ANSWERS - - PART I.

Question 1, Part A:

It is clear that Smith did not have the death of the victim as his conscious objective thus did not "intend" to cause death. It is also clear that he did not have awareness of the risk of death to his victim when he shot the gun at the rat, at least there is no evidence of awareness of such risk. Consequently, subject to the discussion in Part B below, it is unlikely that Smith could be shown to have acted "recklessly" toward his victim.

Only the offense of manslaughter in the third degree is a realistic possibility. Assuming that Smith and Carter were not committing an unlawful act in shooting at the city dump, a conviction of Smith for third degree manslaughter would require proof of criminal negligence. Criminal negligence is committed through conduct which involves (i) a substantial and unjustifiable risk of death to another and (ii) a gross deviation from the standard of care of an ordinary reasonable person. To prove criminal negligence, the state need not show that the accused was aware of this risk; it is enough if he failed to perceive a risk of which he should have been aware.

The evidence in this case would be sufficient to show the kind of risk needed for a finding of criminal negligence. Liability would probably turn upon whether or not the second element of criminal negligence can be proved. The conduct of Smith would surely constitute ordinary negligence and be sufficient for tort liability, since only a "deviation" from proper conduct is required for tort recovery.

Although the question is a close one, most courts would probably conclude on the basis of this evidence that criminal negligence is provable; on the basis of the evidence a jury would have to decide if the deviation was "gross" or "ordinary".

Question 1. Part B:

It is clear in all jurisdictions that voluntary intoxication is not per se a defense to a criminal charge. The law will not excuse one who commits an act while intoxicated simply because he would not have committed it while sober. Thus, Smith will not be able to raise his drinking as a general defense to the charges against him.

However this does not mean that intoxication is irrelevant to an analysis of the case. The treatment of intoxication varies from jurisdiction to jurisdiction:

The traditional position is usually stated as follows: voluntary intoxication may be used to negate an element of specific intent but not one of general intent. The difficulty with this approach lies with the absence of a workable distinction between the two kinds of mental elements. Most commonly, a crime of specific intent is defined as one requiring an intent beyond the intent to do the act which constitutes
the offense; all other offenses are defined as general intent crimes. Under this definition, perhaps none of the homicide offenses contained in the Lafferty statutes would qualify as "specific intent" crimes. Some courts might treat the "intent to kill" offenses as specific intent crimes. Since Smith will be charged only with an offense having recklessness or negligence as the mental state, the traditional approach would probably deny him any use of intoxication as a defense.

The Model Code, and modern statutes patterned after it, provide for a broader application of voluntary intoxication. Evidence of such intoxication may be introduced to negate any element of an offense which it will negate, with one exception. Since it can negate only mental states, this means in effect that intoxication can be used to disprove the mental states of intention (by demonstrating no conscious objective) and knowledge (by demonstrating no mental awareness). It could negate the mental state of recklessness (by demonstrating no awareness of risk) but for the fact that the MPC and other codes have denied intoxication this impact. Of course, voluntary intoxication cannot negate criminal negligence since it is committed through failure to perceive a risk.

In a few jurisdictions, the courts have given intoxication an even more limited role. Certainly, it would not in these jurisdictions have a place in a case involving unintentional homicide.

Conclusion: Since the offense most likely to be charged against Smith is manslaughter committed through criminal negligence, his voluntary intoxication could not be used to his advantage. Could it be used to the advantage of the prosecution? The answer is yes. It could be used as evidence of negligence, i.e., showing a gross deviation from reasonable conduct in shooting a gun while under the influence. Also, in a MPC jurisdiction, it might even serve to allow a finding of recklessness if it could be found that the accused was unaware of risk solely because of his voluntary intoxication.

Question 1, Part C:

Since Carter did not himself commit the act which caused the death of the victim, his liability (if any) would have to be under the law governing accomplices.

