UNIVERSITY OF KENTUCKY  
COLLEGE OF LAW  
CRIMINAL LAW (810-1) PROFESSOR LAWSON  
FINAL EXAMINATION DECEMBER 13, 1985  

INSTRUCTIONS  
THE EXAMINATION IS 3 HOURS LONG. THE WEIGHT OF EACH PART OF THE EXAMINATION IS INDICATED ON THE EXAMINATION. YOU SHOULD ALLOT YOUR TIME ACCORDINGLY.  

I HAVE NOT INCLUDED ANY TRICK QUESTIONS IN THE EXAMINATION, AT LEAST NOT INTENTIONALLY. IN GRADING THE EXAMINATION I WILL BE LOOKING FOR CAREFUL ANALYSIS OF THE PROBLEMS PRESENTED FOR YOUR CONSIDERATION AND PROPER APPLICATION OF THE LEGAL CONCEPTS TO WHICH YOU HAVE BEEN EXPOSED. IN READING THE QUESTIONS, IF YOU BELIEVE THAT CRUCIAL FACTS HAVE BEEN OMITTED AND FIND IT NECESSARY TO ASSUME THEIR EXISTENCE. YOU SHOULD SO INDICATE IN YOUR ANSWER.  

PRECISENESS AND CONCISENESS ARE ESSENTIAL TOOLS FOR THE GOOD LAWYER. YOU SHOULD KEEP IN MIND THAT:  

(1) PRESENTATION OF IRRELEVANT MATTER WILL OFTENTIMES DETRACT FROM YOUR ANSWER EVEN THOUGH IT MIGHT SHOW A GENERAL KNOWLEDGE OF SOME ASPECT OF CRIMINAL LAW.  

(2) EXCESSIVELY VERBOS E OR REPETITIVE MATERIAL MIGHT ALSO DETRACT FROM THE VALUE OF YOUR ANSWER.  

(3) ON THE OTHER HAND, YOU SHOULD BE SURE TO PROVIDE A COMPLETE, WELL-REASONED ANALYSIS OF THE PROBLEMS.  

PART I.  
THE STATE OF LAFFERTY HAS A CRIMINAL CODE CONTAINING THE FOLLOWING STATUTES ON HOMICIDE:  

Sec. 100 Third Degree Manslaughter  
A person is guilty of manslaughter in the third degree when he causes the death of another person (i) through criminal negligence or (ii) through the commission of an unlawful act not amounting to a felony.  

Sec. 110 Second Degree Manslaughter  
A person is guilty of manslaughter in the second degree when he recklessly causes the death of another person.  

Sec. 120 First Degree Manslaughter  
A person is guilty of manslaughter in the first degree when he causes the death of another person under circumstances that would constitute murder except for the
fact that he acts under the influence of an extreme emotional disturbance for which there is a reasonable excuse or explanation.

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Sec. 130 Murder

A person is guilty of murder when (i) he intentionally causes the death of another person, (ii) he recklessly causes the death of another person under circumstances manifesting extreme indifference to life, or (iii) he causes the death of another person during the commission or attempted commission of a dangerous felony offense.

Sec. 140 Penalties

A person found guilty of manslaughter in the third degree shall be imprisoned for no less than 1 year nor more than 5. One found guilty of manslaughter in the second degree shall be imprisoned for no less than 6 years nor more than 10. One found guilty of manslaughter in the first degree shall be imprisoned for no less than 11 years nor more than 20. One found guilty of murder shall be imprisoned for no less than 21 years nor more than life.

PROVIDE A BRIEF BUT CAREFUL ANALYSIS OF THE POTENTIAL LIABILITY OF THE DEFENDANT (OR DEFENDANTS) IN EACH OF THE FOLLOWING CASES:

1. Marvin Barto was in the construction business. He specialized in additions to existing residences. In the summer of 1985 he contracted to add a room to the house of Ray Cupler. The contract called for the room to be completed by September 1, 1985 and had a stiff penalty clause for failure to meet the deadline. Barto was slow getting started on the project and found himself in mid-August not even close to completion. He started working almost around the clock. Then he ran into a problem. His electrician came down with pneumonia and had to be hospitalized.
   About six months earlier Barto had fired a man named Paul Starr for being drunk on a job. Starr was also an electrician. Desperate for help, Barto reemployed Starr to do the electrical work on the Cupler contract. On the second day of Starr's employment, late in the day, Barto found him with a bottle of whiskey in his hand and the smell of alcohol on his breath. He sent him home but let him return the following day to complete the job, which he did. Barto finished the room in time to avoid the penalty.
   One month after the room was occupied, there was a fire in the Cupler house. It started in the new room and quickly spread to an upstairs bedroom which was occupied by Ray Cupler's elderly mother. Ms. Cupler was overcome by smoke and died in the room. An investigation completed by authorities after the fire uncovered evidence indicating that the fire started as a result of defective wiring in the room which had recently been added to the Cupler residence. The investigation also revealed that Barto had failed to...
obtain a building permit for the addition, as required by law. (Violation of this requirement was punishable by fine of $500.) Had he obtained such a permit there would have been an official inspection of the electrical work for the room. As it turned out, no inspection of the room was done at the end of the construction.

