

1973

Criminal Law (A): Final Examination (May 1973)

William & Mary Law School

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1. The defendant (D) killed his wife, according to his own evidence, in the early morning hours of Monday, November 18, in the kitchen of the house where they lived. On the previous Saturday he had telephoned to a Mrs. X, who lived in another state and with whom he admitted that he had previously had sexual relations, that she should expect him on Sunday or Monday. On Monday he visited Mrs. X and told her that his wife had left him. In fact, his wife's dead body was discovered next day in the room where he had killed her. She had received a severe wound on the head caused by a hammer which was found nearby and she had many bruises on her body, but the final cause of death was strangulation. The defendant testified that they had quarreled on Saturday night after other men in a bar had made passes at his wife; he said he entertained suspicions of his wife's conduct with regard to other men in the town where they lived and there had been some suggestion made to him with regard to his wife's conduct with his own younger brother. He testified that the quarrel culminated in his wife's saying, "Well, if it will ease your mind, I have been untrue to you - I know I have done wrong but I think you have also - with Mrs. X." The defendant said that with this he lost his temper, picked up the hammer and struck her with it on the side of the head. She fell on her knees and then rolled over on her back, her last words being, "It's too late now - look after the children." The defendant said she struggled for just a few moments and he could see she was too far gone to do anything. He did not like to see her lay there and suffer, so he just put both hands around her neck until she stopped breathing, which was only a few seconds. On cross-examination, defendant admitted that when he put his hands on her neck and squeezed that he intended to end her life.

Defendant was charged with murder. At the conclusion of the evidence, defendant's counsel requested that the jury be instructed on voluntary manslaughter and be instructed that they might return a finding of guilty of that offense. The court refused to so charge and defendant was found guilty of first-degree murder. He appeals. What result and why?

2. There was evidence that defendant, unattended, had given birth in her home to a baby which was found about twenty-four hours later wrapped in a newspaper, in defendant's garbage can. The state toxicologist testified that from his tests the baby in this case had breathed. Dr. X testified that in his opinion the baby died from hemorrhage resulting from non-ligation of the umbilical cord. These are all the facts known to the government. With what offense or offenses should the defendant have been charged? What problems exist for a successful prosecution?
3. A, B and C were having a few beers in a local pub. The discussion turned to their impecunious condition and possible solutions thereto short of gainful employment. A suggested that their portly host must certainly keep his daily receipts somewhere about the tavern as all banks are closed when he closes the pub and retires upstairs for the night. It was agreed that they would return after the pub was closed and relieve their host of his daily receipts. At closing time they removed themselves to A's home where A's wife prepared a midnight snack for the three of them and listened to their plans. She neither encouraged nor discouraged them as to their proposed adventure. After eating, A departed for the pub to reconnoiter the area. B and C followed him ten minutes later. After leaving the house B had a change of heart and decided that he was not going through with the original plan. He informed C that he was quitting, withdrawing absolutely and would have nothing to do with the plan from then on. After a few epithets concerning B's canine ancestry and empty abdomen, C continued to the pub where he joined A. A didn't ask and C didn't volunteer anything concerning B's absence. They approached the pub but discovered that the inkeeper is a man of some foresight. He had chained a large,

vicious mastiff just inside the gate to a fence which totally surrounded the building. A and C opened the gate and entered the yard. The mastiff attacked without warning inflicting severe wounds upon A's legs. A and C beat a hasty retreat to C's house where C's wife administered first aid to A's wounds and agreed to hide the two of them from the police. However, the police became suspicious of B, arrested him and he told all. The district attorney presents you with a file containing all of these facts. What charges, if any, can be brought against the various persons mentioned assuming admissible evidence to prove them?

4. D had coveted his neighbor's fast and beautiful horse for a long time. He decided to steal the horse but he lacked the nerve to do so. On a given night he decided that perhaps if he fortified himself with enough liquor he might be able to do the act. He drank until he was almost senseless. A physician who examined him immediately after his arrest has given a statement to the effect that D was so intoxicated he could not possibly have known right from wrong or the nature of his act. He staggered to his neighbor's stable, took the horse and put it in his own stable. These facts became known and he was indicted for larceny. His defense was drunkenness. What results and why?
5. You have been retained by a state highway patrolman to defend him on a charge of second degree murder. He tells you that he stopped an out-of-state motorist for speeding. After obtaining his name and address from his driver's license he directed the driver to enter the patrol car as he intended to take him to the magistrate's office. He asked the driver's passenger to follow in their vehicle. Your client states that at that point the driver bolted and attempted to reenter his own vehicle. The patrolman caught him and held him with a "hammer" lock (if necessity this hold must be imposed from behind the one secured). The driver grabbed his gun and simultaneously kicked backwards striking the patrolman a violent blow in his groin with the heel of his shoe. At that time he tightened his hold with a violent jerk which broke the driver's neck.

The police file of the incident has been made available to you. It contains a sworn statement made by the passenger. He corroborates your client's story except that he denies in strong and definite language the patrolman's statement that the driver had taken his gun.

Discuss the defenses available to you and discuss the possibility of success as to each, giving your reasons therefor.