Generally, one is guilty of accomplice liability when he either encourages the commission of an offense or aids in its commission (actus reus) and does so with an intention to promote the commission of the offense (mens rea). Strictly construed, these elements might not be provable against Carter. He did not encourage the commission of homicide; certainly, he did not have an intention to promote the commission of an offense of homicide.
However, it is clear that under the law of most jurisdictions one can be found guilty of being an accomplice to an offense which is committed with recklessness or negligence. The Creamer case in our casebook made this point clear; in that case, one who referred a woman to an abortionist was held guilty of manslaughter for a death which resulted from the abortion. In finding accomplice liability for situations such as this, many courts are not real clear in their reasoning. It is possible to see the situation as one in which the accomplice participates in the conduct leading to the result and has the necessary mens rea for commission of the offense charged (i.e., recklessness or negligence).

The MPC makes the matter much clearer. It has a special provision for accomplice liability for result crimes such as homicide. Conviction is appropriate if the defendant is shown to have aided or encouraged the conduct causing the result and to have had the mens rea necessary for commission of the offense.

Conclusion: Liability of Carter is possible since he was a participant in the conduct leading up to the death in question. It would be necessary to prove his mens rea which might be more difficult than proving the mens rea of Smith.

Question 2:

ONE: What is Melrose guilty of, if anything? He should be advised that the prosecution may be able to convict him of the highest degree of homicide, namely, murder. Melrose obviously did not intend to kill Vice since he did not have his death as a conscious objective. However, he may be subject to an application of the felony murder rule which is contained in the Lafferty murder statute. His action of burning the kennel would probably be a felony under the law of Lafferty. If determined to be a "dangerous felony", within the meaning of the statute, he could be convicted of murder under this provision. The crime would have to be viewed as dangerous in the abstract, rather than the way it was committed. Ordinarily, the offense of arson involves the burning of a building inhabited by people and such an offense would trigger application of felony murder. Burning of a building of this type might be subject to a different interpretation. It should be remembered that felony murder is a strict liability concept and courts tend to give it a narrow construction.

Even if not guilty of murder under the felony murder provision Melrose might be subject to conviction under the extreme recklessness provision of the murder statute. The prosecution would have to prove the elements of recklessness (i.e., a substantial and unjustifiable risk of death, a conscious disregard of this risk, and a gross deviation from the standard of proper care) and then show that the circumstances manifest extreme indifference to life. Starting a fire in a building so near to a residence at night and so far from a fire station and during a windy time would probably be sufficient for a submission of the question to the jury. The lower offense of second degree manslaughter (which would be recklessness without the extreme
indifference) is clearly a possibility. On the other hand, it is
arguable that Melrose had no awareness of the risk of death to Vice in
setting the fire, though he should have been aware, and thus could only
be convicted of third degree manslaughter through criminal negligence.
CONCLUSION: Probably the jury would have to be given instructions on
all three of these offenses and would decide which offense is proved.

NOTE: Although first degree manslaughter might seem to be
implicated in this problem, since Melrose was acting under an extreme
emotional disturbance for which there might have been a reasonable
explanation or excuse, it probably would not be applicable. Usually,
this concept comes into play to mitigate intentional killings from
murder to manslaughter. In this instance, Melrose clearly did not
intend the death in question. Probably, very few if any courts would
see this as a "voluntary manslaughter" situation.

TWO: Does Melrose have any realistic hope of making a defense?
There is a possibility that Melrose could gain relief under the law of
criminal causation. It is clear that his conduct would constitute the
"actual cause" of the death in question. But for his act of starting
the fire the death would not have occurred. Moreover, his act would be
a substantial (as opposed to a trivial) factor in causing the death.
He could argue, however, that there was at least one intervening cause
that should serve to supersede his own action and relieve him of
liability for the death of Vice.

Under the traditional law, intervening causes were broken into
dependent intervening causes (which were defined as actions which were
directly produced by the defendant's acts) and independent intervening
causes (which were defined as acts or events which merely operated upon
conditions produced by the defendant). Under this law, a dependent
intervening cause would not supersede and provide relief to a defendant
unless it was found to be an "abnormal" response to the defendant's
action; an independent intervening cause would not supersede if it was
reasonably foreseeable to the defendant. The Model Penal Code adjusted
this law and provided a rule which simply inquires if the manner in
which the result occurs is so accidental or remote that it would be
unjust to hold the defendant responsible for the result.

