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Criminal Law: Final Examination (May 19, 1971)

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FINAL EXAMINATION
CRIMINAL LAW

Professor Walck
May 19, 1971

General Instructions

1. This examination consists of VI questions with lettered and numbered subdivisions. Be certain to answer all questions and subdivisions in the order presented, numbering and lettering your answers accordingly.
2. Study the question carefully before you begin writing. Read the entire question before answering any part of it.
3. Write legibly. If your answer cannot be read, you will receive no credit.

(Estimated time - 50 minutes)

1. Joe Doe was found by a policeman walking in the middle of a little used but public state highway at 2 a.m. His clothing was disheveled and bloody, he walked with an unsteady gait, his eyes were blood-shot and he had an odor of alcohol on his breath. His speech was slurred. He told the policeman that he had had an accident and that his car with his wife in it was in a ditch a half mile down the road. Joe and the policeman returned to Joe's car where the policeman discovered Joe's dead wife slumped on the passenger side of the car covered with blood from a gaping wound on the top of her head. Her seat belt was unfastened. Joe voluntarily told the policeman: "We were returning from a party at my friend Harry Hannigan's house where I had consumed two beers. I was driving well within the speed limit. When we were several hundred feet down the highway a dog suddenly ran in front of my car. I swerved to miss him, got caught in the gravel on the shoulder of the road, lost control of the car and went into the ditch. The car came to a sudden stop and my wife hit the windshield. I tried to help her out of the car but then decided it would be best to go for help. It was then that you found me."

The police made a thorough investigation that night and the following day. They discovered that there were skid marks on the highway for fifty feet before the car went into the ditch. It slid for another fifty feet in the ditch before coming to rest. In front of the right front tire they found a stone about eight inches across at its largest diameter. The autopsy showed that Mrs. Doe had died as the result of her head striking or being struck by a blunt instrument. The windshield in front of the passenger seat had a large, circular shattered area and some splinters of glass had fallen from this area into the car. On careful examination, blood matching that of Mrs. Doe was found on the windshield and also on the splinters. No hair was found on the shattered area of the windshield or the splinters.

Upon interrogation by the police, Harry Hannigan and the other guests at the party told the police that Joe and his wife had been drinking martinis all evening and were very drunk. That just before they left they had had a violent argument. Joe told her, "Some day you will push me too far." He then drank a couple of beers to "sober me up" and they left.

Several weeks later Joe, after being properly advised of his rights against self incrimination, told the police that his argument with Mrs. Doe had continued after leaving Harry's house. She became more and more offensive in her verbal attacks against him and finally accused him of "not being enough of a man for her." She said that as a result of his lack of interest she had been "sleeping" regularly with his friend Harry. After this news he became so emotionally distraught that he decided to kill her. He "bashed her skull in" with a tire iron, struck the windshield with the same tire iron, smeared his wife's blood on the windshield and glass splinters, drove the car into the ditch, placed the stone in front of the right wheel and then "set out for help".

- (a) As assistant district attorney, you have been given a file containing all of the above and asked to analyze it to determine what offenses, if any, can be proven against Joe other than drunken driving. Give the elements of the offense(s). If any of the terms used in your statement of the elements would not be readily understood by a layman, define them.
- (b) Assuming that Joe has now disclaimed his confession and has plead not guilty, what will be necessary for you to do before Joe's confession will be admissible in court? Which of these facts support it? What degree of proof is necessary to maintain it?

- (c) Would your answer to (b) above be different if Joe's confession had been made in open court and if so, why?
- (d) Assume you decide to charge Joe with first degree murder. Would his intoxication be a defense to that charge and, if so, of what must he convince the jury?
- (e) Assume all of these facts, including Joe's confession, went to the jury. Joe's attorney requests an instruction on voluntary manslaughter. Must the court give such an instruction? Why? Explain.