DISCUSS THE POTENTIAL LIABILITY OF BARTO FOR THE DEATH OF CUPLER'S MOTHER. (15 points)

2. Chester and Myrtle Mathis had been married for 10 years. At times the marriage was stormy, mostly because of the fact that both were insanely jealous and suspicious. Toward the end of 1984, however, things went well for them; the marriage was calm for a couple of months. They decided to celebrate with an evening out for New Year's Eve.

Unfortunately, Chester did not work on the last day of the year. He joined some friends early in the morning and started drinking. He got home later than scheduled and this made Myrtle furious. They got ready to go to the New Year's Eve Party, but argued furiously for more than an hour. By the time they left for the party both were fuming mad. Chester had continued to drink, which did not help the matter.

At the party, Chester and Myrtle ran into some people with whom Myrtle worked. At some point Myrtle was asked to dance by a man from work and she consented. Chester said nothing, but it was apparent to Myrtle that he was burning. She danced with the man three times before Chester said anything about it. Then he called her a "slut" and threatened to knock her teeth out. He continued to drink.

Myrtle continued to dance with her friend from work. Chester left the hall where the party was being held and went to his car. He kept a gun in the glove compartment. He got the gun, returned to the dance floor, and found Myrtle on the dance floor with her friend doing a slow dance at close quarters. Chester ran across the floor shouting and shooting. He emptied the gun, He put three shots in Myrtle and three in her friend. Both died instantly.

Chester was indicted for two counts of murder. The facts described above were proved. In his own testimony Chester said he loved his wife, intended her no harm, and was so drunk on the occasion in question that he could not remember anything that happened. The trial judge instructed the jury on intentional murder and rejected the defendant's request for instructions on the lower degrees of homicide. (As you know, a judge is obligated to give instructions on lower degrees of an offense charged if the evidence is sufficient to support a finding on the lower degrees.) The judge then instructed the jury as follows: "The defendant in this case was voluntarily intoxicated, if he was intoxicated at all. It is not a defense under the law for having committed a crime while so intoxicated."

THE DEFENDANT WAS CONVICTED OF TWO COUNTS OF MURDER. HE APPEALS THE CONVICTIONS ON THE GROUND THAT THE TRIAL JUDGE'S INSTRUCTIONS WERE ERRONEOUS. DISCUSS. (15 points)

3. Carl Boyd was in an upstairs bedroom in his residence doing his exercises prior to retiring for the evening. It was near midnight. Boyd had had a very hard day and was tired. During one of his deep
kneebends he glanced out the window and saw movement across the street near his parked 1985 Mazda RX7. Upon a closer look he saw a male figure trying to open the door on the driver's side of the car. He grabbed a pistol that he kept loaded in a nightstand near his bed and headed toward the street. Upon exiting his front door with gun in hand he yelled at the figure near his car, "Hey, what do you think you're doing!" It was a very dark night. Boyd was excited and he was mad. The figure near his car yelled back, "It's me, dad, your son Rich." Boyd thought the figure said, "It's too bad, you son-of-a-bitch," and he ran toward the car. He saw the figure reach into his jacket pocket. Still not recognizing the figure as his son he raised his gun and fired, killing the figure instantly. It turned out in fact that the deceased was his son who had come from his nearby apartment for the purpose of borrowing the car to obtain a pizza from a local shop.

BOYD IS INDICTED FOR MURDER. HE COMES TO YOU FOR AN ANALYSIS OF HIS LEGAL SITUATION. PROVIDE HIM A WRITTEN EXPLANATION OF YOUR THOUGHTS ABOUT HIS POTENTIAL LIABILITY. (UNDER THE LAW OF LAFFERTY, AS IN ALL JURISDICTIONS, AN INDIVIDUAL HAS A RIGHT UNDER PROPER CIRCUMSTANCES TO USE FORCE AGAINST ANOTHER TO PROTECT HIS PROPERTY OR TO PROTECT HIS PERSON.) (10 points)

PART II.