The defendant could argue that the lack of pressure on the water
line was an intervening cause which should relieve him of liability.
Since this would be an independent intervening cause under traditional
law the question would be whether or not it was foreseeable. Under
the MPC the question would be whether or not the accused could be held
justly liable for the death. The defendant could argue that the
victim's action of going back into the burning building was an
intervening cause which should relieve him of liability. This would
probably be classified as a dependent intervening cause under
traditional law. The fact question would be whether or not this was a
normal response under the circumstances? Again, under the MPC the
inquiry would be in terms of whether or not it would be just to hold
the defendant liable for the death. The jury would have issues to
decide in the area of causation. But, clearly, Melrose has the
possibility of making a defense to the charge of homicide.

Question 3, Part A:

The only homicide offense possibly chargeable against Nuchols would be third degree manslaughter. It is arguable that his conduct constitutes criminal negligence, i.e., that it had a substantial and unjustifiable risk of death in it and a gross deviation from the standard of care of a reasonable man. Clearly Nuchols was not aware of this risk of death, which assures that his mens rea is negligence and not recklessness. Whether or not these elements could be proved is somewhat questionable. It may be that a court would conclude that the conduct of Nuchols did not create a sufficient risk of death for homicide liability; also, it may be that courts would conclude that there is a "deviation" from proper conduct but not a "gross deviation". A stronger argument for liability for manslaughter, however, could be made under the second part of the statute. Nuchols act of fighting with Murphy could be seen as an illegal act not amounting to a felony (i.e., assault) with death being the result of the illegal act; this is known as misdemeanor manslaughter. The difficulty of proceeding against Nuchols under this section of the statute may be that the unlawful act is not "independent" of the homicide, a concept which applies to felony murder and might be applied to this related concept.

There are two other difficulties involved in proceeding against Nuchols for homicide. He may claim a defense of self-defense since his blow to Murphy's chin was in response to an attempt by Murphy to strike Nuchols. One does have a right to defend himself against an unlawful attack by another. However, it may be that Nuchols act of provocation (calling Murphy an S.O.B.) could serve to deprive him of the defense of self-defense. The specific law of the jurisdiction would be determinative. In addition, Nuchols may argue that the act of Banks was an intervening cause of the death of Murphy which serves to supercede his own actions in bringing about the death. The intervening cause in this instance would be an independent one (operating upon conditions produced by the defendant) and would be judged by the "foreseeability" standard. Probably, it could be found foreseeable since the fight occurred near the street.

Question 3, Part B:

Banks would be charged, if at all, under the statute creating the offense of third degree manslaughter. It is possible but not very likely that his conduct could be viewed as criminal negligence. Certainly, driving a car on a street poses a substantial risk of death to other people. The problem of proving criminal negligence against Banks would be in establishing a "gross deviation". His driving in excess of the speed limit would constitute a "deviation" from proper care but it is very unlikely that this could be viewed as a "gross deviation". However, it is clear that Banks was driving in excess of the speed limit at the time of the incident. This is an unlawful act not amounting to a felony and would be sufficient to trigger the misdemeanor-manslaughter concept. So, it is possible for Banks to be prosecuted for homicide.
Perhaps the best defense which could be made for Banks would be that of lack of causation. Homicide is a result crime. It will be necessary for the prosecution to prove that Banks' unlawful act was the actual cause of the death in question. The inquiry is this: Can it be said that "but for" Banks illegal act of driving above the speed limit the death would not have occurred. It may be very difficult for the prosecution to prove this element beyond a reasonable doubt. This gives Banks a chance for acquittal.

Question 4:

The evidence is sufficient to support a finding that Dugan killed Barton intentionally, i.e., with death of Barton being a conscious objective of Dugan. His act of shooting the victim with a deadly weapon is sufficient standing along to support the finding but there is more evidence of intention. It is clear that Dugan had strong negative feelings about Barton; shortly before the shooting he threatened to kill him if he ever touched Joyce again. Unless Dugan can provide evidence indicating a lack of intention to kill through his own testimony, the analysis of liability will have to focus on the offenses of murder and first degree manslaughter.

