damaged and Darlene and Victor, the driver of the other car,
dsteered their cars to the shoulder. Victor got out on the driver's side without looking and stepped into the path of an on-coming truck. He was badly injured and taken to the hospital in a coma and put on a life support system. Three weeks later, in compliance with Victor's living will, the hospital disconnected Victor's life support system and he died.

Darlene's blood alcohol level thirty minutes after the accident was 0.08. At that level there is no statutory presumption that the driver was (or was not) under the influence of alcohol.

The prosecutor is considering indicting Darlene for some level of homicide. Discuss the issues.

Question three

Davis, a 250 pound college football player, and his friend, Betty, went to a nightclub to have a few drinks and dance. Vernon, a fifty year old 160 pounder, who had been drinking, asked Betty to dance. When she declined, Vernon called her an "ugly whore." Davis immediately got to his feet, grabbed Vernon by the coat and demanded, "You apologize to the lady."

David is charged with attempted possession of a sawed off shotgun, attempted hunting of deer out of season, attempted manufacture of an automatic weapon, and conspiracy to manufacture an automatic weapon. Your investigation discloses the following:

It is illegal to knowingly possess a shotgun with a barrel less than 18" and overall length less than 26." Doug's shotgun had a barrel length of 27".

It is illegal to hunt deer from a vehicle.

It is illegal to manufacture a firearm that will fire automatically.

Discuss the charges against Doug.

Question five (two points apiece).
Answer the following briefly (no more than two sentences)

1) What is the "year and a day" rule?

2) What is the defendant's burden when a statute labels a matter an "affirmative defense?"

3) What is the modern analogue to a homicide committed in sudden "heat of passion on reasonable provocation?"

4) A and B borrow C's car and use it to commit a robbery. C knows the use of the car but does not desire the robbery. What crime, if any, has C committed?

5) A leaves a message on B's answering machine asking B to sell cocaine to A. Pursuant to a warrant the police search B's apartment and intercept the message before B hears it. What crime, if any has A committed?

6) A and B decide to steal a car (Class D felony) and use it to rob a bank (Class B felony). A looks through a parking garage for a car with the keys in it. He is caught and tells the police what he and B planned. What crime (s) can B be convicted of?

7) A is charged with going 65 in a 55 zone on an interstate highway. A defends by saying he thought the speed limit was 65; that he did not see the sign lowering the speed to 55 as he came into an urban area. Is he entitled to a mistake of fact defense? Why or why not?

8) D rents an apartment from A. D is two months behind in his rent. A wrongly believes that he can use self-help to evict D. A enters with a passkey in D's absence and starts to set D's furniture out on the street. D returns and strikes A to prevent him from removing the furniture. What is the analysis if D is charged with assault?

9) What is "transferred intent?" Give an example.
10) What is "choice of evils?" Give an example.

While drinking beer in the airport cocktail lounge prior to checking in for his flight, Doug fell into conversation with a man named Carson, who offered him $1000 to check a bag on his ticket for delivery to a man named Paul who would be waiting at the Pittsburgh airport. After some consideration, Doug agreed. Carson gave Doug $500, the balance to be paid by Paul in Pittsburgh.

Doug believed that the bag contained illegal drugs, probably cocaine. When he picked the bag up and took his place in the check-in line the bag was heavier than he anticipated. As he waited in line he thought about drug-sniffing dogs, mafia connections and the like. He got out of the line and looked for Carson to return the bag. Not seeing Carson anywhere he left the bag near an exit and resumed his place in line. A security guard observed Doug's actions and stopped and questioned him. With Doug's consent the guard opened the bag and found a powerful bomb rigged to go off when the plane was in mid-flight.

Doug is charged with the following:

1) Criminal possession of a destructive device. The statute provides:

A person is guilty of criminal possession of a destructive device [defined to include a "bomb"] when he possesses . . . such device with:;

1) intent to use that device to commit an offense against the laws of this state. .

. or of the United States; or

2) knowledge that some other person intends to use that device to commit an offense against the laws of this state. .

. or of the United States

2) Attempt to traffic in a Schedule I or 11 controlled substance

(which includes cocaine, heroin, etc.). The statute provides:

A person is guilty of trafficking [defined to include distributing and possession with intent to distribute] in a controlled substance in the first degree when he knowingly and unlawfully trafficks in a controlled substance classified in Schedules I and 11.

3) Wanton endangerment in the first degree. The statute provides:
A person is guilty of wanton endangerment in the first degree when, under circumstances manifesting extreme indifference to the value of human life, he wantonly engages in conduct which creates a substantial danger of death or serious bodily injury to another person.

Which statute(s), if any, is appropriate for Doug's conduct and mental state? Discuss.