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 LEGAL CONCEPTS TO THE FACTS PRESENTED. IN READING THE QUESTIONS, IF YOU BELIEVE THAT ESSENTIAL FACTS HAVE BEEN OMITTED AND FIND IT NECESSARY TO ASSUME THEIR EXISTENCE YOU SHOULD SO INDICATE IN YOUR ANSWERS.

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 VERBose OR REPETITIVE MATERIAL MIGHT ALSO DETRACT FROM THE VALUE OF YOUR ANALYSIS.

(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 HOMICIDE STATUTES:

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.

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. TO THE EXTENT YOU NEED TO RELY ON LEGAL DOCTRINE NOT CONTAINED IN THESE STATUTES, YOU MAY RELY ON THE TRADITIONAL CRIMINAL LAW (THE SO-CALLED COMMON LAW) OR ON THE MODEL PENAL CODE, SO LONG AS YOU IDENTIFY WHAT YOU ARE DOING:

1. Smith, a Vietnam veteran, took great pride in his expertise as a marksman with a rifle. He had learned to shoot while in the military and practiced on a regular basis with a local police organization. He usually practiced with an officer named Carter who was skilled in the use of a handgun. In July, 1986, toward the end of a practice session, Smith and Carter got into a friendly argument over whether a handgun or a rifle was a better weapon. At the end of the argument they decided to go to the city dump and test their respective skills by shooting rats; they agreed that each would have 10 shots and that the one who killed the most rats would win $500 from the other. They met at the dump late one evening (before dark) to settle the wager. Smith loaded his rifle and prepared for the initial shot. He saw a rat near what appeared to be a recently dumped load of produce boxes and other grocery store debris. He aimed his rifle and fired at the rat just as it reached the top of the recently dumped load. When the rat disappeared, Smith and Carter ran to where it had last been seen. What they found instead of a rat was an old man bleeding to death from Smith's gunshot. They rushed the old man to a hospital but he was dead on arrival.

The police conducted an investigation of the homicide. Among other things they learned that the victim was a homeless person who had regularly visited the city dump to obtain food scraps from garbage thrown away by grocery stores. They learned that Smith and Carter
undertook to settle their wager without looking around the dump to see if anyone might be endangered by their shooting. They also learned that Smith had been drinking during part of the afternoon and had had at least two drinks within an hour of the accident.

YOU ARE AN ASSISTANT TO THE PROSECUTING ATTORNEY. HE HAS ASKED YOU TO PREPARE A BRIEF MEMORANDUM ADDRESSING EACH OF THE FOLLOWING MATTERS:

A. THE POTENTIAL LIABILITY OF SMITH FOR THE DEATH OF THE OLD MAN. (5 points)

B. THE SIGNIFICANCE OF THE EVIDENCE THAT SMITH HAD BEEN DRINKING PRIOR TO THE INCIDENT AT THE DUMP. (NOTE: THE PROSECUTOR FEARS THAT SMITH'S LAWYER MIGHT TRY TO TAKE ADVANTAGE OF THIS FACTOR IF POSSIBLE. NATURALLY, THE PROSECUTOR WANTS TO EXPLOIT THE FACTOR FOR THE BENEFIT OF THE STATE IF FEASIBLE. HE WANTS YOU TO CONSIDER BOTH SIDES OF THE QUESTION.) (5 points)

C. THE POTENTIAL LIABILITY OF CARTER FOR THE DEATH OF THE OLD MAN. (5 points)

2. Al Melrose lives on a narrow country road just outside the City of Lexington in the State of Lafferty. In March, 1986, Mark and Becky Vice lived on the same road about 100 yards from the Melrose house. Al and Mark had had lots of trouble by this date, mostly because of the fact that Mark used a building at the back of his house as a dog kennel. The number of dogs kept in the kennel varied from time to time but never numbered less than ten. In 1985 Melrose had sued Vice for maintaining a nuisance on his property, the basis for the suit being unreasonable noise and odor from the kennel. But on the last day of February, 1986, a court had dismissed Melrose's complaint as unfounded. He became furious to say the least.