Under the law of Lafferty, murder is committed through an intentional killing. However, a murder offense may be mitigated to the lesser included offense of first degree manslaughter if it is shown that the defendant killed while acting under an "extreme emotional disturbance" for which there is "a reasonable excuse or explanation". The Lafferty statute is based on the Model Penal Code proposal for dealing with emotional killings. The traditional law provided mitigation on the basis of (i) adequate provocation; (ii) heat of passion; (iii) suddenness; and (iv) a killing caused by the provocation and passion. The MPC is slightly more liberal but still seeks to provide mitigation for an emotional killing that has a reasonable explanation for it. The evidence in this case provides a classic illustration of the situation in which the element of mitigation comes into play. The evidence is sufficient to support a finding that the defendant was acting under extreme emotional disturbance and it is also sufficient for a finding of reasonableness. The jury would have to decide.

The defendant has the possibility of complete acquittal on the basis of self-defense. Under the traditional law, he would be relieved of liability if he (i) believed that he faced a threat of death or serious bodily injury at the hands of another; (ii) believed that he used only such force as was necessary to defend himself against the threat; and (iii) had reasonable grounds for his beliefs. He has a chance to prove this defense. His greatest difficulty may come in proving the last element. Brian was not in fact armed and to the defendant's knowledge had never owned a gun. His statement that he thought Brian was reaching in his pocket for a gun may be a little lacking in credibility. The prosecution will be able to introduce evidence showing hate by Dugan of Barton and will use this to show that Dugan may have wanted an excuse to kill Barton. The evidence will have
to be submitted to a jury; the jury will have to decide if Dugan had reasonable grounds for his beliefs that he faced a deadly threat and that he did only what was necessary.

NOTE: The Model Code adjusted the law of self-defense by allowing the defense on the basis of subjective beliefs. However, it provided that a defendant having the subjective beliefs necessary for the defense of self-defense could possibly be convicted of lower homicide or assault offenses if he was reckless or criminally negligence in holding the beliefs.

PART II.

Question 1, Part A:

David's chances for reversal on appeal are probably nonexistent. The reasons for this conclusion are as follows:

Evidence of intoxication: Voluntary intoxication is not a defense to crime committed while intoxicated. However, in most jurisdictions it can be introduced as evidence to negate elements of mens rea, with its role varying somewhat from jurisdiction to jurisdiction. The problem facing Sparks in this instance, however, is that there is no mental element which can be negated by his intoxication. The first offense (possession of intoxicating beverages with intent to sell) has a mental element, namely "intent to sell", but it is clear that Sparks' intoxication at the time of the party could not negate this element since it existed prior to his intoxication (i.e., from the time of his purchase of the alcohol with an intention to sell it at the party). The second offense (selling to a minor) is a strict liability offense; obviously, intoxication cannot negate any of its elements.

Evidence of Mistake of Fact: The law does not recognize mistake of fact as a defense per se. This is illustrated best perhaps by the general refusal of most jurisdictions to recognize significance to a mistake as to the age of a statutory rape victim. Of course, a mistake of fact may have an evidentiary role in a case if it would serve to negate an element of the crime charged. For example, one who takes another's property believing it to be his own cannot be convicted of theft since the prosecution would be unable (because of the mistake of fact) to prove an intent to steal. When these well-established principles are applied to the present situation, it is clear once again that the judge corrected excluded the evidence of Sparks' belief that everyone at the party was above the age of 18 years. The crime of unlawfully selling to a minor had no mental state requirement. Thus, the mistake of fact had no relevancy to the issues.

Evidence of Ignorance of the Law: There is a maxim that ignorance of the law is no excuse. It is designed to avoid the situation where every person would establish his own code of
criminality through his ignorance and there would be no community established code of criminality. So, it is uniformly held that one may not defend a criminal charge by proving that he was unaware of the existence of a law making his conduct a crime. The situation here is a classic illustration of the application of this concept. Therefore, the judge was correct in ruling that Sparks' ignorance of the law requiring a license to sell alcoholic beverages was irrelevant to the charges.

Question 1, Part B:

David's chances on appeal would improve substantially under the second set of statutes. The statutes now have mental elements not contained in the first set; the first offense requires that the accused "knowingly possess" and the second offense requires that he "knowingly sell".