1. Lafferty is a small agricultural state located between two highly industrialized states. It is sparsely populated and has lots of open farm and pasture lands with many small rivers and streams. Within the last few years, Lafferty has all too often been the dumping ground for industrial wastes from the two adjoining states. State officials have found deadly toxic substances in several locations and usually in or near a river or stream. They believe that the substances have been dumped from trucks in the middle of the night. The Legislature of Lafferty has taken action by enacting the following statute:

A person is guilty of unlawfully possessing toxic substances in the state of Lafferty if he possesses such substances within the territorial boundaries of the state without having on his person a licence to so possess. The penalty for violation of this statute is 2 years in prison, $5,000 fine, or both.

Bruce Clark is a resident of Lafferty. He makes his living by hauling industrial garbage. He lives near the state border and hauls materials from the adjoining state to Lafferty for disposal. Bruce is poorly educated, drinks a little too much whiskey, but still makes a decent living with the one truck he owns.

On June 1, 1985, Bruce hauled a load of garbage into Lafferty from an adjoining state, took it to a remote garbage dump that was unmanned (at least he so believed), and unloaded it. Before he could move his truck, some police officers arrived on the scene, blocked his truck, and examined the load he had just dumped. The officers discovered that Bruce had unloaded (among other things) two cannisters of a very highly toxic chemical. He was arrested
immediately and charged with unlawfully possessing toxic substances.

At trial, the prosecution proved the facts described above. Bruce took the witness stand to testify on his own behalf. He made no effort to contend that the substances in question were not toxic, nor did he contend that they were not on his truck. He tried over objection to testify (i) that he was intoxicated when he entered the above described garbage dump on June 1, (ii) that he had been told and believed that he had on his truck at the time wastepaper, sawdust, old carpet, and ordinary household garbage, and (iii) that he did not know that the law required him to have a license to haul anything. The trial judge declared all this testimony inadmissible and refused to let him so testify. He was convicted.

A. BRUCE DESIRES TO APPEAL THE CONVICTION AND SEEKS YOUR ADVICE. HE THINKS THE JUDGE'S EVIDENCE RULINGS DENIED HIM TO A FAIR DEFENSE. DO YOU AGREE OR DISAGREE? EXPLAIN FULLY.

B. WOULD YOUR ANSWER BE DIFFERENT IF THE APPLICABLE STATUTE READ AS FOLLOWS:

A person is guilty of unlawfully possessing toxic substances in the state of Lafferty if he knowingly possesses such substances within the territorial boundaries of the state without having on his person a license to so possess.

IF YOUR ANSWER WOULD BE DIFFERENT, PLEASE EXPLAIN. (15 points for both parts)

2. Jack Burgess is a coal miner who works and lives in the eastern part of the state of Lafferty. Until recently he lived with his wife Mary and their 2 year old son. Jack works in the mine as a common laborer, is poorly educated, can barely read, and drinks too much when not working. He is not happy with his life but feels trapped by his own inadequacies. In March, 1984 he was asleep one evening on the couch when his son threw a ball through a window and created a loud noise. When this happened, Burgess jumped up from the couch and struck the child in the face with his hand, knocking him to the floor. He had slapped the child on other occasions, but this time he did more. He kicked the child in the abdomen when he was on the floor, all in the presence of his wife Mary.

The child became ill. His mother put him to bed early but did not call or take him to the doctor. The child was still ill the next morning. Before going to work, Jack Burgess checked on his son and instructed his wife to take the child to the doctor that morning. That evening, when he arrived home from work, he discovered that the child had not been taken to a doctor by his mother and that he was still ill, perhaps even more so than before. Jack promptly took his son to a physician, told the physician that his son had been accidentally struck in the abdomen very hard by a much bigger boy, and that he had been very ill ever since. The doctor examined the child, told the father to keep him in bed for a couple of days, and assured him that nothing really serious was wrong with the child.

Burgess followed the doctor's instructions. The child died
during the night. An autopsy revealed that internal injuries had caused the child's death, specifically, a ruptured small intestine and swelling of the stomach which served to block passage into the intestine.

Burgess has been indicted for murder. The prosecution proves all of the facts described above. Burgess testifies that he did not intend to hurt his son. He proves through the testimony of the physician who performed the autopsy and through another expert witness that the child could have been successfully treated for his injuries if a proper diagnosis had been made on the evening he was taken to the doctor for treatment. At the end of the evidence Burgess moves for a directed verdict of acquittal which is denied. He is convicted of murder.

BURGESS WANTS TO KNOW WHAT LEGAL ISSUES HE MIGHT BE ABLE TO USE IN AN APPEAL OF HIS CONVICTION AND HE WANTS YOUR OPINION AS TO THE LIKELY OUTCOME OF AN APPEAL. EXPLAIN FULLY THE REASONS FOR YOUR ADVICE TO BURGESS. (TO THE EXTENT NECESSARY ASSUME THAT THE HOMICIDE LAW APPLICABLE TO THE CASE IS IDENTICAL TO THAT SET FORTH IN PART I OF THE EXAMINATION.) (15 points)

3. Arthur Farley was the leader of a group of young adults who lived together in a commune type arrangement. Bill Hardesty and Don Bush members of the group and very closely associated with Farley. The group lived on a small plot of farmland in a remote area of the state of Lafferty. They sustained themselves partly by living off the land and partly by engaging in illegal drug traffic in nearby communities. Drug use and sexual activity was commonplace among members of the group.