On March 3, 1986, Melrose went to bed about midnight. For some reason the dogs in the kennel became aroused at about 1:00 a.m. and began to bark like crazy. Melrose had fallen asleep only to be awakened suddenly by the dogs. He put on his clothes hurriedly, went into his garage to obtain a gasoline can, and rushed to the back of the Vice house. He poured gasoline on the dog kennel and used a cigarette lighter to ignite the gasoline. Flames spread quickly across one side of the building. Melrose rushed back to his house, called a fire station which was about 8 miles away, and reported that there was a fire at the Vice house.

An open space of only fifteen feet separated the kennel building and the Vice house. Once the fire in the kennel got underway it spread to the roof of that building and burned furiously. With the help of some wind which was blowing across the fire toward the Vice house, the fire spread to the roof of the house within a short time after ignition. Mark and Becky Vice were asleep and unaware that their house was on fire. The alarm had sounded at the fire station and two trucks were on their way to the fire.

The trucks arrived before the fire on the Vice roof was out of control. The firemen hooked their hoses to some nearby hydrants but discovered immediately that there was not enough water pressure on the
line to fight the fire on the house. They aroused Mark and Becky Vice, got them to safety, but merely watched as the fire engulfed the house.

At some point, Becky turned to Mark and said excitedly, "my god, what about the money?" Mark rushed past the firemen and entered the front door of his house which was now a raging fire. Shortly thereafter, the roof collapsed and blocked all access in and out of the house. Mark died inside the building.

In a subsequent investigation of the fire it was learned that Becky and Mark had about $25,000 in cash in the house at the time of the fire. It was also learned that the water pressure in this part of the county could not possibly have provided sufficient water to extinguish the fire. Investigators also learned that Melrose had ignited the blaze which ultimately spread to the house.

MELROSE EXPECTS TO BE INDICTED FOR HOMICIDE. HE HAS COME TO YOU FOR AN ANALYSIS OF HIS POTENTIAL LIABILITY FOR THE DEATH OF MARK VICE. HE WANTS ANSWERS TO TWO QUESTIONS IN PARTICULAR: (1) "WHAT AM I GUILTY OF, IF ANYTHING?" (2) "DO I HAVE ANY REALISTIC HOPE OF MAKING A DEFENSE TO THE CHARGES?" EXPLAIN YOUR CONCLUSIONS FULLY. (10 points)

3. James Nuchols is an avid supporter of the University of Kentucky basketball team. In December, 1985, he was in a bar in downtown Louisville watching a game on television between the Wildcats and the University of Louisville. Paul Murphy, an avid supporter of the University of Louisville's team, was in the bar watching the same game. Both Nuchols and Murphy had a couple of drinks while watching the contest. Toward the end of the game, which was hotly contested, a heated argument broke out between Nuchols and Murphy. A bartender intervened and told them to leave the premises and settle their dispute outside. Still angry, they left the bar and continued their argument on the street outside the premises. A few moments later Nuchols called Murphy "a stupid S.O.B.". Murphy took a swing at Nuchols and missed. Nuchols responded with a blow to the chin of Murphy and knocked him into the street. At that very moment Bill Banks was driving his car down the street outside the bar. He was listening to the basketball game on his radio but otherwise attentive to his driving; unfortunately, he was driving at 45 mph although the speed limit was only 35 mph. He saw Murphy fall into the street and tried unsuccessfully to stop his car. His front right wheel ran over Murphy's chest. Murphy was rushed to the hospital but died that same day from injuries caused by the vehicle.

A. THE PROSECUTING ATTORNEY FOR WHOM YOU WORK AS AN ASSISTANT HAS ASKED FOR YOUR ANALYSIS OF THE POTENTIAL CRIMINAL LIABILITY OF JAMES NUCHOLS. SPECIFICALLY, HE WANTS TO KNOW WHAT CRIME OR CRIMES, IF ANY, TO CHARGE AGAINST NUCHOLS AND HE WANTS TO KNOW OF ANY DIFFICULTIES WHICH HE MIGHT ENCOUNTER IN PROSECUTING A CASE AGAINST THIS MAN. (10 points)