In order to ascertain David's chances on appeal, it will be necessary to determine the exact meaning of the statutory requirements of knowledge contained in the two statutes, for the exact scope of the requirements is not clear. Does the first statute require only that the accused have knowledge of his possession of alcoholic substances within Lafferty or does it require in addition to this that he have knowledge of the legal requirement of a license? Similarly, does the second statute require only that the accused have knowledge that he is selling alcoholic substances or does it require in addition that he know that the person he is selling to is under the age of 18? Resolution of these questions of interpretation is essential to a determination of the correctness of the evidence rulings by the trial judge. In some modern statutes, there can be found a provision which requires that any mental state contained in a statutory offense must be applied to all the elements of the crime unless otherwise clearly indicated. If this rule of construction is followed, knowledge would apply in both offenses to the two elements described above. Analysis of the judge's rulings would be as follows:

Intoxication: In most jurisdictions, voluntary intoxication could be introduced to negate an element of knowledge, which is defined as mental awareness. Since the defendant could be guilty of selling to a minor only if he knew that the buyer was under 18, evidence of intoxication would be relevant to this issue. It would probably not be relevant to any other element.

Mistake of Fact: The evidence of Sparks' mistake of fact as to the age of people in attendance would be relevant under the modified statute. A sale to one known to be under 18 would be an element of the offense; the mistake of fact would prevent proof of this element.

Ignorance of Law: When a statute requires knowledge of the unlawfulness of conduct, then the maxim described above must give way. Construing the statute on unlawfully possessing for sale as requiring knowledge of a license requirement would make evidence of Sparks' ignorance of the law relevant.
Question 2, Part A:

Under the general doctrine of complicity a individual is guilty of offenses committed by another when he aids in the commission or planning of that offense or encourages its commission (actus reus) and does so with an intention to promote its commission. Ordinarily, one is not guilty of complicity when he merely knows that an offense is being committed and that he has done something to aid its commission; his mens rea must reach the level of having the commission of the offense as his conscious objective. (It should be noted that a few jurisdictions have created a special offense to deal with this latter situation; it is called criminal facilitation and is committed when one does some act which aids the commission of a crime with knowledge of that fact.)

The principles described above apply rather easily to offenses which involve criminal conduct (such as robbery, theft, and burglary) but do not apply easily to result offenses (such as homicide or assault). Since a result which is an element of a crime may be unintentional (not a conscious objective) in so far as an accomplice is concerned, a special provision for accomplice liability for such offenses is necessary and exists in most jurisdictions. The Creamer case, and others we studied, make it clear that one can be guilty as an accomplice for result offenses which are not intended. The Model Penal Code deals with this situation explicitly by providing that one can be guilty of a result offense when (i) he encourages or aids in the conduct which causes the result and (ii) has the mental state needed for commission of the offense charged. Thus, under both the traditional law and the MPC, an accomplice who is reckless or negligent can be guilty of a result crime through participation in conduct which causes that result.

Applying these principles to the facts of our case we get the following:

Albert: He is clearly guilty of the burglary of the jewelry store, the robbery of the liquor store, and the auto theft. He aided or encouraged all of these offenses and he intended to promote their commission. He did not intend to promote the offense of assault on the police officer. But assault is a result crime and he did intend to promote the conduct which resulted in this offense; if it can be proved that he was either reckless (consciously disregarded a risk that death or injury would result because of the robbery with a gun) or criminally negligent (failed to perceive such a risk and a gross deviation from proper conduct) then he could be convicted of reckless or negligent assault (assuming the jurisdiction has such an offense).

Baker: He is guilty of the burglary of the jewelry store since he committed the offense. He knows of the plan to rob the liquor store but does not have this offense as his conscious objective. Also, he does nothing to aid or encourage the
commission of this offense. No accomplice liability for this offense.

Carter: He is guilty of robbery and assault of the officer since he committed these offenses. But his liability for the burglary committed by Baker is subject to the same analysis as provided above for Baker. Knowledge of a plan to commit a crime is not sufficient mens rea for guilt as an accomplice. He had no intention to promote the commission of the burglary. The same is true with respect to the car theft; his connection to this offense may be a little troublesome for him, but the facts do not indicate participation in this offense. Mere knowledge that it was going to be committed would not be sufficient for guilt.