At some point, Phyllis Queen (a young woman of 22) came to the commune to live. Phyllis was a little different from others in the group. She freely participated in the group's drug activity but had no interest in sexual activity with the male members of the group. A number of problems developed within the group as a result of Phyllis's "peculiarity". Several of the men developed obsessions of conquest of Phyllis; most of the women resented her attitudes on sexual purity. Farley decided that he needed to take corrective actions.

On July 1, 1984, he met with Hardesty and Bush and told them of his intention to have sexual intercourse with Phyllis on the following evening. He told them to bring her to his private cabin (which was about 500 feet from the main house where everyone else lived) at 7:00 p.m. and to assist him in accomplishing the sexual act with Phyllis which was necessary to restore peace and tranquility to the group. Hardesty got very excited when he heard of Farley's plan. Bush manifested some reluctance but finally agreed to participate. The following day Bush worked in the same area of the garden with Phyllis Queen. In talking with Phyllis he discovered she had some very intense religious convictions about premarital sex. He said nothing to her about the plan for that evening, but he was even more troubled than before about Farley's plan for solving the commune's difficulties. Later that day he visited with Farley and tried to persuade him to abandon the plan. Farley refused. Bush said nothing about his own intentions but he knew at that time that he was not
going to deliver Phyllis to Farley's cabin.

Bush was nowhere to be found at 7:00 p.m. on July 2, 1984. Hardesty looked and looked for him and finally decided to act on his own. He approached Phyllis in the main house, told her that Farley wanted to see her, and accompanied her across the grounds to Farley's cabin. Farley announced his intentions once Queen and Hardesty were inside the cabin. Queen tried to run. Hardesty and Farley subdued her, removed her clothes, and Farley consummated the act. When he let her go, she uttered an obscenity and kicked him as hard as she could in the groin. He grabbed a knife from a nearby table and stabbed her in the chest. She died within a couple of minutes. Bush learned of what happened in Farley's cabin and called the police. Farley, Hardesty, and Bush were all taken into custody and charged with criminal offenses.

PROVIDE AN ANALYSIS OF THE POTENTIAL CRIMINAL LIABILITY OF THE THREE MEN. STATE CLEARLY THE PRINCIPLES UNDERNEATH YOUR ANALYSIS AND DESCRIBE THE SPECIFIC GROUNDS FOR IMPOSING LIABILITY ON THE OFFENDERS FOR SPECIFIC CRIMES, IF YOUR ANALYSIS LEADS YOU TO THE CONCLUSION THAT CRIMES HAVE BEEN COMMITTED BY ONE OR MORE OF THE ACTORS. ( IF YOU NEED A PARTICULAR HOMICIDE LAW FOR USE IN YOUR ANALYSIS, ASSUME THAT THE JURISDICTION HAS A LAW IDENTICAL TO THAT DESCRIBED IN PART I OF THE EXAMINATION. TO THE EXTENT YOU NEED OTHER LAW FOR YOUR ANALYSIS YOU MAY USE THE PREVAILING COMMON LAW, THE MODEL PENAL CODE, THE KENTUCKY PENAL CODE, OR WHATEVER LAW YOU KNOW, SO LONG AS YOU IDENTIFY YOUR SOURCES.) (25 points)

4. Adams and Baker were neighbors living in a narrow valley near a coal mine. Directly across from their houses were a railroad track and a highway used heavily by mining company trucks. Late one evening near dark, Adams and Baker were walking along the highway when they saw two men lying on the railroad tracks obviously intoxicated and passed out. They also saw a loaded coal train just a couple hundred feet up the track speeding toward the two drunks. Adams yelled at Baker to help and rushed toward the two men on the tracks. Baker did nothing. Adams grabbed one of the men, dragged him off the tracks and laid him on the edge of the highway. He turned just as the train ran over and killed the other drunk. Enraged at Baker for making no attempt at rescue, Adams commenced to yell and scream obscenities at his neighbor. At that moment a loaded coal truck came speeding down the highway and struck the unconscious drunk lying in its path, causing death instantly.

DISCUSS THE POTENTIAL CRIMINAL LIABILITY OF ADAMS AND BAKER. (TO THE EXTENT YOU NEED A PARTICULAR HOMICIDE LAW FOR YOUR ANALYSIS, RELY ON THE LAW DESCRIBED IN PART I OF THE EXAMINATION.) (10 points)