B. BILL BANKS HAS NOT YET BEEN CHARGED WITH ANY CRIME IN CONNECTION WITH THE ACCIDENT. HE FEARS INDICTMENT FOR HOMICIDE AND HAS EMPLOYED FRANK HARMON, A PROMINENT CRIMINAL DEFENSE LAWYER, TO REPRESENT HIM. YOU ARE AN ASSOCIATE IN HARMON'S FIRM AND HAVE BEEN ASKED TO PROVIDE AN ANALYSIS OF BANK'S PROBLEM.
PROVIDE AN ANALYSIS OF HIS POTENTIAL LIABILITY AND OF ANY POSSIBLE DEFENSES WHICH HE MIGHT BE ABLE TO RAISE. (5 points)

4. Joyce Dugan started dating a young man named Brian Barton when she was only 16 years old; Barton was 21 years old at the time. A few months later Joyce became pregnant by Barton. A marriage followed shortly thereafter. Joe Dugan, father of Joyce, suffered great emotional distress over these developments and became permanently disenchanted with his son-in-law. His feelings toward Barton grew even more intense as problems developed in the marriage, problems associated with Brian's excessive drinking and his tendency to give special attention to women other than his wife.

For a period of several months Joe watched as his daughter's relationship with her husband deteriorated. He could see that Barton was drinking too much and he saw enough to suspect that Joyce might be experiencing physical abuse at the hands of her husband. For some time Joe had entertained concerns about the possibility that Barton might have some capability for violence; he began to worry some about the well-being of his daughter. He tried on two occasions to persuade his daughter to leave her husband and come home to live but she refused. Late one night, at about 1:00 a.m., Joe got a phone call from Joyce asking him to come and get her and the baby. Joe drove the three miles to the Barton home and pulled into the driveway. He could see that the lights were on in the house and that Brian was home; he assumed, correctly as it turned out, that Brian had been drinking heavily. Before leaving his car Joe took a handgun from the glove compartment and put it in his jacket pocket.

Once inside the house he could see that his daughter had been crying. He told her to get her coat and the baby. At that point Brian interceded: "You get the hell out of this house, that bitch is not going anywhere." By this time Joe was beside himself with anger at his son-in-law: "If you ever put your hands to her again I'll kill you." Joyce grabbed her coat and started toward her father. Brian reached out to grab her by the arm and said, "no, don't leave me." Joe pulled the gun from his pocket and pointed it at Brian. Brain stopped in his tracks. A couple of seconds of silence elapsed. Brian started to put his hand in the jacket of a pocket he was wearing. Joe fired his pistol. Brian was killed almost instantly. Joe later told authorities he thought Brian was going for a gun when he reached into his pocket. He also told them he had never known of Brian owning or possessing a handgun. In fact Brian had no gun on his person on the night in question.

JOE DUGAN HAS BEEN CHARGED WITH MURDER. YOU ARE AN ASSOCIATE OF THE LAWYER WHO HAS BEEN EMPLOYED TO REPRESENT DUGAN. HE HAS ASKED YOU FOR A MEMORANDUM GIVING HIM YOUR BEST ANALYSIS OF DUGAN'S SITUATION. (10 points)

PART II.

IN THIS PART OF THE EXAMINATION I HAVE TRIED TO MINIMIZE THE NEED FOR YOU TO KNOW A PARTICULAR BODY OF CRIMINAL LAW, SUCH AS THE MODEL CODE, THE KENTUCKY LAW, OR THE PREVAILING COMMON LAW. TO THE EXTENT I HAVE FAILED TO ACCOMPLISH THIS OBJECTIVE, YOU SHOULD ANSWER THE
QUESTIONS BY RELYING ON THE PREVAILING COMMON LAW POSITION. IF YOU CANNOT DO THIS, RELY ON WHATEVER LAW YOU KNOW AND IDENTIFY YOUR SOURCES.

1. The state of Lafferty, like all others, attempts to regulate the distribution and use of intoxicating substances through licensing and criminal penalties. Contained in its Penal Code are the following statutes:

Sec. 1010. A person is guilty of unlawfully possessing intoxicating substances if, with intent to sell, he possesses such substances on premises located within the territorial boundaries of Lafferty without having a license to possess and sell such substances. The penalty for violation of this statute is 1 year imprisonment, $5000 fine, or both.