Dawkins: He is guilty of theft. Knowledge that he is facilitating the commission of robbery by providing the vehicle is not equal to an intention to promote the commission of that offense. His liability should be individualized and he specifically did not intend to participate in the robbery. He might be guilty of facilitating the robbery in a jurisdiction which has such an offense.

Question 2, Part B:

Conspiracy is used as a basis for vicarious liability in most jurisdictions. There are two propositions pertinent to the present case: (1) all conspirators are liable for offenses committed by coconspirators when those offenses were the objective of the conspiracy; and (2) conspirators are liable for offenses which were not the objective of the conspiracy if they were a natural and probable consequence thereof. The extent to which conspiracy will be used to extend liability to actors involved in group activity varies from jurisdiction to jurisdiction. The MPC probably has the most restricted rules and essentially limits accomplice liability to instances in which the offender has the underlying offense as his conscious objective, subject of course to the possibility of convicting one for result crimes on the basis of lesser mental states.

The analysis of liability under this law would be as follows:

Albert: Once again he would be liable for all the offenses. The burglary, robbery, and theft were the objectives of separate conspiracies with each of the principal offenders and the offenses were committed pursuant to the conspiracy. Only the assault of the police officer was not a specific objective of the conspiracy. However, it was foreseeable as a consequence of the conspiracy to commit armed robbery and would be viewed as a "natural and probable consequence" of the conspiracy.

Baker: It is possible that Baker could be viewed as having joined a broad conspiracy which included commission of the robbery offense by Carter. He had awareness of the intention to commit it and it is clear that one can be a conspirator without knowing the identity or seeing face to face other conspirators.
Some jurisdictions might be willing to see this as a chain conspiracy situation and, since Baker knew of the broader scope of the criminal enterprise, they might extend vicarious liability far enough to include him. However, he does have a good argument that he did not commit the offense of conspiracy to rob the liquor store since he never "agreed" to participate in that offense; of course, agreement is essential to the existence of a conspiracy. Under the MPC he would not be guilty of the offenses committed by Carter.

Carter: The analysis described above would apply equally well to Carter in so far as the jewelry store burglary is concerned. A stronger argument could be made to hold Carter responsible for the automobile theft, assuming that he knew it was being planned and that it was for the purpose of providing a vehicle for the robbery. It would be easier for jurisdictions to find that he was a conspirator in a plan which included as objectives the car theft and subsequent robbery. However, the MPC would still not hold him responsible for this crime since it was not his conscious objective.

Dawkins: Dawkins might find himself more involved in this criminal enterprise than he would like to be. Knowing that the vehicle he planned to steal was going to be used in a robbery might make it possible for courts to find him to be a conspirator in an endeavor which included the robbery of the liquor store. Of course, if found to be a conspirator in this broad plan he could be found guilty of the robbery and also the assault which occurred as a natural and probable consequence of it. Once again, MPC would look at his mental state with respect to each offense; his liability would probably be limited to theft.

Question 3:

Roberts' indictment for attempted shooting into residence: The offense of attempt is generally defined as an act toward the commission of a crime with an intention to commit that crime. The mens rea is intention, meaning that the actor must have had the underlying crime as his conscious objective. Under this law it is clear that not every act done with an intention to commit an offense will be an attempt. The actor must go beyond mere "preparation" in order to commit the offense; he must cross a line between preparation and "perpetration" in order to satisfy the act requirement. Several standards of measurements have been used to determine whether or not a person has gone far enough to commit attempt. Probably the two most common standards predating the MPC were the "physical proximity" standard (which required the actor to come dangerously close to success) and the "probable distance" standard (which required the actor to go so far that it was probable he would have completed the offense absent outside interference). The MPC has provided another standard which has been widely adopted; it requires that the actor have taken a substantial step toward commission of the offense, with this defined to mean that his act must be strongly corroborative of his intention. All of these tests are designed to
accomplish the same thing, namely, to provide some assurances that the actor has an intention to commit an offense and that his intention is a firm one.

Conclusion: The prosecution may have trouble proving intent to shoot into the house. If this obstacle is overcome, a jury would have to decide if his act crossed the line between preparation and perpetration under the applicable test.