(Estimated time - 40 minutes)

II. A. Define Common law burglary.

B. Would the following constitute common law burglary? Give reason(s).

1. Owner closed up his house where he had lived for years and took a job in Europe for two years. He fully intended to return and occupy the house. D broke a lock and entered the house at midnight to steal a valuable painting.
2. Same as 1 except that after two years owner decided to stay in Europe and contracted with a realtor to sell the house. D broke and entered the house at midnight on a day three weeks after the house had been advertised for sale.
3. Utilizing pre-dawn light D put the handle of a garden rake through a hole in Farmer's chicken house to raise the latch of a door so that he could enter the chicken house and steal Farmer's chickens. However, being clumsy he dropped the rake and the chickens caused such a commotion that he abandoned his scheme and ran. The chicken house was directly back of Farmer's residence.
4. Same as 3 except that D utilized a fish net with a long handle in an attempt to catch a chicken and pull it through a window.
5. D, a day servant for X had unrestricted right to enter the house and was given a key so she could let herself in in the morning to prepare breakfast. She came to the house one midnight, let herself in with the key, took several valuable figureines and left, closing the door behind her.
6. Same as 5 except that she hid the figureines in another part of the house and left. The next day, during her normal duty hours she put the figureines in her "tote" bag and took them home.
7. In any of the above, if you decided that D was not guilty of burglary, was he or she guilty of any other offense? If so, what?

(Estimated time - 30 minutes)

- III. A. D wants to steal A's automobile. He borrowed the car and while using it with A's consent he had a duplicate ignition key made. Late one night he went to A's house, put his key in the ignition and attempted to start the engine. Unknown to D, A was a very cautious fellow and each night would remove the rotor from the distributor making it impossible to start the car even with a key. D is charged with attempted larceny and he defends on the basis that since it was impossible to start the engine he could not be guilty of attempted larceny. What result? Why?

- B. The facts are the same as in A above except that D asks X to pick up the car on the way home telling X that the car is his (D's) property. X has the same experience in attempting to start the car. Is your answer as to D any different than in A above? Why? What offense, if any, has X committed?
- C. Suppose X knew that the car did not belong to D and that D had no right to possession. What offense or offenses would D and X be guilty of in B above? Why?
- D. Suppose that when D asked X to steal the car for him X refused. Would D be guilty of any offense at that point? If so, what?

(Estimated time - 20 minutes)

- IV. B and D, two boys 19 years of age, were engaged in target practice with a .22 caliber rifle. They were sitting on a beach shooting into a river approximately a mile wide. Children ranging in age from 4 to 10 years of age were playing on the same beach, B and D "emptied" their gun, placed it on a blanket and went for a cold drink. They took "all" their ammunition with them. While they were gone X, a child of six, picked up the gun and pulled the trigger. The gun discharged and killed his playmate. May B, D and/or X be charged with any criminal offense? Explain, give reasons.

(Estimated time - 15 minutes)

- V. A, B and D decided to go into business as fishermen. They purchased a boat, nets and all other gear necessary for the enterprise. They had been in business just two weeks when they were arrested for using nets in fresh water streams in violation of a state statute. They were charged with conspiracy and they offer in defense evidence that they were ignorant of the statute. The court refuses to admit the evidence and instructs the jury that ignorance of the law is no excuse and that everyone is presumed to know the law. Defendants appeal. What result? Why?

(Estimated time - 20 minutes)

- VI. D was walking down Main Street enjoying the spring weather when he was suddenly set upon by his old enemy X who was carrying a large knife. D told X that he (D) was armed with a gun and that he should come no further. X continued toward D with the up-raised knife and D, believing that he was about to be stabbed shot and killed X. D did not have a permit to carry a gun and while he says he shot in self-defense he has admitted to the police that he was happy for the opportunity to kill X and "have it overwith once and for all".
- 1. Assume this was a "no-retreat" jurisdiction, may D successfully plead self-defense? Give reasons.
 - 2. Same except he is in a "retreat" jurisdiction. Would he be required to retreat? How far? Under what circumstances?