Sec. 1020. A person is guilty of unlawfully selling intoxicating substances if he sells such substances to a person who is under the age of 18 years at the time of the sale. The penalty for violation of this statute is 30 days in jail, $1000 fine, or both.

David Sparks is an engineering student at Lafferty University. On May 10, 1986, David had a party in the yard of the house where he had lived during his four years at Lafferty U. All of his good friends from school were invited; most brought dates. On the day before the party David bought more than $400 worth of beer, whiskey, and food. Since he could not afford to pay for all this himself, he decided to employ a bartender for the party and charge a modest amount for beer and mixed drinks--50 cents for beer and a buck for a mixed drink. He hoped at least to recover his costs, and if he made a little profit that would be just fine.

A big crowd came to the party and stayed a long time. One of the people in attendance was Phil Austin and his date Pam Parker. Phil was an engineering student and a friend of David Sparks; Pam was a freshman at Lafferty U. Phil and Pam stayed at the party for about three hours but left while it was still in full swing. While there they each had three mixed drinks; Pam paid for two and Phil paid for the other four. They left the party in Pam's car, with Phil driving. After traveling about a mile, Phil ran through a stop sign and hit a police car. The police officer discovered immediately that Phil and Pam were intoxicated; he also discovered that Pam was only 17 years old.

Further investigation revealed that they had been at the Sparks party and had bought alcoholic beverages on the premises. The officer took Phil and Pam into custody and went immediately to the location of the party. Once there he arrested David Sparks and charged him with violation of the two statutes described above.

At David's trial the prosecution proved the facts described above. David took the witness stand to testify on his own behalf. He wanted to testify (i) that he was intoxicated during the party and did not even know that Phil and Pam were in attendance; (ii) that he believed that everyone in attendance was over the age of 18 years; and (iii) that he did not know that the law required him to have a license
to sell alcoholic beverages at his own home. But when the prosecutor objected to all this testimony the trial judge sustained the objections and ruled the testimony inadmissible. In so ruling he declared that the testimony was not relevant to any material issue in the case. David was convicted of both crimes.

A. DAVID IS THINKING ABOUT APPEALING HIS CONVICTIONS AND SEEKS YOUR ADVICE. HE IS CONVINCED THAT THE JUDGE DENIED HIM A FAIR CHANCE TO DEFEND HIMSELF BY RULING ALL HIS EVIDENCE INADMISSIBLE. PROVIDE HIM WITH AN EVALUATION OF HIS CHANCES FOR REVERSAL OF HIS CONVICTIONS. EXPLAIN FULLY.

B. ASSUME THAT THE STATUTES UNDER WHICH DAVID WAS CHARGED READ NOT AS PROVIDED ABOVE BUT RATHER AS FOLLOWS:

Sec. 1010. A person is guilty of unlawfully possessing intoxicating substances if, with intent to sell, he knowingly possesses such substances on premises located within the territorial boundaries of Lafferty without having a license to possess and sell such substances. The penalty for violation of this statute is 1 year imprisonment, $5000 fine, or both.

Sec. 1020. A person is guilty of unlawfully selling intoxicating substances if he knowingly sells such substances to a person who is under the age of 18 years at the time of the sale. The penalty for violation of this statute is 30 days in jail, $1000 fine, or both.

IF YOUR EVALUATION OF DAVID'S CHANCES ON APPEAL WOULD BE DIFFERENT UNDER THESE STATUTES PLEASE PROVIDE AN EXPLANATION OF YOUR REASONING. (15 points total for both parts).

2. Albert is a deputy sheriff in a rural county in the state of Lafferty. He encounters some serious financial problems as a result of some farm land he bought when interest rates were high. He sees no easy way out of his dilemma and at some point decides to take some drastic steps to rectify his situation.

He seeks out Baker, a local high school dropout, and hires him to burglarize the Small Jewelry Store, which is located in the only town in the county. He then seeks out Carter, an uneducated man who works around as a farm hand, and hires him to rob the Big Time Liquor Store, which is located on the same street as the jewelry store. He then seeks out Dawkins, an unemployed janitor, and persuades him to enter an adjoining county to steal a car for use in the liquor store robbery.