Duncan's indictment for attempted murder: Had Duncan caused the death of the farmer's daughter by his act of shooting into the residence he could have been convicted of murder. His mens rea would have been extreme recklessness which manifested extreme indifference to human life. This makes it appear at first blush that his unsuccessful act might constitute attempted murder. However, there would be a serious proof problem in making a case under this indictment. As stated above, an attempt is defined to require that the actor have the underlying offense as his conscious objective. If the prosecution can prove that Duncan intended to kill the farmer or his daughter then attempted murder can be proved. But absent that proof the offense was not committed by Duncan. Of course he is guilty of the offense of shooting into an occupied residence, which in a sense is in the nature of an attempt crime. At least it is an inchoate offense designed to deal with individuals whose actions threaten injury or death.

Roberts and Duncan indictment for conspiracy: A conspiracy is not committed unless there is an agreement between two or more people that one or more of them will commit an offense. While an agreement need not be express and may be implied from the circumstances, it is clear that an agreement must be proved before this inchoate offense is committed. There is no evidence here of an agreement between the two actors. Roberts seems to have been acting on his own. While Duncan may have been motivated to act by Roberts attempt, it is still very difficult to see how evidence could be introduced showing an agreement between the two.

PART III.

Question 1: The MPC definition of insanity requires that an accused suffer from a mental disease or defect which causes him to lack either (i) a substantial capacity to appreciate the criminality of his conduct or (ii) a substantial capacity to conform his conduct to the requirements of the law. Under the M'Naghten test the accused must also suffer a mental disease or defect. As a result of this he must either lack the capacity to know what he is doing or, if he knows what he is doing, lack to capacity to determine the wrongfulness of his conduct. In more modern versions of the M'Naghten test, the "knows what he is doing" portion of the standard has been dropped as redundant. The principal differences between the two tests are these: (1) the MPC standard has a "control" element which M'Naghten does not have (although most jurisdictions supplemented M'Naghten with irresistible impulse); (2) the MPC uses "criminality of conduct" in lieu of wrongfulness to eliminate the notion that the issue is one of ethics or morality; and (3) the use of "substantial" is designed to recognize that one can be legally insane although not extremely ill.
Question 2: The critical point in time for the insanity concept is the date of the alleged criminal act; the crucial time for the incompetency to stand trial concept is the date of the legal proceeding. Although both deal with mental illness of an accused for the most part, the type of illness may be very different. The standard of measurement is very different. An accused lacks the competency to stand trial when he lacks the capacity to understand the proceedings and to participate rationally in his own defense. The standard for legal insanity is described in Question 1. The consequence of a finding of legal insanity is acquittal of the offense; the consequence of incompetency to stand trial is that the accused cannot be tried under the charges until his competency is regained.

Question 3: The principle of legality is fundamental to the criminal law. It prohibits the imposition of criminal penalties unless there existed a criminal prohibition properly enacted prior to the conduct that is in question. The maxim nulla poena sine lege--no punishment without law--states the principle. As a part of this principle, a legislature cannot create a crime and give it retroactive effect; a court cannot create a crime to fit conduct of the accused. In addition, a court may not construe an existing statute in such a way as to violate this basic principle.

Question 4: All of these concepts are labels used as common law to describe parties to crime. The aider and abettor was a principal in the second degree; he was not the perpetrator of the offense but he was present (actually or constructively) at the time of the offense and was ready to give aid if necessary. The accessory before the fact was a participant in an offense committed by a principal but was not present at the time of the commission of the offense. A solicitor or a conspirator (not present at the time a crime was committed) was an accessory before the fact. An accessory after the fact was one who aided other participants in the commission of an offense by helping them escape apprehension or prosecution. He was an obstructor of justice.

Question 5: Criminal solicitation is an inchoate offense which is committed when an actor requests, encourages, or commands another person to commit a crime with an intention to have that other person commit the offense. A solicitor is guilty of criminal attempt if the person solicited attempts the offense and he is guilty of the completed offense as an accomplice if the offense is committed. The real significance of the crime of solicitation is in its application to a rejected request of command to commit an offense. Criminal facilitation is an offense which exists in only a few jurisdictions. It is committed by one who aids another in the commission of an offense through conduct or action, knowing that the offense is going to be committed and that his conduct will contribute to its commission.