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## Criminal Law (May 30, 1969)

William & Mary Law School

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## CRIMINAL LAW

May 30, 1969

Mr. Torcia

Time: 3 hours

Instructions - (not relevant for Question 2): You are to assume that the occurrences set forth in the following problems took place in the State of Marshall, the fifty-first state of the United States. The pertinent "murder" statute provides: "All murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration of, or in the attempt to perpetrate any arson, rape, robbery, burglary, or kidnapping, shall be murder in the first degree. All other kinds of murder shall be murder in the second degree." All other penal statutes in the State of Marshall are mere codifications of the common law. In the following problems, you are to discuss the possible criminal liability of the parties.

### I.

Weight - 30.

Suggested time - 55 minutes.

A asked B to join him in going out and finding a likely person to rob. B refused; so A abandoned the idea. Later that same day (about midnight), B told A that he had changed his mind and would now be willing to join him in a robbery. A said: "Good, let's go." They looked around in vain for a likely prospect to rob for about an hour. As they passed the dwelling house of C, they noticed through a closed window that a mink coat was draped over a nearby chair. They decided to steal it. A tossed a boulder through the window and, after smashing the glass, the boulder fell inside. A found a long stick, poked it through the hole in the window, and tried to impale the coat on the stick and then drag it out. But he was unable thus to impale the coat and, finally, he and B decided not to steal it. So, they continued on their way until they noticed the front door of D's dwelling house slightly ajar. They decided to enter and steal all the jewelry they could find. A was to go into the house and B was to remain outside as the lookout. A pulled open the front door wider and walked in. He found himself in the living room. A felt the jewelry was probably in the bedroom. So he opened the closed but unlocked bedroom door and walked in. He found no jewelry therein. (In fact, there was no jewelry anywhere in the dwelling house). When A came out of the house, B called him vile names for coming out empty-handed. A became highly enraged, took out a gun and shot at B. The bullet missed B, but struck and killed E, a milkman, who happened to be passing by. A and B then fled the scene, taking a short-cut through the land of F where they came upon an apple tree. A collected a few apples from the ground and carried them away; but B, desirous of fresh apples, shook the tree and collected and carried away the apples that he caused to fall to the ground.

### II.

Weight - 20.

Suggested time - 35 minutes.

State what each of the following legal tests of insanity is; and defend or criticize each, as the case may be:

- (a) M'Naghten
- (b) Durham
- (c) Model Penal Code.



III.

Weight - 30.

Suggested time - 55 minutes.

A, a bum, breezed into town on the midnight freight train. Although he had only a dime in his pocket, he was determined to find something to eat. He noted that a restaurant, "Joe's 24-Hour Eatery", was open. He decided to go in, buy a cup of coffee and, after patrons had completed their meals and left the restaurant, to pick up and consume any scraps that might have been left behind (such as the remains of a sandwich). He pushed open the door, walked in, hung up his coat in the cloak room, bought a cup of coffee, took a table, sipped his coffee slowly, and proceeded to wait and watch. As it happened, however, no one left any food behind. He was becoming crazed with hunger. Finally, when a patron, B, left his meal temporarily to go to the rest room, A dashed over to B's table and wolfed down his piece of pie. A returned to his own table and resumed his waiting and watching. His roaming eye fell upon a woman, C, who was wearing a diamond necklace. A decided to steal the necklace. He had in mind undoing the clasp and removing the necklace, while on the run, in one sweeping motion and then dashing out of the restaurant. He ran up behind her, slipped the necklace from her neck and, after he got a few steps away, she discovered the loss of her necklace, screamed, and proceeded to chase A. A spun around and knocked her to the floor. D, a day-shift chef, who had been sleeping in his regular quarters in a back room adjoining the kitchen, was awakened by C's screams, and he rushed out into the street and called E, a policeman. When D entered the restaurant with E, A dropped the necklace to the floor, took a butcher knife from the counter, and menaced E with it in order to facilitate his escape. E pulled out his gun and shot at A, missed, and killed D. (Assume that E's shooting at A was "lawful" under the circumstances). As A was leaving the restaurant, he grabbed what he believed to be his own coat. Shortly thereafter, when several blocks away, he discovered that he had taken the coat of someone else. He decided to keep it anyway.

IV.

Weight - 20.

Suggested time - 35 minutes.

A was driving his car in a 20 mile per hour zone at a speed of 60 miles per hour. (You are to assume that such conduct on the part of A amounted to "recklessness", and that it also constituted a misdemeanor). B, a pedestrian, who happened to be intoxicated, was crossing the street and exercising "reasonable care" in doing so. A observed B and attempted to stop his car but, because of his high speed, was unable to do so. So A's car struck and injured B. A, together with C (a policeman who happened to be cruising in the area), stopped and rushed to the side of B. B, feeling especially aggressive because of the influence of the intoxicants, and blind with rage because A had struck him with the car, lashed out to punch A in the nose. A ducked, and B's fist hit C in the eye. The blow knocked C down and, in the fall, his head struck the bumper of A's car, resulting in his (C's) death.

THE END