Baker and Carter do not meet face-to-face at any point in time, but each knows that Albert has made arrangements for the other to commit a crime for the purposes of theft; in fact, each knows the specific assignment undertaken by the other. Dawkins knows of the use which Albert intends to make of the car; he is willing to commit car theft but has no willingness at all to participate in robbery.

Baker enters the Small Jewelry Store late one night, takes a substantial quantity of jewels, and delivers them to Albert the following morning. Dawkins goes to an adjoining county, steals a car,
and delivers it to Albert. Albert delivers the car to Carter and at
the same time gives him a gun. He instructs Carter to shoot the gun
only if absolutely necessary and even then only to scare and not to
injure. Carter goes to the Big Time Liquor Store late one evening near
closing time, pulls the gun from his pocket, and instructs the clerk to
empty the register. The clerk gives Carter the money just as an
off-duty state police officer enters the store to make a purchase.
Carter panics, shoots the police officer in the leg, and flees. The
officer suffers serious injury but survives.
Carter subsequently turns himself into the state police and
confesses. An investigation uncovers all of the facts described above.

A. PROVIDE AN ANALYSIS OF THE LIABILITY OF EACH OF THE PARTIES
FOR THE CRIMES COMMITTED BY THE OTHERS, USING THE GENERAL
DOCTRINE OF COMPLICITY (OR ACCOMPLICE) LIABILITY).

B. PROVIDE AN ANALYSIS OF THE LIABILITY OF EACH OF THE PARTIES
FOR THE CRIMES COMMITTED BY THE OTHERS, USING THE DOCTRINE OF
ACCESSORIAL LIABILITY THROUGH CONSPIRACY. (20 points total for
both parts)

3. Rob Roberts, Dave Duncan, and Curt Curllass were driving along a
country road in an isolated part of the state of Lafferty when their
car broke down. It was near midnight and there was no traffic on the
road. They walked along the road for about two miles before coming to
a farmhouse. The farmer and his family were asleep at the time. The
three men knocked on the farmhouse door, got the farmer out of bed,
told him of their problem, and asked if he could put them up for the
night. Doubting their story, the farmer told them his wife was very
ill and suggested that they walk to a service station which was only 4
miles down the road.

As the three men were walking away from the farmhouse, Roberts
stopped suddenly, pulled a gun out of his pocket, and inserted a
cartridge in the chamber. Thinking that Roberts intended to shoot into
the farmhouse, Curllass yelled out, "are you crazy", and grabbed his arm
knocking the gun to the ground. Duncan quickly picked up the gun,
aimed it at the farmhouse, and fired. The farmer's daughter, who was
asleep in a bedroom, was struck in the leg by the gunshot and seriously
injured.

The state of Lafferty has a statute which creates an offense
called shooting into an occupied residence; one commits the offense by
"shooting intentionally into a residence knowing it to be occupied".
Under the law of Lafferty a person is guilty of murder if he "causes
the death of another person intentionally or recklessly under
circumstances manifesting extreme indifference to life."
Rob Roberts has been indicted for attempted shooting into an
occupied residence. Dave Duncan has been indicted for attempted
murder. Both Roberts and Duncan have been indicted for conspiracy to
shoot into an occupied residence.

PROVIDE A BRIEF ANALYSIS OF THE LIKELIHOOD OF SUCCESS IN THE
PROSECUTION OF THESE INDICTMENTS. EXPLAIN YOUR CONCLUSIONS. (10
points)
PART III.
(10 points total)

IN A SINGLE PARAGRAPH OF MODERATE LENGTH ANSWER EACH OF THE FOLLOWING QUESTIONS. EACH ONE IS WORTH ONLY TWO POINTS, SO YOU SHOULD NOT ALLOT AN ABUNDANCE OF TIME TO THIS PART OF THE EXAMINATION.

PRECISION IS OF PARAMOUNT IMPORTANCE.

1. Describe the Model Penal Code's standard of legal insanity and compare it to the M'Naghten test.

2. Relate the incompetency of an accused to stand trial to the defense of insanity.

3. Describe the principle of legality?

4. What is an "aider and abettor", an "accessory before the fact" and an "accessory after the fact"?

5. Compare "criminal solicitation" with "criminal facilitation".